

Clerks Conference

2005-2006

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Texas Municipal Courts
Education Center



TEXAS MUNICIPAL COURTS EDUCATION CENTER



COURSE MATERIAL San Antonio Clerks Seminar January 18-19, 2006

**1609 Shoal Creek Boulevard, Suite 302 Austin, TX 78701
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Web Page: www.tmcec.com**

Funded by a grant from the Texas Court of Criminal Appeals

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San Antonio January 18-19, 2006

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San Antonio

12-Hour Regional Clerks Program
 Crowne Plaza Riverwalk
 111 Pecan Street East
 San Antonio, TX 78205
 Telephone: 210.354.2800
 January 17-19, 2006

TUESDAY, JANUARY 17, 2006

- 1:00 – 5:00 p.m. **Preparation Course Level I - Clerk's Certification Program**
 Olivia Cruz, Court Clerk, Boerne
- 1:00 – 5:00 p.m. **Preparation Course Level II - Clerk's Certification Program**
 Hilda Phariss, Court Administrator, Bryan
- 2:00 – 5:00 p.m. **OPTIONAL PRE-CONFERENCE SESSION:**
Asked and Answered, A Legislative Update
 Margaret Robbins, Program Director, TMCEC
- 3:00 – 5:00 p.m. **Registration**

WEDNESDAY, JANUARY 18, 2006

- 6:45 – 8:00 a.m. **Registration and Breakfast**
- 8:00 – 8:15 a.m. **Welcome & Announcements**
 Margaret Robbins, Program Director, TMCEC
- 8:15 – 9:45 a.m. **Professionalism and Court Decorum**
 Jan Matthews, Municipal Judge, Lubbock
- 9:45 – 10:00 a.m. **Break**
- 10:00 – 12:00 p.m. **DSC/Deferred**
 Margaret Robbins, Program Director, TMCEC
- 12:00 – 1:00 p.m. **Lunch**

TRACK A	TRACK B
1:00 – 2:00 p.m. Juveniles and Alcohol Offenses Margaret Robbins, Program Director, TMCEC	1:00 – 2:00 p.m. Points: Driver Responsibility Program Sherrie Zgabay, Manager, Driver Improvement, Department of Public Safety
2:00 – 2:15 p.m.	Break
2:15 – 3:30 p.m. CDLs and Commercial Motor Vehicles Robin Smith, Presiding Judge, Midland	2:15 – 3:30 p.m. Handling Government Documents Ted Wood, Special Counsel for Trial Courts, Office of Court Administration, Austin (concurrent with judges)

(continued)

TRACK A		TRACK B	
3:30 - 3:45 p.m. Break			
3:45 - 5:00 p.m. Who is in Charge of What and When? Robin A. Ramsay, Presiding Judge, Denton		3:45 - 5:00 p.m. Proper Reporting to the Office of Court Administration Sandra Mabbett, Judicial Information Specialist, Office of Court Administration (concurrent with judges)	

THURSDAY, JANUARY 19, 2006

6:45 - 8:00 a.m. **Breakfast**

TRACK A		TRACK B	
8:00 - 12:00 p.m. Using Differences Constructively: Understanding Psychological Types Hope Lochridge, Executive Director, TMCEC, Austin <i>(Class size limited to 20; sign up on roster at TMCEC Registration Desk)</i>	8:00 - 9:15 a.m. Court Costs & Avoiding Fraud Rene Henry, Financial Management Specialist, Austin	8:00 - 9:15 a.m. FTAs and Warrants Margaret Robbins, Program Director, TMCEC (concurrent with judges)	
	9:15 - 9:30 a.m. Break		
	9:30 - 10:30 a.m. Collection Roles Jim Lehman, Collections Specialist, Office of Court Administration, Austin	9:30 - 10:30 a.m. Dismissals Stewart Milner, Municipal Judge, Arlington and Hilda Phariss, Court Administrator, Bryan (concurrent with judges)	
	10:30 - 10:45 a.m. Break		
	10:45 - 12:00 p.m. Court Security Allen Gilbert, Municipal Judge, San Angelo	10:45 - 12:00 p.m. Appeals Stewart Milner, Municipal Judge, Arlington and Hilda Phariss, Court Administrator, Bryan (concurrent with judges)	

12:00 noon

Adjourn Seminar

1:00 - 5:00 p.m.

Clerk's Certification Test (Levels I, II and III)

Test Administrator: Carrie Harper, Registration Coordinator, TMCEC

SEMINAR INFORMATION SHEET

Welcome to our seminar for Municipal Court Support Personnel. If you have questions that this information sheet does not answer, the Center staff will be glad to assist you. We hope you enjoy the program.

ATTENDANCE

The Board of Directors of the Center has ruled that attendance records are mandatory. **In order for you to receive a certificate of attendance for this seminar, you must attend all 12-hours.** Roll may be called at any time and failure to attend without first informing a Center staff employee prior to missing can cause you to not receive attendance credit for the program. If you are late entering any session, please inform a staff member prior to entering the room. Your badge is your proof of identification. Please wear it at all times during the seminar. The badge also serves as your ticket to enter the room where the breakfast and lunches are served.

MEAL INFORMATION

The Center provides breakfast and lunch on Day 1 and breakfast only on Day 2 to the participants while they are attending the seminar. Guests are not allowed to attend the meal functions with the participant.

CLASS TIMES

Day 1	8:00 a.m. - 5:00 p.m.
Day 2	8:00 a.m. - 12:00 noon

CHECK OUT

The hotel has a set check out time. It will be announced on the first day during the welcoming announcements. Please insure that you do not go beyond this time. Extra-day charges imposed by the hotel will be your responsibility.

VENDORS

The Texas Municipal Courts Education Center and the Texas Municipal Courts Association, as grantee, do not endorse, recommend or imply approval of any or all vendors represented in person or by materials/displays at or near TMCEC/TMCA sponsored meetings and seminars.

INFORMATION PRESENTED AT THE SEMINAR

The information presented at this seminar reflects the viewpoints of the instructors and does not necessarily express the opinion of the Center, its Board or Committees.

Federal and state statutes prohibit employment discrimination on the basis of disability, age, race, color, religion, sex, or national origin. Sexual harassment is included among the prohibitions. The TMCEC strongly disapproves of any form of discrimination or harassment at its seminars, meetings or within its work environment. Employees, participants, faculty, and volunteers who have experienced or observed any acts that they believe may be prohibited by federal, state or common law should report the incident to the TMCEC Executive Director immediately. All such alleged acts will be investigated and consideration given to the appropriate action, if any, to be taken.

Please check your address & telephone number listed on the roster and notify the TMCEC staff of any corrections or changes. Corrections are to be written on the provided space located at the bottom of the Request for Certification form that will be handed out prior to the end of the seminar.

CONTINUING EDUCATION UNITS

The Texas Municipal Courts Education Center will award 1.2 CEU to each participant who successfully completes the 12-Hour Support Personnel Program. The CEU is a nationally recognized unit designed to provide a record of an individual's continuing education accomplishments. Upon written request to the Center, a record will be made available as designated by the participant.

The CEU concept provides individuals with recognition for their efforts to update or broaden their knowledge, skills, or attitudes. Records of CEU awarded provide a framework within which individuals can develop and achieve long-range educational goals.

The availability of the CEU records and documentation permits individuals to maintain and transmit to others a record of their lifelong learning experiences. For example, individuals may use personal records of number of CEU earned for:

- Reporting maintenance or improvement of professional competence;
- Documenting continuing qualifications for renewing licensure, recertification, or registration; or
- Presenting evidence of personal and vocational growth and adjustment to meet changing career demands.

Probably the two most common uses of a CEU record by the individual learner are (1) to supply an employer or prospective employer with information on continuing education and training experiences pertinent to an occupational competence, and (2) to provide documentation to registration boards, certification bodies, or professional and occupational societies of continuing education undertaken to maintain or increase professional competence.

There is no relationship between CEU and academic credit. By definition, the CEU relates only to non-credit continuing education experiences. Academic credit applies specifically to degree requirements and CEU are not awarded for that purpose. No institutions of higher education are known to give automatic credit for CEU.

TEXAS MUNICIPAL COURTS EDUCATION CENTER FACULTY ROSTER

12-Hour Regional Judges/Clerks Programs San Antonio Crowne Plaza

Honorable Reynolds Cate
Municipal Judge
City of San Antonio
6394 Fox Run
San Antonio, TX 78233
(210) 207-7151 (o)
(210) 655-4442 (h)

Honorable Allen Gilbert
Municipal Judge
City of San Angelo
110 South Emerick
San Angelo, TX 76903
(325) 657-4371 (o)
(325) 657-4566 (f)

Mr. James Lehman
Collections Specialist
Office of Court Administration
P.O. Box 12066
Austin, TX 78711-2066
(512) 936-0991 (o)
(512) 463-1648 (f)

Honorable Stephen M. Crane
Municipal Judge – Rowlett &
Sachse and City Attorney -
Mesquite
P.O. Box 850137
Mesquite, TX 75185-0137
(972) 216-6374
(972) 216-6442 (f)

Honorable Sara Hartin
Municipal Judge
City of New Braunfels
1486 S. Seguin Avenue
New Braunfels, TX 78130
(830) 608-2145 (c)
(830) 608-2148 (f)

Ms. Hope Lochridge
Executive Director
TMCEC
1609 Shoal Creek, Suite 302
Austin, TX 78701
(512) 320-8274 (o)
(800) 252-3718 (o)
(512) 435-6118 (f)

Ms. Olivia Cruz
Court Clerk
City of Boerne
402 E. Blanco
Boerne, TX 78006
(830) 249-9511
(830) 249-9265

Mr. Rene Henry
Financial Management
Specialist
205 W. 14th Street
Austin, TX 78711
(512) 463-1625

Ms. Sandra Mabbett
Judicial Information Specialist
Office of Court Administration
P. O. Box 12066
Austin, TX 78711-2066
(512) 463-1637 (o)
(512) 463-1648 (f)

Honorable Gary Ellsworth
Municipal Judge
City of Spearman
30 SW Court
Spearman, TX 79081
(806) 659-2524

Honorable Mathew King
Presiding Municipal Judge
City of Keller
330 Rufe Snow Drive
Keller, TX 76248
(817) 431-1518
(817) 431-2764

Honorable Jan Blacklock
Matthews
Municipal Judge
City of Lubbock
P.O. Box 2000
Lubbock, TX 79457
(806) 775-2462 (c)
(806) 775-2468 (f)

Mr. Ross Fischer
Assistant Chief Disciplinary
Counsel
State Bar of Texas
126 E. Nueva, Suite 200
San Antonio, TX 78205
(210) 208-6600 (o)
(210) 208-6646 (direct)

Honorable C. Victor Lander
Municipal Judge
City of Dallas
2014 Main Street, Room 210
Dallas, TX 75201
(214) 670-5573 (c)
(214) 670-6947 (f)

Honorable Stewart W. Milner
Municipal Judge
City of Arlington
P.O. Box 90403
Arlington, TX 76004-3403
(817) 459-6980
(817) 459-6971

Ms. Hilda Phariss
Court Administrator
City of Bryan
P.O. Box 1000
Bryan, TX 77805-1000
(979) 209-5424 (c)
(979) 731-1760 (f)

Honorable Robin A. Ramsay
Presiding Municipal Judge
City of Denton
601 E. Hickory, Suite D
Denton, TX 76205
(940) 349-8139 (c)
(940) 349-9924 (f)

Ms. Margaret Robbins
Program Director
TMCEC
1609 Shoal Creek Blvd., #302
Austin, TX 78701
(512) 320-8274 (o)
800/252-3718
(512) 435-6118 (f)

Honorable Lester Rorick
Presiding Judge
City of Pasadena
P.O. Box 1575
Pasadena, TX 77501
(713) 475-7826 (c)
(713) 475-7225 (f)

Honorable Robin Smith
Presiding Judge
City of Midland
P. O. Box 1152
Midland, TX 79702-1152
(432) 685-7303 (c)
(432) 685-7319 (f)

Mr. Ryan Kellus Turner
Program Attorney & Deputy
Counsel
TMCEC
1609 Shoal Creek Blvd., #302
Austin, TX 78701
(512) 320-8274 (o)
800/252-3718
(512) 435-6118 (f)

Honorable Edward Winfrey
Municipal Judge
City of Decatur
P.O. Box 1299
Decatur, TX 76234-0478
(940) 627-6256 (c)
(940) 393-9985
(940) 627-1822 (f)
(830) 249-4176 (f)

Mr. Ted Wood
Special Counsel to Trial Courts
Office of Court Administration
P.O. Box 12066
205 W. 14th Street, 7th Floor
Austin, TX 78711-2066

Ms. Sherrie Zgabay
Manager Driver Improvement,
Driver License Division/Project
Manager DRP
DPS
P.O. Box 4087
Austin, TX 78773
(512) 424-5001
(512) 475-3070 (f)



ABOUT THE SPEAKERS

REYNOLDS N. CATE

Reynolds N. Cate is an Adjunct Professor at the St. Mary's University School of Law in San Antonio and served as a Municipal Judge for the City of San Antonio from 1990 through 2004. Prior to that, Judge Cate was an Assistant District Attorney for Bexar County from 1989-1990, and a Municipal Judge for the City of Terrell Hills from 1984-1989.

Judge Cate received his Bachelor of Arts degree with honors at the University of Texas – Austin in 1965 and his Doctorate of Jurisprudence from the University of Texas School of Law in 1970. In 1988, he served as President of the Federal Bar Association in San Antonio.

STEPHEN CRANE

Stephen Crane has been an Assistant City Attorney (prosecutor) for the City of Mesquite since 2000 and previously was a suburban sole practitioner for 24 years practicing criminal, family and probate law. For about 20 years, he has served as an Associate Municipal Judge for several cities including Mesquite, Rowlett and Garland. Mr. Crane graduated from Duke University in 1973, Southern Methodist University School of Law in 1977 and, after a 25 year hiatus from academia, returned to graduate school at Texas A&M – Commerce where he is close to completing a Masters in Higher Education – Administration.

GARY ELLSWORTH

Gary Ellsworth is a non-attorney judge and has served as the presiding judge for the City of Spearman, TX since December 1993 and presiding judge for the City of Gruver, TX since February 2003. Judge Ellsworth was recently elected to the Board for the Texas Municipal Courts Association as the Region I Director.

In addition to his judicial duties, Judge Ellsworth is the Emergency Management Coordinator for Hansford County. He also owns and operates the Lyric Cinema, Spearman's two-screen movie theatre.

Judge Ellsworth is a Partner in Education for the 4th grade at Spearman Elementary where he teaches the Junior Judges curriculum. In 2001, Judge Ellsworth served as a judicial mentor for the State Commission on Judicial Conduct. But his favorite role in life is that of 'Papa' to his five grandchildren.

ROSS FISCHER

Ross Fischer is an Assistant Chief Disciplinary Counsel for the State Bar of Texas. He works in the San Antonio office of the Bar, and is responsible for pursuing ethical grievances against lawyers in over 30 Texas counties.

Prior to joining the Disciplinary Counsel's Office, Mr. Fischer served as Kendall County Attorney for four years, where he handled all misdemeanor criminal prosecution and civil matters for the County. He is a member

of the Texas Online Authority, which oversees the State's web portal, and is responsible for making state services available on the Internet.

Mr. Fischer is a graduate of St. Edward's University in Austin and the University of Texas School of Law. He and wife Michelle live in Kendalia with their daughter Claire.

ALLEN GILBERT

Judge Allen Gilbert has served as Municipal Court Judge for the City of San Angelo since 1975. Judge Gilbert began teaching judges in 1977 through Texas Tech School of Law and has taught municipal court judges ever since. Judge Gilbert currently sits on the Juvenile Committee for Tom Green County. He has served on the Board of the Texas Municipal Courts Association for six years, is a past Vice-President of the Texas Municipal Courts Association, and has served on that Association's Legislative Committee. Judge Gilbert has also served on the Supreme Court Education Committee.

SARA HARTIN

Sara Hartin received her B.A. in Journalism from the University of Texas in Austin in 1970 and her J.D. degree from South Texas College of Law in Houston in January 1981. She worked as a legal secretary for ten years, the last four while attending law school.

After graduating from law school, Judge Hartin worked as an Assistant District Attorney in Abilene, Taylor County, Texas, then went into private practice. While in private practice, she was an Associate Municipal Judge for the City of Abilene for three years. In 1989, she became an Assistant City Attorney and municipal prosecutor for the City of Abilene and worked there for seven years. Judge Hartin also represented Abilene in all appeals to the County Court at Law. In 1996, she left Abilene to work at the City of Plano as one of the municipal court prosecutors. She left the City of Plano in 1998 to become the City Attorney for the City of Copperas Cove and remained there for three years. As the City Attorney, she also prosecuted cases in municipal court as well as handled all appeals to the County Court at Law. Judge Hartin was then an Assistant City Attorney with the City of Killeen with her main duties being prosecuting for the municipal court. In 2005, Judge Hartin accepted her current position as municipal judge for the City of New Braunfels.

Yes, she is a native Texan. Judge Hartin co-presented a paper to the Texas City Attorneys Association in 1995 regarding the "Constitutionalists" or "Republic of Texas" organizations, their beliefs and tactics in regards to traffic citations, and how to combat their claims. She prosecuted a "constitutionalist" case from municipal court all the way through the Fifth Circuit Court of Appeals and would have made it to the U.S. Supreme Court, but the defendant died.

RENE HENRY

Rene Henry, CPA, was the Collections Project Manager in the Research & Court Services Section at the Office of Court Administration from October 1997 – September 2005. Prior to that, he worked at the Comptroller's Office for 20 years, 14 of which he spent working directly with cities and counties.

Mr. Henry holds a B.B.A. degree in accounting from the University of Texas at Austin and is a licensed certified public accountant.

MATHEW KING

Mathew King began working for the City of Keller in 1993, and since 1995 has served as the Presiding Municipal Judge.

Judge King earned his Bachelors Degree with Honors in 1977 and his Juris Doctor in 1983 from Texas Tech University. His experience also includes work in private practice, and with the Tarrant County Criminal District Attorney's Office.

C. VICTOR LANDER

Victor Lander was born in Georgia and grew up in New York City and Virginia. He received his Bachelor of Arts with honors from Morehouse College in Atlanta, Georgia and his Juris Doctor from the University of Texas in Austin. Judge Lander worked for the Federal Communications Commission in Washington, D.C., before joining his father, the late Fred L. Lander, III, in the private practice of law in state and federal courts in Dallas. He was appointed an Associate (part-time) Municipal Judge for the City of Dallas in 1991 and has served as a full-time Municipal Judge for Dallas since 1996. He was named Outstanding Municipal Judge by the Texas Municipal Courts Association in 2003.

JIM LEHMAN

Jim Lehman is currently the Collections Specialist for the Research & Court Services Section of the Office of Court Administration. He joined OCA in January of 1998. Prior to OCA, Mr. Lehman was the Collections Manager for the Dallas County Criminal Courts and is largely responsible for successfully implementing that county's fine collection program. Mr. Lehman spent over 20 years in the private sector finance/collections industry prior to joining Dallas County.

Mr. Lehman holds a Bachelor of Arts degree from Central State University at Edmond, Oklahoma, where he studied Public Administration and Business Administration. He currently serves as Executive Director of the Governmental Collectors Association of Texas. Mr. Lehman is the recipient of the Justice Achievement Award from the NCSC, and has been published in various publications including *County Progress Magazine*, *Courts Today*, and *GCAT Newsletter*.

HOPE LOCHRIDGE

Hope Lochridge has served as the Executive Director of the Texas Municipal Courts Education Center since 1991. Prior to that she was the Director of the Public Service/Law-Related Education Department of the State Bar of Texas and the Executive Director of Law Focused Education, Inc., a 501(c)(3) non-profit corporation dedicated to educating young people about the law. She earned a B.A. in Government from Beloit College, Wisconsin and a Masters in Human Resource Development from the University of Texas at Austin. A native Texan, she has an 20 year old daughter, Molly, and enjoys outdoor recreation and travel.

SANDRA L. MABBETT

Sandra Mabbett is the Judicial Information Specialist for the Office of Court Administration's Research and Court Services Division. Judicial Information staff is responsible for collecting, analyzing and publishing court activity statistics and other judicial data. She has served in this position since 2004.

Prior to her employment with OCA, she was employed by the Internal Revenue Service for 25 years where she was a manager in the Examination Operation, responsible for a group of tax auditors and tax examiners

conducting audits of individual taxpayers. Ms. Mabbett is a native of upstate New York who moved to Austin in 1978.

JAN BLACKLOCK MATTHEWS

Judge Jan Matthews is currently an appointed municipal judge for the City of Lubbock Municipal Court; a position she has held since 1996. She was elected Presiding Municipal Judge in 1994 and 1996. Judge Matthews received her Bachelor of Business Administration degree from Sul Ross State University in Alpine, Texas and her Juris Doctorate from Texas Tech University School of Law in Lubbock.

Prior to becoming judge, she held the position of Misdemeanor Chief for the Lubbock County District Attorney's Office from February 1989 through June 1994. Judge Matthews was Vice President of Administration/Counsel for Beadz, Inc. in Midland from July 1988 to January 1989 and worked as an attorney/law clerk at the law firm Wagonseller, Cobb & Snuggs in Lubbock from October 1987 through July 1988.

Judge Matthews is the Region I director for the Texas Municipal Courts Education Center and the Texas Municipal Courts Association (currently chair of the Membership Committee and Public Outreach committees). She is also a member of the faculty for the Texas Municipal Courts Education Center. She is a past director of the Legal Aid Society of Lubbock, the Caprock Girl Scout Council; she also served previously on the Lubbock Urban Design and Historic Preservation Commission. By appointment of former Governor George W. Bush, she was a former director for the Texas Polygraph Examiners Board.

STEWART W. MILNER

Stewart Milner is a graduate of the University of Texas at Arlington and the Oklahoma City University School of Law. He began his employment with the City of Arlington in 1992 as an Assistant City Attorney and became Chief Prosecutor for the City of Arlington in 1994. From 1997 to the present, he has served as the Chief Judge for the City of Arlington Municipal Court.

Judge Milner has taught classes for the North Texas Council of Governments, City of Arlington Police Academy, Texas Court Clerks Association, and the Building Professional Institute.

HILDA PHARISS

Hilda Phariss graduated from Sul Ross State University located in Alpine, Texas in 1976. Ms. Phariss taught Science classes in Texas public schools for five years at three different Texas school districts: Pecos, Dublin, and at Yates High School in Houston.

Ms. Phariss went to work for the City of Bryan in March of 1983 in the City Secretary's office and was promoted to Court Administrator in July 1985. Ms. Phariss has been very active in this profession as a leader in the field of court administration, particularly involved with the Texas Court Clerks Association since 1985. She was elected Vice President from 1989 through 1992 and was elected President of the association from 1992 through 1994. She was the TML affiliate representative from 1994 to 1996. She has also been very involved with the Gulf Coast Chapter since 1985 and held the position of President twice, 1990 -1992 and 1996-1998.

Ms. Phariss has been a staff member of the Texas Municipal Courts Education Center teaching various subjects since 1991. She is currently a member of the TMCA education committee and chairs the TCCA Education Committee. She is currently a Level II certified court clerk and is also a certified study session facilitator for Level I and Level II. She is a State of Texas Licensed Court Interpreter in Spanish.

Ms. Phariss is very active within her community. She is a presenter in English and Spanish for the Bryan Police Department Citizens Police Academy. She is a volunteer at the Dispute Resolution Center as a bilingual certified mediator. She is currently the President of the local Habitat for Humanity Affiliate and has been a volunteer the last five years. She is a member of the Hispanic Forum in Bryan, Texas.

ROBIN A. RAMSAY

Robin Ramsay is currently a licensed attorney and the Presiding Municipal Judge for the City of Denton. Mr. Ramsay received his undergraduate degree from Southern Methodist University in Dallas and his law degree from Texas Tech University in Lubbock.

Prior to becoming a judge, Mr. Ramsay served as Students' Attorney for the University of North Texas and as an Adjunct Professor of Business Law. After leaving the University of North Texas and prior to his current appointment, Mr. Ramsay practiced law with the Hammerle Law Firm with offices in Lewisville and Denton.

Mr. Ramsay has received his accreditation for the American Academy of Attorney Mediators and currently acts as a Mediator for both pre-litigation and litigated matters by assignment of Court and at the request of the parties or their attorneys. Mr. Ramsay also serves as alternate Mental Health Magistrate for Denton County at the assignment of the Denton County Probate Court.

MARGARET ROBBINS

Margaret Robbins is the Program Director for the Texas Municipal Courts Education Center, a position she has held since 1986.

Before joining the TMCEC staff, Ms. Robbins was Court Clerk for three years and then Municipal Court Judge for four years for the City of Cedar Park. Ms. Robbins has served as author and editor to numerous publications including the TMCEC newsletter, *TMCEC Clerks' Procedures Manual*, and the Clerks' Certification Study Guides.

ROBIN D. SMITH

Judge Robin D. Smith is the Presiding Judge of the City of Midland Municipal Court. He has served in that position since November of 1984. Prior to that appointment, he practiced law as a prosecutor for the City of Midland in 1982-83 and operated as a solo practitioner in 1983-84.

Judge Smith's educational accomplishments include a Bachelor's degree in Economics and Psychology from Oklahoma State University and his Juris Doctorate from Texas Tech University. His professional Association work includes serving as Chair of the State Bar of Texas Municipal Judges Section in 1989-90 and President of the Texas Municipal Courts Association in 1991-92. He served on the TMCA Board of directors from 1986-1997 and again in 2001 to the present. In August 1997, he completed a term as the Chair of the American Bar Association's National Conference of Specialized Court Judges. In 1997, Judge Smith was appointed by Chief Justice Tom Phillips to serve on the Texas Judicial Council where he served until 2001.

From 2002-2004, Judge Smith was selected as the National Highway Transportation Safety Administration Judicial Fellow. As Judicial Fellow, Judge Smith provided input for the United States Department of Transportation on policy and publications. Judge Smith was also called upon to speak on traffic safety issues for the Administration.

Among honors, the Texas Municipal Courts Association named Judge Smith *Judge of the Year* in June 1998 and the State Bar of Texas Municipal Judges Section presented Judge Smith with the *Michael J. O'Neal*

Outstanding Jurist Gavel Award in 2002. In 2001, Judge Smith was presented the American Bar Association's National Conference of Specialized Court Judges' *Education Award*. Judge Smith also was recognized by the Texas Junior Chamber of Commerce as one of *Five Outstanding Young Texans* in 1994 and is a four-time winner of the *City of Midland Management Awards*.

He is a frequent speaker for several groups including the National Judicial College and the Texas Municipal Courts Education Center. In addition, he has spoken at judicial training seminars in several states. He is considered to have expertise in the areas of search and seizure, constitutional criminal procedure and juvenile law. In addition to his activities and position at the Midland Municipal Court, he edits and publishes the *Texas Municipal Court - Justice Court News* which has more than 800 monthly subscribers.

RYAN KELLUS TURNER

Ryan Kellus Turner is General Counsel for the Texas Municipal Courts Education Center. Prior to joining the Center, he served as Briefing Attorney for Judge Sharon Keller at the Texas Court of Criminal Appeals. Mr. Turner obtained his juris doctorate from Southern Methodist University School of Law, Dallas, Texas. He received his bachelor's degree in psychology from St. Edward's University, Austin, Texas, where he now teaches as an adjunct faculty member in the School of Behavioral and Social Sciences. In 2004 he received the School's Adjunct Teaching Excellence Award. Mr. Turner is currently Deputy City Attorney for the City of Dripping Springs and previously served as a Special Assistant County Attorney for Kendall County.

A native Texan, Mr. Turner was raised in the north Texas town of Vernon. He is the co-author of the book *Lone Star Justice: A Comprehensive Overview of the Texas Criminal Justice System*.

ED WINFREY

Ed Winfrey, a former police officer, was appointed as the full-time Municipal Judge for the City of Decatur in 1989. He attended Texas A&M University, and received his undergraduate and law degree from Texas Wesleyan University. After passing the bar in 2001, Ed entered private practice in Fort Worth and continues to serve part-time as Municipal Judge.

TED WOOD

Ted Wood is Special Counsel for Trial Courts at the state Office of Court Administration (OCA). Prior to joining OCA, Mr. Wood served for nearly eight years as Randall County Judge. He has taught state and federal government classes at Amarillo College and worked as a briefing attorney for the Seventh Court of Appeals. Mr. Wood is a 1991 graduate of Baylor Law School where he was a Notes and Comments Editor on the Baylor Law Review. He earned an undergraduate degree in Business at the University of Wisconsin.

SHERRIE ZGABAY

Sherrie Zgabay is a Manager of the Driver Improvement section for the Department of Public Service in Austin. She has been with the DPS for 18 years and with Driver Improvement for the past two years. The gist of her career with DPS has been spent applying enforcement actions and assisting customers with compliance requirements. She is routinely involved in monitoring and implementing new legislation.

WELCOME!

**TEXAS MUNICIPAL COURTS ASSOCIATION
TEXAS MUNICIPAL COURTS EDUCATION CENTER
OFFICERS AND DIRECTORS - FY 2005-2006**

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Ceramic Mugs.....	\$7
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<i>Long Sleeve T-Shirts</i>	
SIZES S, M, L, XL.....	\$18
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Caps.....	\$12
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"Lone Star Justice" Book.....	\$25

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Thanks!

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PROFESSIONALISM AND COURT DECORUM

Presented by

**Jan Blacklock Matthews
Municipal Judge
Lubbock**

Course Objectives

By the end of the session, participants will be able to:

1. Explain professionalism and how it affects court decorum.
2. Explain how ethics impacts professionalism.
3. Determine which Canons in the Code of Judicial Conduct affect municipal court clerks' behavior and attitude.
4. List effective communication techniques that foster professionalism.
5. Explain how generational differences present differences in dealing with people.
6. List characteristics of people who are professional.

**Professionalism &
Court Decorum**

Jan Blacklock Matthews
City of Lubbock
Municipal Judge

Professionalism

In our dealings with the public
and co-workers,
those behaviors that enhance
trust.

**...contemporary way of
saying...**

"Mind your Manners"
and observe the
Rules of Common Decency

Professionalism

"the conduct, aims, or qualities that characterize or mark a profession or a professional person..."
Merriam-Webster Dictionary (2005)

"professional character, spirit, or methods..."
Random House Unabridged Dictionary (1997)

"The expertness characteristic of a professional person."
<http://wordnet.princeton.edu>

There is no such thing as one job that is to be performed professionally, and another that is not.

Regardless of its size or nature, every job can be performed in a professional manner.

Professionalism...

will give you that extra edge that will make the difference between you and the other person.

Municipal Court Clerk Impact

Local, State & Federal Law Enforcement

*Criminal Record Checks, Disposition and
Disposal Information, Police Departments,
Sheriff's Departments, Texas Criminal Justice
System, Federal Bureau of Investigation,
Alcohol, Tobacco & Firearms, Drug
Enforcement Administration, Federal
Probation, Federal
Marshals, Detention Facilities (Adult &
Juvenile), Campus Police, Texas Department
of Wildlife, Parks & Recreation*

Military

*Criminal Background and
Disposition Information on
Members of the military*

Texas Department of Public Safety

*Information regarding
Traffic Matters
(including Alcohol and Tobacco
convictions)*

Justice System Users

*Judges, Magistrates, County &
District Clerks, Probation Officers,
District Attorneys, County Attorneys,
Public Defenders, Local Interventions
Programs, Community Service
Programs, Defendants, Victims,
Court Interpreters, Caseworkers*

First Impressions

(really do last a lifetime)

Greetings
Conversation
Non-Verbal Communication

In keeping with the public trust embodied in their positions, judges and other Court employees should reflect by their conduct the law's respect for the dignity and value of all individuals who come before, or make inquiries of, the Court.

—National Center for State Courts
Trial Court Performance Standards & Measurement System
http://www.ncsconline.org/D_Research/TCPS

Ethics
are considerations of what is right and what is wrong in the affairs of man.

Unethical behavior displays a lack of professionalism.

Texas Code of Judicial Conduct [excerpts]

- Canon 3(B)(3)—"A judge shall require order and decorum in proceedings before the judge."
- Canon 3(B)(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 [emphasis added]."

...cont'd...

- Canon 3(B)(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.

■ **Canon 6(C)(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.**

■ [Canon 6(C)(2)-cont'd]—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.

Master the Art of Communication

Effective Listening
Telephone Techniques
Legible Writing

**Attempt to
Master Cultural
Communication & Diversity**

Gender
Race
Religion
Generational

**The error of youth is to
believe that intelligence
is a substitute for
experience;**

**while the error of age is to
believe that experience
is a substitute for
intelligence.**

-Lyman Bryson

Generational Differences can present issues:

- Difficulties working side by side
- Understanding or empathizing with others
- Education and training difficulties
- Customer service misunderstandings

Four Generations we most likely see in Court:

- Veteran or Silent Generation (1922 – 1942)
- Baby boomer or Boomer Generation (1946 – 1964)
- Generation X or Xers or Baby Busters (1965 – 1980)
- Generation Y or Millennials (Baby Boomlets?) (1981 – 1994)

Points to Ponder

- Character and Integrity
- Honesty and Forthrightness
- Trustworthiness
- Continual Improvement
- Pressing for Excellence
- Being Responsible and Accountable

...and more...

- P rojecting a Professional Image
- P rofessional Maturity and Conduct
- C onfidences and Confidentiality
- F ollowing Instructions
- B eing a Team Player
- M anners
- D oing What is Right

3 M's

- W hat is our Mission at Municipal Court?
- W ho are the role Models you admire most in life, and aspire to emulate?
- L ook at y ourself in the Mirror as a clerk and co-worker—are you proud of what you see?

"The great secret..

is not having bad manners or good manners or any other particular sort of manners, but having the same manners for all human souls. In short, behaving as if you were in Heaven where there are no third-class carriages, and one soul is as good as another."

-George Bernard Shaw

Review of Generational Characteristics

Excerpts from
"Understanding the Generational Gap"
Compiled by
Jo Dale Bearden

Veteran Generation

1922 - 1942

Shared Events

- Mickey Mouse
- Golden age of radio
- Joe DiMaggio
- World War II
- The Great Depression

The state of the world during their formative years...

- High unemployment
- Standing in line for day to day necessities
- Patriotic
- Women and boys entered the workforce

Veteran Generation (1922-1942)

- 5% of today's workforce
- Respect authority, even when it frustrates them
- Place duty before pleasure
- Want acknowledgement of experience
- Maintain dedication to a job once they take it
- Keep family and work lives separate

Baby Boomers

1943 - 1964

Defining Events

- Captain Kangaroo
- Laugh-in
- Fallout shelters
- Peace signs
- TV dinners
- Bell bottoms
- Cold war – “civil defense drills”

The state of the world during their formative years...

- Last generation of stay-at-home moms
- Family oriented upbringing
- Went to college in record numbers
- Vietnam
- Protest
- Political unrest

Boomer Generation (1943–1964)

- 45% of current workforce
- Live to work
- Maintain a general sense of optimism
- Willing to go into debt, counting on future income
- Nostalgic about their youth; sensitive about aging
- Raising children of utmost importance

Generation Xers

1965 - 1980

Defining Events

- Brady bunch
- Cabbage Patch Kids
- Microwaves
- Satellite dishes
- Sesame Street
- Divorced parents
- Communication through fax, pagers, and e-mail

The state of the world during their formative years...

- Divorce rates increase
- Both parents working – Latchkey kids
- Confronted with drug addiction, AIDS, sexual freedom, environmental problems

Xers Generation (1965–1980)

- 40% of today's workforce
- Accepting of different lifestyles
- Desire immediate gratification
- Unimpressed by "status"
- Work to live; not live to work
- View money as only part of the larger equation
- Desire versatility; need opportunities for growth

Generation Y

1981 - 1994

Defining Events

- Barney
- X-Games
- Cell phones
- Jerry Springer
- Internet
- Virtual pets

The state of the world during their formative years...

- Parents/politicians made a concerted effort to "protect" generation from the "bad" things
- Never knew a world without computers
- Era of situational ethics
- Era of convenience
- Global thinkers
- School violence

Generation Y (1981–1994)

- Live in the moment
- Rely on the immediacy of technology
- Demonstrate respect only after they are treated with respect
- Question everything
- Often called "Generation of Hope"
- Limited vocational experience

Review of Generational Themes

Veterans	Boomers	Xers	Ys
Hard work	Personal fulfillment	Uncertainty	What's next
Duty	Optimism	Personal focus	On my terms
Sacrifice	Crusading causes	Live for today	Just show up
Thriftiness	Buy Now/Pay later	Save, Save, Save	Earn to spend
Work fast	Work efficiently	Eliminate the task	Do exactly what's asked

Veteran Generation

- Don't rush things
- Appreciate rapport
- Don't like assumptions being made about their knowledge
- Like their background and experience to be acknowledged
- Like paper work in summary form
- Will come to court to handle problems

Boomers

- "I know all that" chip that they may carry around
- Don't like authority
- Prefer paperwork that can be scanned
- May prefer to come to court to handle problems

Generation Xers

- Don't expect them to respect you just because of who you are
- Need clear objectives and directions
- May get bored easily
- Need visual stimulation in paperwork
- Would rather pay using technology

Generation Y

- Paper work should be visual stimulating, but more apt to read than Xers
- Would rather pay using technology

CODE OF JUDICIAL CONDUCT
Amended August 22, 2002

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 also 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.

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.

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.

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.

(8) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or

other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control. This subsection does not prohibit:

- (a) communications concerning uncontested administrative or uncontested procedural matters;
- (b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties;
- (c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;
- (d) consulting with other judges or with court personnel;
- (e) considering an *ex parte* communication expressly authorized by law.

(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.

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 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 officeholder expenses as permitted by state law.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners who are not related to the judge by consanguinity or affinity within the third degree of relationship.

(3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A judge shall be informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge's household.

(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 spouse or other family member and 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.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

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.

G. Practice of Law. A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and

may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Extra-Judicial Appointments. Except as otherwise provided by constitution and statute, a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

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.

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 or in a general or in a 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.

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code §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.

CANON 6

Compliance with the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

(1) An active, full-time justice or judge of one of the following courts:

- (a) the Supreme Court,
- (b) the Court of Criminal Appeals,
- (c) courts of appeals,
- (d) district courts,
- (e) criminal district courts, and
- (f) statutory county courts.

(2) A full-time commissioner, master, magistrate, or referee of a court listed in (1) above.

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

- (1) when engaged in duties which relate to the judge's role in the administration of the county;
- (2) with Canons 4D(2), 4D(3), or 4H;
- (3) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the

county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(4) with Canon 5(3).

C. 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 the 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 a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(e) with Canons 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.

D. A Part-time commissioner, master, magistrate, or referee of a court listed in 6A(1) above:

(1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and

(2) should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.

E. A Judge Pro Tempore, while acting as such:

(1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4D(2), 4D(3), 4E, 4F, 4G or 4H, and

(2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

F. A Senior Judge, or a former appellate or district judge, or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer:

(1) shall comply with all the provisions of this Code except he or she is not required to comply with Canon 4D(2), 4E, 4F, 4G, or 4H, but

(2) should refrain from judicial service during the period of an extra-judicial appointment not permitted by Canon 4H.

G. Candidates for Judicial Office.

(1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.

(2) Any judge who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.

(3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary

action by the State Bar of Texas.

(4) The conduct of any other candidate for elective judicial office, not subject to paragraphs (2) and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

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.

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 and 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 or 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.

- (1) "Shall" or "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.

- (4) "De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.

- (5) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:
 - (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;
 - (ii) service by a judge as an officer, director, advisor or other active participant, in an educational, religious, charitable, fraternal, or civic organization or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
 - (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest; and
 - (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(6) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(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.

(9) "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(10) "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.

(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.

(12) "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

(13) "Retired Judge" means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system. (Secs. 831.001 and 836.001, V.T.C.A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)])

(14) "Senior Judge" means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government Code. [Ch. 359, 69th Legislature, Reg. Session (1985)]

(15) "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec.

1601(18), 71st Legislature (1989))

(16) "County Judge" means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 1601(18), 71st Legislature (1989)])

(17) "Part-time" means service on a continuing or periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.

(18) "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.

Rule 12

Public Access to Judicial Records

Effective April 1, 1999

12.1 Policy. The purpose of this rule is to provide public access to information in the judiciary consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary. The rule should be liberally construed to achieve its purpose.

12.2 Definitions. In this rule:

- (a) *Judge* means a regularly appointed or elected judge or justice.
- (b) *Judicial agency* means an office, board, commission, or other similar entity that is in the Judicial Department and that serves an administrative function for a court. A task force or committee created by a court or judge is a "judicial agency".
- (c) *Judicial officer* means a judge, former or retired visiting judge, referee, commissioner, special master, court appointed arbitrator, or other person exercising adjudicatory powers in the judiciary. A mediator or other provider of nonbinding dispute resolution services is not a "judicial officer".
- (d) *Judicial record* means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced or filed in connection with any matter that is or has been before a court is not a judicial record. A record is a document, paper, letter, map, book, tape, photograph, film, recording, or other material, regardless of electronic or physical form, characteristics, or means of transmission.
- (e) *Records custodian* means the person with custody of a judicial record determined as follows:
 - (1) The judicial records of a court with only one judge, such as any trial court, are in the custody of that judge. Judicial records pertaining to the joint administration of a number of those courts, such as the district courts in a particular county or region, are in the custody of type judge who presides over the joint administration, such as the local or regional administrative judge.
 - (2) The judicial records of a court with more than one judge, such as any appellate court, are in the custody of the chief justice or

presiding judge, who must act under this rule in accordance with the vote of a majority of the judges of the court. But the judicial records relating specifically to the service of one such judge or that judge's own staff are in the custody of that judge.

(3) The judicial records of a judicial officer not covered by subparagraphs (1) and (2) are in the custody of that officer.

(4) The judicial records of a judicial agency are in the custody of its presiding officer, who must act under this rule in accordance with agency policy or the vote of a majority of the members of the agency.

12.3 Applicability. This rule does not apply to:

(a) records or information to which access is controlled by:

(1) a state or federal rule, including:

(A) a rule of civil or criminal procedure, including Rule 76a, Texas Rules of Civil Procedure;

(B) a rule of appellate procedure;

(C) a rule of evidence; or

(D) a rule of administration;

(2) A state or federal court order not issued merely to thwart the purpose of this rule;

(3) the Code of Judicial Conduct; or

(4) Chapter 552, Government Code, or another statute or provision of law;

(b) records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by:

(1) a state or federal court rule, including a rule of criminal procedure, appellate procedure, or evidence; or

(2) common law, court order, judicial decisions, or another provision of law.

12.4 Access to Judicial Records.

(a) Generally. Judicial records other than those covered by Rules 12.3 and 12.5 are open to the general public for inspection and copying during regular business hours. But this rule does not require a court, judicial agency, records custodian to:

(1) create or retain a judicial record for a specific period of time, other than to print information stored in a computer;

(2) retain a judicial record for a specific period of time;

(3) allow the inspection of or provide a copy of information in a book or publication commercially available to the public; or

(4) respond to or comply with a request for a judicial record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in section 1.07a, Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction.

(b) Voluntary disclosure. A records custodian may voluntarily make part or all of the information in a judicial record available to the public, subject to Rule 12.2(e)(2) and 12.2(e)(4), unless the disclosure is expressly prohibited by law or exempt under this rule, or the information is confidential under law. Information voluntarily disclosed must be made available to any person who requests it.

12.5 Exemptions from Disclosure. The following records are exempt from disclosure under this rule:

(a) Judicial work product and drafts. Any record that relates to a judicial officer's adjudicative decision making process prepared by that judicial officer, by another judicial officer, or by court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer.

(b) Security plans. Any record, including a security plan or code, the release of which would jeopardize the security of an individual against physical injury or jeopardize information or property against theft, tampering, improper use, illegal disclosure, trespass, unauthorized access, or physical injury.

(c) Personnel information. Any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.

(d) Home address and family information. Any record reflecting any person's home address, home or personal telephone number, social security number, or family members.

(e) Applicants for employment or volunteer services. Any records relating to an applicant for employment or volunteer services.

(f) Internal deliberations on court or judicial administration matters. Any record relating to internal deliberations of a court or judicial agency or among judicial officers or members of a judicial agency, on matters of court or judicial administration.

(g) Court law library information. Any record in a law library that links a patron's name with the material requested or borrowed by that patron.

(h) Judicial calendar information. Any record that reflects a judicial officer's appointments or engagements that are in the future or that constitute an invasion of personal privacy.

(i) Information confidential under other law. Any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law, including information that relates to:

(1) a complaint alleging misconduct against a judicial officer, if the complaint is exempt from disclosure under chapter 33, Government Code, or other law;

(2) a complaint alleging misconduct against a person who is licensed or regulated by the courts, if the information is confidential under applicable law; or

(3) a trade secret or commercial or financial information made privileged or confidential by state or judicial decision.

(j) Litigation or settlement negotiations. Any judicial record relating to civil or criminal litigation or settlement negotiations:

(1) in which a court or judicial agency is or may be a party; or

(2) in which a judicial officer or members of a judicial agency is or may be a party as a consequence of the person's office or employment.

(k) Investigations of character or conduct. Any record relating to an investigation of any person's character or conduct, unless:

(1) the record is requested by the person being investigated; and

(2) release of the record, in the judgment of the records custodian, would not impair the investigation.

(l) Examinations. Any record relating to an examination administered to any person, unless requested by the person after the examination is concluded.

12.6 Procedures for obtaining access to judicial records.

(a) Request. A request to inspect or copy a judicial record must be in writing and must include sufficient information to reasonably identify the record requested. The request must be sent to the records custodian and not to a court clerk or other agency for the records custodian. A requestor need not have detailed knowledge of the records custodian's filing system or procedures in order to obtain the information.

(b) Time for inspection and delivery of copies. As soon as practicable and not more than fourteen days after actual receipt of a request to inspect or copy a judicial record, if the record is available, the records custodian must either:

(1) allow the requestor to inspect the record and provide a copy if one is requested; or

(2) send written notice to the requestor stating that the record cannot within the prescribed period be produced or a copy provided, as applicable, and setting a reasonable date and time when the document will be produced or a copy provided, as applicable.

(c) Place of inspection. A records custodian must produce a requested judicial record at a convenient, public area.

(d) Part of record subject to disclosure. If part of a requested record is subject to disclosure under this rule and part is not, the records custodian must redact the portion of the record that is not subject to disclosure, permit the remainder of the record to be inspected, and provide a copy if requested.

(e) Copying, mailing. The records custodian may deliver the record to a court clerk for copying. The records custodian may mail the copy to a requestor who has prepaid the postage.

(f) Recipient of request not custodian of record. A judicial officer or a presiding officer of a judicial agency who receives a request for a judicial record not in his or her custody as defined by this rule must promptly attempt to ascertain who the custodian of the record is. If the recipient of the request can ascertain who the custodian of the requested record is, the recipient must promptly refer the request to that person and notify the requestor in writing of the referral. The time for response prescribed in Rule 12.6(b) does not begin to run until the referral is actually received by the records custodian. If the recipient cannot ascertain who the custodian of the requested record is, the recipient must promptly notify the requestor in writing that the recipient is not the custodian of the record and cannot ascertain who the custodian of the record is.

(g) Inquiry to requestor. A person requesting a judicial record may not be asked to disclose the purpose of the request as a condition of obtaining the judicial record. But a records custodian may make inquiry to establish the proper identification of the requestor or to clarify the nature or scope of a request.

(h) Uniform treatment of requests. A records custodian must treat all requests for information uniformly without regard to the position or occupation of the requestor or the person on whose behalf a request is made, including whether the requestor or such person is a member of the media.

12.7 Costs for Copies of Judicial Records; Appeal of Assessment.

(a) Costs. The costs for a copy of a judicial record is either:

(1) the costs prescribed by statute, or

(2) if no statute prescribes the costs, the actual costs, as defined in section 111.62, Title 1, Texas Administrative Code, not to exceed 125 percent of the amount prescribed by the General Services Commission for providing public information under Title 1, Texas Administrative Code, sections 111.63, 111.69, and 111.70.

(b) Waiver or reduction of cost assessment by records custodian.

A records custodian may reduce or waive the charge for a copy of a judicial record if:

- (1) doing so is in the public interest because providing the copy of the record primarily benefits the general public, or
- (2) the cost of processing collection of a charge will exceed the amount of the charge.

(c) Appeal of cost assessment. A person who believes that a charge for a copy of a judicial record is excessive may appeal the overcharge in the manner prescribed by Rule 12.9 for the appeal of the denial of access to a judicial record.

(d) Records custodian not personally responsible for costs. A records custodian is not required to incur personal expense in furnishing a copy of a judicial record.

12.8 Denial of access to a judicial record.

(a) When request may be denied. A records custodian may deny a request for a judicial record under this rule only if the records custodian:

- (1) reasonably determines that the requested judicial record is exempt from required disclosure under this rule; or
- (2) makes specific, nonconclusory findings that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.

(b) Time to deny. A records custodian who denies access to a judicial record must notify the person requesting the record of the denial within a reasonable time not to exceed fourteen days after receipt of the request, or before the deadline for responding to the request extended under Rule 12.6(b)(2).

(c) Contents of notice of denial. A notice of denial must be in writing and must:

- (1) state the reason for the denial;
- (2) inform the person of the right of appeal provided by Rule 12.9; and
- (3) include the name and address of the Administrative Director of the Office of Court Administration.

12.9 Relief from denial of access to *Judicial Records*.

(a) Appeal. A person who is denied access to judicial record may appeal the denial by filing a petition for review with the Administrative Director of the Office of Court Administration.

(b) Contents of petition for review. The petition for review:

- (1) must include a copy of the request to the record custodian and the records custodian's notice of denial;
- (2) may include any supporting facts, arguments, and authorities that the petitioner believes to be relevant; and
- (3) may contain a request for expedited review, the grounds for which must be stated.

(c) Time for filing. The petition must be filed not later than the 30th day after the date that the petitioner receives notice of a denial of access to the judicial record.

(d) Notification of records custodian and presiding judges. Upon receipt of the petition for review, the Administrative Director must promptly notify the records custodian who denied access to the judicial record and the presiding judge or each administrative judicial region of the filing of the petition.

(e) Response. A records custodian who denies access to a judicial record and against whom relief is sought under this section may within fourteen days of receipt of notice from the Administrative Director submit a written response to the petition for review and include supporting facts and authorities in the response. The records custodian must mail a copy of the response to the petitioner. The records custodian may also submit for in camera inspection a record, or a sample of records, to which access has been denied.

(f) Formation of special committee. Upon receiving notice under Rule 12.9(a)(3), the presiding judges must refer the petition to a special committee of not less than five of the presiding judges for review. The presiding judges must notify the Administrative Director, the petitioner, and the records custodian of the names of the judges selected to service on the committee.

(g) Procedure for review. The special committee must review the petition and the records custodian's response and determine whether the requested judicial record should be made available under this rule to the petitioner. The special committee may request the records custodian to submit for in camera inspection a record, or a sample of records, to which access has been denied. The records custodian may respond to the request in whole or in part but is not required to do so.

(h) Considerations. When determining whether the requested judicial record should be made available under this rule to petitioner, the special committee must consider:

- (1) the text and policy of this Rule;
- (2) any supporting and controverting facts, arguments, and authorities in the petition and the response; and
- (3) prior applications of this Rule by other special committees or by courts.

(i) Expedited review. On request of the petitioner, and for good cause shown, the special committee may schedule an expedited review of the petition.

(j) Decision. The special committee's determination must be supported by a written decision that must:

- (1) issue within sixty days of the date that the Administrative Director received the petition for review;
- (2) either grant the petition in whole or in part or sustain the denial of access to the requested judicial record;
- (3) state the reasons for the decision, including appropriate citations to this rule; and
- (4) identify the record or portions of the record to which access is ordered or denied, but only if the description does not disclose confidential information.

(k) Notice of decision. The special committee must send the decision to the Administrative Director. On receipt of the decision from the special committee, the Administrative Director must:

- (1) immediately notify the petitioner and the records custodian of the decision and include a copy of the decision with the notice; and
- (2) maintain a copy of the special committee's decision in the Administrative Director's office for public inspection.

(l) Publication of decisions. The Administrative Director must publish periodically to the judiciary and the general public the special committees' decisions.

(m) Final decision. A decision of a special committee under this rule is not appealable but is subject to rule by mandamus.

(n) Appeal not exclusive remedy. The right of review provided under this subdivision is not exclusive and does not preclude relief by mandamus.

12.10 Sanctions. A records custodian who fails to comply with this rule, knowing that the failure to comply is in violation of the rule, is subject to sanctions under the Code of Judicial Conduct.



TEXAS MUNICIPAL COURT CLERKS' CREED OF PROFESSIONALISM

1. I pledge to be punctual in all my dealings with the Court and the public, recognizing that I am an integral part of the Texas Municipal Court system.
2. I pledge to promote a fair and just result in all my dealings with the Court and the public.
3. I pledge to maintain a cordial and respectful demeanor and be guided by a fundamental sense of integrity and fair play in all my professional activities.
4. I pledge to not engage in *ex parte* communication on any pending case in this Court, as I am an "arm" of the Municipal judge. Every defendant has a right to a fair and impartial hearing, and may present proper arguments before the Municipal judge and all interested parties, thereby allowing a complete and accurate record.
5. I pledge to be civil in my dealings with the public and with co-workers and conduct all Court and Court-related proceedings, whether written or oral, with civility and respect for each of the participants.
6. I pledge to treat each defendant and case as if it is the most important case in our Court. Most defendants only have one case in our Court, and to them, that case is the most important case I have to deal with.
7. I pledge to treat each defendant equally, without regard to gender, race, or creed.
8. I pledge to abstain from making disparaging, demeaning, or sarcastic remarks or comments about co-workers or defendants.
9. I pledge to abstain from any conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive.
10. I pledge that while in Court, I will dress in a manner showing proper respect for the Court, the proceedings, and the law.
11. I pledge to advise defendants, witnesses, jurors, and others appearing in Court that proper conduct and attire is expected within the Courthouse and, where possible, prevent defendants, witnesses, or others from creating disorder or disruption.
12. I pledge to conduct myself in a manner that demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process.
13. I pledge at all times to act in good faith and to honor promises or commitments to the public and to the Court. My word is my bond.
14. Above all, I pledge to remember that the court is the servant of the people, and that I will approach my duties in this fashion.

FUNDED BY A GRANT FROM THE
TEXAS COURT OF CRIMINAL APPEALS

TEXAS MUNICIPAL COURTS EDUCATION CENTER

1609 SHOAL CREEK BLVD., SUITE 302 AUSTIN, TEXAS 78701
TELEPHONE (512) 320-8274
1-800-252-3718
FAX (512) 435-6118

DSC AND DEFERRED DISPOSITION

Presented by

**Margaret Robbins
Program Director
TMCEC**

OBJECTIVES

By the end of the session, participants will be able to:

1. Set office procedures for processing driving safety courses.
2. Require court personnel to process the proper paperwork for granting and disposing of a case granting a driving safety course.
3. Determine the rehabilitative issues when granting deferred disposition. and
4. Identify and apply proper procedures for processing and handling cases in which the court has granted deferred.

Deferred Disposition

■ All fine only Offenses Except

- Offenses committed in a construction maintenance work zone (472.022 T.C.)
- DUI and consumption w/2 convictions
- Holder of CDL (Includes at time of offense)
- Offense Relating to "Motor Vehicle Control"
 - » Prior to 9/1/05 = Relating to "Traffic Offense"
 - Sect 720.002(f)(2)
 - Subtitle C (Rules of the Road)
 - Chapter 521 (DL)

Deferred Disposition

■ Conditions (May)

- Post bond in amount of fine to secure payment of fine
- Pay restitution not to exceed fine
- Professional counseling
- Diagnostic testing for alcohol or drugs
- Psychosocial assessment

Deferred Disposition

- Participate in alcohol and drug abuse treatment or education program
- Pay costs directly or through court costs of testing, assessment, treatment or education program
- Driving safety course
- Reasonable conditions

Mandatory DSC as Part of Deferred Disposition (Effective 9/1/05)

- Only applies to "traffic offenses" that are "moving violations"
- Alleged against defendants under 25
- Provisional DL holders required to be re-examined for DL
 - Must pay \$10 to DPS for State Gen. Rev.
- Problematic Issues?

Deferred Disposition

- All alcohol offenses, including PI-under age 21 (Mandatory)
 - Alcohol Awareness Course required
 - Community service required (except DUI)
 - » First offense - 8 to 12 hours
 - » Second offense - 20 to 40 hours

Deferred Disposition

- Completion of terms
 - Dismisses charge
 - Court may order SPECIAL EXPENSE not to exceed amount of fine be paid
- Failure to complete terms
 - Court may impose judgment or reduce fine if Defendant is 25+
 - Court MUST impose fine if under 25
 - » Effective 9/1/05
 - Defendant pays fine or may appeal

Deferred Disposition

■ Report to DPS

- May not report traffic offenses deferred unless defendant fails to complete and there is a conviction (Sec. 543.204, T.C.)
- Required to report deferral of all Alcoholic Beverage Code offenses at time case deferred (Sec. 106.117, A.B.C.)

DSC Art. 45.0511, C.C.P.

DSC - Subsection (b)

- Qualified Offense
- If Defendant Elects DSC
- And does so Timely
- And Defendant meets Qualifications

DSC: Offenses Eligible

- **DSC applies to:**
 - Jurisdiction of JP or Municipal Court
 - Involves the Operation of Motor Vehicle
 - » Subtitle C Rules of the Road
 - » Disobeying Warning Signs
 - » Juvenile Offenders on Same Violations
- **DSC Does Not Apply to Offense Committed by CDL holder 45.0511 (s)**
 - Including at time of offense

DSC - Qualified Offense

- **Does not apply to**
 - Speeding 25 mph over limit (b)(5)
 - Passing a school bus
 - Hit and Run Offenses (Occupied Vehicles)
 - Serious traffic offenses (CMV)
 - Work Zone While Workers are Present
 - » Subtitle C Rules of Road
 - » Not including Seatbelt and Inspection Offenses

DSC - Election (b)(3)(A)&(B)

- **Election**
 - In Person
 - By Attorney
 - By Certified Mail

DSC - Timely

- **Before the Answer Date**
- **Mailbox Rule** Art. 45.013, C.C.P.
 - If mailed on or before answer date
 - Must be received within 10 days of answer date
 - Keep envelope
 - » Legible postmark evidence (US Mail)

DSC - Qualifications

- **Evidence of Financial Responsibility**
 - "Under Chapter 601 of Trans. Code"
- **Texas DL**
 - Or No Tx DL but:
 - » U.S. Military
 - » Active Duty
 - » No DSC or MOC in any state in last 12 mos. Before date of offense

DSC - Discretionary

- **45.0511 (d)**
 - Defendant had DSC in preceding 12 months
 - Request not timely, but before Final Disposition
- **Alternative**
 - Court may require DSC during deferral period under Art. 45.051 (Deferred Disposition)

DSC-Fees

- **Mandatory (b)**
 - no more than \$10, plus Court Cost
- **Discretionary (d)**
 - up to fine amount, plus Court Cost
- **No refunds if course not taken**

Safety Seats and Seatbelts

- **Violations of 545.412 & 545.13(b) TC**
- **Must take DSC w/ 4 hours of Instruction Encouraging Use of Child Seats and Seatbelts**
- **TEA must approve this Special DSC**
- **Rule is found in 545.413 (i) TC**
- **Judge may allow Special Seatbelt DSC if defendant had regular DSC within last 12 months (Article 45.0511(u), C.C.P.)**
 - DL record must show no special DSC in last 12 months

DSC-Notification

- **Ticket required to have notice Art. 45.0511 (q)**
 - Statement of right
 - May be able to have charged dismissed
- **Court required to notify Art. 45.0511(r)**

DSC - Subsection (c)

- Court enters judgment on plea
- Court costs collected
- Court defers imposition of judgment for 90 days
- During 90 day period - court requires
 - DSC certificate
 - Driving record
 - » (c-1) Valet Service Option = Additional \$10 for DPS
 - Affidavit
 - » Including Military Affidavit

DSC - Compliance

- On proof of Completion
 - Court removes judgment
 - Reports to DPS date of completion
 - Court may only dismiss one charge for each completion
- Note: DSC certificates may not be uniform in appearance after 9/1/05

DSC - Show Cause Hearing

- Failure to complete
 - Court notifies in writing of show cause hearing
 - » of failure
 - » of time of hearing
 - » of place of hearing
 - Court mails notice to address on file with court

DSC - Show Cause Hearing

- **Appears at show cause**
 - Court may allow extension of time to present certificate, or
 - Court may impose judgment
 - Defendant may pay the fine or appeal

DSC - Show Cause Hearing

- **Failure to appear at show cause hearing**
 - Impose judgment on underlying charge
 - Issues *capias pro fine*

DSC AND DEFERRED

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DSC AND DEFERRED

I. DRIVING SAFETY COURSES/MOTORCYCLE OPERATOR COURSES

A. Application

1. Offenses to Which DSC Applies

Article 45.0511, C.C.P., is entitled "Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal." DSC and MOC only applies to an offense that in the jurisdiction of the justice or municipal court and involves the operation of a motor vehicle that is defined by Section 472.022, T.C.; Subtitle C, Title 7, T.C.; and Section 729.001(a)(3), T.C.

2. Exceptions

Exceptions to the application of Article 45.0511 include (this means that the following persons are not eligible for a driving safety course):

- Persons with a commercial driver's license are excluded from taking a driving safety course, including when the person is driving his or her own personal vehicle (this includes a person who held a commercial driver's license when the offense was committed);
- An offense committed in a construction or maintenance zone when workers are present;
- Persons who are alleged to have been speeding 25 mph or more over the speed limit;
- 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;
- Persons charged with leaving the scene of an accident who fail to stop and give information and render aid; and
- Persons charged with a serious traffic violation.

B. Course Requirements

1. DSC

The offense is committed by the operator of a motor vehicle. When the judge grants DSC, the defendant must complete a driving safety course approved by the Texas Education Agency. Court costs statutes require the defendant to pay all applicable court costs when the judge enters judgment but defers imposition of the judgment for 90 days. The court may also require a \$10 administrative fee if the request is made on or before the answer date on the citation.

The court *may*, but does not have to, require the defendant to pay a \$10 fee for obtaining a copy of the defendant's driving record from the DPS. A record must be kept of the fees

and they must be remitted to the Comptroller quarterly who then credits the fees to DPS. (Article 45.0511(c-1), C.C.P.)

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. Safety Belt Course

If the offense charged is under the child safety seat system or safety belt law involving the driver not restraining a child under the age of five and under 36 inches in height in a child passenger safety seat system or a person under the age of 17 in a safety belt, the defendant must take a special driving safety course that contain four hours of instruction on the effectiveness and safety of using a child safety seat system or seat belt.

A defendant may take a driving safety course for failing to keep a child secured in a child passenger safety seat system or a safety belt even if he or she has taken a driving safety course in the last 12 months. A defendant may do this only if the judge requires the defendant to take a specialized driving safety course (including four hours of instruction on child passenger safety seat systems) and any course the defendant has taken in the last 12 month did not have such instruction. The defendant's driving record and affidavit is required to show that he or she has not taken the specialized driving safety course in the last 12 months. The Texas Education Agency refers to this specialized DSC as "Seat Belt Schools." (Article 45.0511(u), C.C.P.)

C. 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 training course, as appropriate, with the 12 months preceding the date of the offense (Exception: A defendant may take a driving safety course for failing to keep a child secured in a child passenger safety seat system or a safety belt even if he or she has taken a driving safety course in the last 12 months. A defendant may do this only if the judge requires the defendant to take a specialized driving safety course—including four hours of instruction on child passenger safety seat systems—and any course the defendant has taken in the last 12 month did not have such instruction. The defendant's driving record and affidavit is required to show that he or she has not taken the specialized driving safety course in the last 12 months. The Texas Education Agency refers to this specialized DSC as "Seat Belt Schools." (Article 45.0511(u), C.C.P.);
- Must enter a plea of guilty or *nolo contendere* on or before the answer date on the citation and present the court in person, by counsel, or by certified mail (postmarked on or before due date) a request to take the course;
- Must present the court with a valid Texas driver's license or permit [*The court may, but does not have to, require the defendant to pay a \$10 fee for obtaining a copy of the defendant's driving record from the DPS. A record must be kept of the fees and they must be remitted to the Comptroller quarterly who then credits the fees to DPS. The court then requests the certified copy of the defendant's driving*

record from DPS. (Article 45.0511(c-1), C.C.P.)]; or is a member of the United States military forces serving on active duty; and

- Must provide the court evidence of financial responsibility.

D. Court Requirements

After the defendant enters a plea and makes the request for the course, the court must enter judgment on the plea at the time the plea is made, defer imposition of the judgment, and *allow the defendant 90 days to successfully complete the approved course and present to the court the following on or before the 90th day:*

- a certificate of completion of the DOC or MOC (The certificates come from the course providers and may look different. If the court is unsure whether the certificate is valid, the court should contact the course provider);
- 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 (If the defendant was on active military duty, presumably the defendant will not have a driving record with the Texas Department of Public Safety; and
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course, as applicable. If the defendant was on active duty, then the affidavit must state that the defendant had not completed a driving safety course in the other state on the date of the request to take the course in the municipal court in Texas and had not completed such a course within the 12 months preceding the date of the current offense.

If a defendant fails to present all the required evidence by the end of the 90 days deferral period, the court may not dismiss the charge.

E. Judge's Discretion before Final Disposition

If a defendant has completed an approved driving safety course or motorcycle operator training course within the 12 months preceding the date of the current offense, the court has discretion to grant a request to take DSC or MOC if the request is made before the final disposition of the case.

F. Costs

1. Mandatory

Court costs statutes require the defendant to pay all applicable court costs when the case is deferred; the court may also require a \$10 administrative fee if the request is made on or before the answer date on the citation.

2. Judge's Discretion

The court has discretion to grant a request to take DSC or MOC if the request is made before the final disposition of the case. If the judge grants the request, the defendant must pay all the required court costs. In addition 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, the person is not entitled to a refund of the fee.

G. Required Evidence at End of 90 Days

Before a court may dismiss a charge when a defendant has requested DSC or MOC, the defendant must present all of the following to the court on or before the 90th day after the court grants the request:

- A uniform certificate of completion of the driving safety course or a verification of completion of the motorcycle operator course (The certificates come from the course providers and may look different. If the court is unsure whether the certificate is valid, the court should contact the course provider);
- His or her driving record as maintained by the Texas 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 current offense. If the defendant was on active military duty, presumably the defendant will not have a driving record with the Texas Department of Public Safety; and
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course, as applicable. If the defendant was on active duty, then the affidavit must state that the defendant had not completed a driving safety course in the other state on the date of the request to take the course in the municipal court in Texas and had not completed such a course within the 12 months preceding the date of the current offense.

H. Satisfactory Completion

When the defendant presents all the evidence required, the court shall remove the judgment (interim judgment that was deferred for 90 days) and dismiss the charge.

I. Failure to Complete Course/Submit Evidence of All Requirements

If a person fails to present the court with the required evidence of course completion, copy of 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 enter an adjudication of guilt and 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.

J. Appeal

If the defendant fails to complete the course or fails to submit all the required evidence and the judge subsequently adjudicates (enters judgment imposing the fine) the defendant's guilt, the defendant may appeal the conviction if the municipal court is a non-record municipal court. If the defendant does not appeal, the defendant must pay the fine.

K. Reports to the Texas Department of Public Safety

If the defendant completes the DSC or MOC and presents satisfactory evidence of the other requirements and dismisses the charge, the court reports to the Texas Department of Public Safety the fact that the defendant successfully completed a driving safety course or a motorcycle operator training course under Article 45.0511, C.C.P., and the date of completion.

If the defendant fails to complete the course and the offense charged is a traffic offense, the court reports the conviction to the Department of Public Safety.

L. CHANGES AS OF 7/11/2005 TOPROVIDER-PRINTED CERTIFICATE SPECIFICATIONS

The following information is passed to you. We have adjusted the specifications for Uniform Certificates of Course Completion, based on input from course providers. Please continue to supply us with your thoughts and concerns.

- The requirement that the pantograph on certificates read “COPIES VOID FOR COURT” has been changed. All Uniform Certificates of Course Completion must contain a pantograph which, when copied, alerts the holder that the copy is not valid for court. The course provider may choose the wording. Phrases such as “UNOFFICIAL COPY”, “VOID”, and “COPY – NOT VALID” are acceptable. During the review of draft copies of certificates, the Division will point out any deficiencies in wording and require that appropriate verbiage be used for the pantograph.

REVERSE SIDE:

- The requirement that an English and Spanish version of the “Warning” printed on the reverse of certificates has been deleted.
- The requirement that an English and Spanish version of the “Notification of Cash Reward” printed on the reverse of certificates has been deleted.

M. PROVIDER-PRINTED CERTIFICATE SPECIFICATIONS

In the information below, sample numbers have been inserted. Course providers must insert the information that applies to individual certificates, students, courts, etc.

The following headings and information must appear on original certificates:

Certificate Number: <CP123-12345678> [i.e., a certificate number purchased from TEA]

For duplicate certificates a new number must be used and immediately below the new number must appear **Replaces Certificate Number** <CP123-12345678> [i.e., the original certificate number]

School-Classroom: <C1234-001>

Instructor: <Lastname, Firstname>

Completion Date: <mm/dd/yyyy>

Issue Date: <mm/dd/yyyy>

Student's DL Number: <12345678>

Student's DOB: <mm/dd/yyyy>

Student's Phone Number: <123-456-7890>

Court: <JP Jones, Muni Court, Here, TX> [This field will be expanded to more than 30 characters. At this time, the information must be limited to 30 characters, including punctuation and spaces.]

REASON FOR ATTENDANCE: <Traffic Citation> or <Insurance Discount> or <Other>

Student's Name and Mailing Address:

Joe Everyman
123 Main St.
Anywhere, TX 75XXX

**STATE OF TEXAS DRIVING SAFETY COURSE
UNIFORM CERTIFICATE OF COURSE COMPLETION**

This certifies that the student named herein has successfully completed a six (6) hour driving safety course that is approved and regulated by the Texas Education Agency.

Under penalty of perjury, I certify that I have received six (6) hours of instruction.

Student Signature: _____
You must sign this document at the time you submit it to the court, in person or by mail.

The signature line shown above (for the student's signature) must consist of microprint containing the words "Official Document".

UNLAWFUL IF REPRODUCED OR ALTERED (on Court copy)

UNLAWFUL IF ALTERED (On Insurance Only copy)

Courts requiring verification of validity may contact:

Course Owner Contact: <123-456-7890> and/or www.courseprovider.com and/or cp@aol.com

Duplicate certificates will bear a different certificate number, but the same information - and shall be printed on the same form. Any information that is different from information shown on the original must have the legend:

CHANGED FROM: <information shown on original>

REVERSE SIDE:

WARNING; A driving safety course is at least six (6) hours long. There are no exceptions. You may commit a crime if you use this certificate for court or insurance and have gone to class for less than six (6) hours or put anything on this certificate that is not true.

AVISO: Un curso de manejo a la defensiva deberá de durar al menos 6 (seis) horas. Sin excepciones. Usted puede cometer un delito si utiliza este certificado para la corte o la compañía de seguros y asistió a la clase por menos de 6 (seis) horas o hace indicaciones en este certificado que no sean verdaderas.

CASH REWARD: You can get a cash reward if you provide a tip that leads to a criminal conviction of a person who misuses a driving safety certificate. Call (512) 936-6777 for details.

RECOMPENSA EN EFECTIVO: Usted puede recibir una recompensa en efectivo si nos da información que se pueda utilizar para obtener una convicción criminal de personas que utilicen este certificado ilegalmente. Para más información llame al teléfono (512) 936-6777.

For anti-counterfeiting purposes, certificates shall be or have:

Overall size: Court and Insurance certificates both on one 8.5"X11" (8 ½ inches wide by 11 inches deep). The separate parts of the certificate must be marked <Court Copy> or <Insurance Copy> as appropriate.

Printed on white 20 pound or better paper.

Bear printed pantographing to protect against possible photocopy duplication that shall read "COPIES VOID FOR COURT".

Bear microprint wording to read "Official Document" that constitutes the (student) signature line on the court copy only.

DRIVING SAFETY COURSE FORMS

REQUEST FOR A DRIVING SAFETY COURSE (Art. 45.0511(b), CCP)

CAUSE NUMBER: _____

STATE OF TEXAS § IN THE MUNICIPAL COURT
VS. § CITY OF _____
§ _____ COUNTY, TEXAS

I hereby enter my appearance on the complaint of the offense of: _____
(in person)(by counsel)(by certified mail). I understand that I have a right to a jury trial. I hereby waive my
right to a jury trial, plead (guilty)(no contest) and elect under Art. 45.0511, CCP, to take a driving safety
course.

I understand that I must present to the court the following with this request:

- 1. a valid Texas driver’s license or permit or proof of active military duty;
- 2. proof of financial responsibility pursuant to Chapter 601, Transportation Code (automobile liability insurance);
- 3. payment of court cost; and
- 4. payment of a \$10 nonrefundable fee.

I understand that I must:

- 1. complete a driving safety course or motorcycle operator training course as applicable within 90 days of this request;
- 2. submit by the 90th day from this request a uniform certificate of course completion of a driving safety course or a verification of course completion of a motorcycle operator course as evidence of that I have completed such a course;
- 3. submit by the 90th day from this request an affidavit that I was not taking a such a course nor had I completed one within the preceding 12 months from the date of my current offense that is not shown on my driving record as maintained by the Texas Department of Public Safety (or if I am on active military duty that I have not taken a course in the state where I obtained by driver’s license in the preceding 12 months nor am taking such a course at the time of this request); and
- 4. submit by the 90th day from this request a copy of my driving record as maintained by the Texas Department of Public Safety (if maintained by the Texas Department Public Safety—active military duty only).

I understand that:

- 1. if I comply with the court order granting the taking of a driving safety/motorcycle operator course and submit all the required evidence as ordered that the court will dismiss my case and report to the Texas Department of Public Safety the date that I completed my course for inclusion on my driving record;
- 2. failure to submit all the evidence required by the court, that I will be notified of a show cause hearing and be required to appear before the court to show cause why I did not present the required evidence of course completion;
- 3. the judge may at the show cause hearing enter a final adjudication against me and require me to pay the fine; and
- 4. the failure to appear at the show cause hearing will result in a final adjudication being enter against me and that I will be required to pay the fine and any additional costs required by law.

Defendant's Signature

Date

Defendant's Attorney (if applicable) Date

REV. 9/05

AFFIDAVIT FOR DRIVING SAFETY COURSE (Art. 45.0511(c)(3), CCP)

CAUSE NUMBER: _____

STATE OF TEXAS
VS.

§
§
§

IN THE MUNICIPAL COURT
CITY OF _____
COUNTY, TEXAS

AFFIDAVIT*

I, _____, state under oath that on the date of my request for a driving safety course/motorcycle operator training course in the above numbered cause that I was not taking such a course nor had I completed one within the 12 months preceding the date of my current offense that is not shown on my driving record as maintained by the Texas Department of Public Safety (or as maintained by state that issued my driver's license—active military duty personnel only).

Defendant's Signature

Sworn and Subscribed before me, the undersigned authority on this the ____ day of _____, 200__.

(seal)

(Judge)(Court Clerk)(Deputy Court Clerk)
(Notary Public in and for the State of Texas)

***Editor's Note:** *Required to be filed within 90 days of the request for a driving safety course/motorcycle operator course.*

REV. 09/05

DRIVING SAFETY – NOTICE TO DEFENDANT TO SHOW CAUSE (Art. 45.0511, CCP)

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

Name: _____ Offense: _____

Address: _____

You are hereby ordered to appear before the _____ Municipal Court at _____ o'clock ____m., on the _____ day of _____, 200__, to show cause why you failed to comply with the Court's order in this case by _____, 200__.

Failure to appear on this date and time will result in the issuance of a capias pro fine (arrest warrant) against you based on the judgment of \$_____ entered against you when you submitted your plea and request for a driving safety course.

(Judge)(Clerk), Municipal Court
City of _____
_____ County, Texas

REV. 09/05

**JUDGMENT – DRIVING SAFETY COURSE/MOTORCYCLE OPERATOR TRAINING SAFETY PROGRAM GRANTED
(Art. 45.0511, CCP)**

CAUSE NUMBER: _____

STATE OF TEXAS § **IN THE MUNICIPAL COURT**
VS. § **CITY OF** _____
 § _____ **COUNTY, TEXAS**

On this the ____ day of _____, 200__, the Defendant in the above numbered and entitled cause appeared (by attorney) (in person) (by mail) and entered a plea of (guilty) (no contest) and waived a jury trial; and the Court finds the Defendant guilty of the offense of _____. The Defendant, having been found guilty, is assessed a fine of \$ _____ plus any and all costs required to be paid.

The Defendant, having elected to take a driving safety course on or before the answer date on the citation, the Court finds that the Defendant meets the requirements for taking a driving safety course, the imposition of this judgment is hereby deferred for a period of 90 days and the Defendant is hereby granted the right to take a (driving safety course) (motorcycle operator training course). The Defendant is ordered to pay immediately all Court costs and fees required by statute or ordinance in the amount of \$ _____.

The Defendant is required to complete the course by and present evidence to this Court of (a uniform certificate of completion of the driving safety course) (a verification of completion of the motorcycle operator training course) by _____, 20___. Furthermore, when presenting evidence of course completion, the Defendant is order to present a copy of the Defendant's driving record as maintained by the Department of Public Safety showing that the Defendant has not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense and an affidavit stating that the Defendant was not taking a driving safety course or motorcycle operator training course, as applicable, under this article on the date the request to take the course was made and has not completed such a course that is not shown on the Defendant's driving record within the 12 month preceding the date of the offense.

(municipal court seal)

 Judge, Municipal Court
 City of _____
 _____ County, Texas

FINAL JUDGMENT

CAUSE NUMBER: _____

STATE OF TEXAS § **IN THE MUNICIPAL COURT**
VS. § **CITY OF** _____
 § _____ **COUNTY, TEXAS**

- On this the ____ day of _____, 200__, on the above numbered and entitled cause
- The judgment is **Ordered** removed and the case dismissed on the grounds that the Defendant presented evidence of successful completion of a driving safety course/the motorcycle operator training course and presented the ordered driving record and affidavit under Art. 45.0511, C.C.P.
 - The Defendant, having not complied with the Court's order set forth above, having been given notice of a show cause hearing, and having failed to show cause why he/she failed to comply with the Court's order, is **Ordered** to pay the fine assessed in the amount of \$ _____ immediately. If the Defendant fails to comply with the orders of this Judgment, the Defendant shall be committed to the custody of the Chief of Police of the City of _____, Texas until said fine and costs are fully paid. In the event the Defendant defaults in the discharge of this judgment, pursuant to Article 45.048(b), Code of Criminal Procedure, the Court specifies that the Defendant remain in jail:
 _____ hours (not less than eight or more than 24) to earn
 _____ (minimum Dollar amount \$50*) to satisfy the fine and costs.

It is further Ordered and Adjudged by the Court that execution may issue against the property of the said Defendant for the amount of such fine and costs.

(municipal court seal)

 Judge, Municipal Court
 City of _____
 _____ County, Texas

*Effective 09/05

II. DEFERRED DISPOSITION

When the court grants deferred disposition, the court defers further proceedings in the case without entering an adjudication of guilty and places the defendant on probation. Only judges have the discretion to grant deferred disposition.

A. Offense eligible for Deferred

Deferred disposition applied to misdemeanor offenses punishable by fine only, with a few exceptions.

- Offense committed in a construction and maintenance work zone with workers are present.
- A minor charged with the offense of consuming an alcoholic beverage is not eligible for deferred disposition if the minor has been previously convicted twice or more of this offense.
- A minor charged with the offense of driving under the influence of an alcoholic beverage is not eligible for deferred disposition if the minor has been previously convicted twice or more of this offense.
- A minor who is not a child (under the age of 17) and who has been previously convicted at least twice of minor consuming alcohol, minor in possession of alcohol, purchase of alcohol by a minor, minor attempting to purchase alcohol, or a misrepresentation of age is not eligible to receive a deferral of a subsequent offense.
- A person who holds a commercial driver's license and who held a commercial driver's license when the traffic offense was committed that related to motor vehicle control, other than a parking violation.

B. Proceedings

- The defendant must enter a plea of guilty or *nolo contendere* or there must be a finding of guilty.
- The defendant must pay court costs before the judge grants deferred.
- The judge may set the probation period up to 180 days.
- The judge *may* require the defendant to do any of the following:
 - Post a bond in the amount of the fine assessed to secure payment of the fine;
 - 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 or another course as directed by the judge; and
- Present satisfactory evidence that the defendant has complied with each requirement imposed by the judge; and comply with any other reasonable condition.
- The judge *must* require a defendant charged with an Alcoholic Beverage Code offense, including public intoxication (age 17 but under age 21), but except driving under the influence (DUI) to do the following:
 - Complete and alcohol awareness program and
 - Complete the required community service (8 to 12 hours; subsequent 20 to 40 hours);
- The judge *must* require a defendant charged with the Alcoholic Beverage Code offense of driving under the influence to do the following:
 - Complete and alcohol awareness program;
- The judge *must* require a defendant under the age of 25 and charged with a moving traffic violation to
 - complete a driving safety course;
- The judge *must* require a defendant with a provisional license charged with a moving traffic violation to do the following:
 - Complete a driving safety course; and
 - Be examined by the Texas Department of Public Safety as required by Section 521.161(b)(2), T.C., (a defendant is not exempt from the examination regardless of whether the defendant was examined previously.)

C. Satisfactory Completion

At the conclusion of the deferral period if the judge determines that the defendant has presented satisfactory evidence of compliance with the requirements imposed by the judge, the judge *shall*

- dismiss the complaint, and
- clearly note in the docket that the complaint is dismissed and that there is not a final conviction.

If the complaint is dismissed, the judge *may*

- impose a special expense not to exceed the amount of the fine assessed.

D. Failure to Comply with the Terms

When a defendant fails to comply with the terms of probation, the judge may proceed with an adjudication of guilty and then the judge may:

- impose a fine, or
- reduce the fine previously assessed.

If the defendant is under age 25, the court may not reduce the previously assessed fine, but must assess the fine that was initially set at the beginning of the deferral.

E. Expunction

Records relating to a complaint dismissed under deferred disposition may be expunged under Article 55.01, C.C.P. Expunction is the process by which the record of a criminal conviction is destroyed or sealed. Under Chapter 55, C.C.P., the defendant must apply to the District Court for the expunction.

If the defendant is under the age of 17 and the defendant completed the terms of the deferral for a penal offense, the defendant may request expunction under Article 45.0216, C.C.P.

F. Appeal

If the defendant fails to complete the terms of probation and the judge subsequently adjudicates the defendant's guilt, the defendant may appeal the conviction if the municipal court is a non-record municipal court. If the defendant does not appeal, the defendant must pay the fine.

G. Reports to the Texas Department of Public Safety

- Traffic offense – if the defendant fails to complete the terms of the deferral and does not appeal, report a conviction to the Department of Public Safety. If the defendant completes the terms of the deferral, do not report anything to the Department of Public Safety.
- Alcoholic Beverage Code offenses – Courts must report to the Department of Public Safety 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.
- Alcoholic Beverage Code offenses – Courts must order defendants' driver's licenses suspended or denied issuance of if defendants do not complete the alcohol awareness program. The court reports to DPS the order on the DIC-15 form.

DEFERRED DISPOSITION FORMS

ORDER DEFERRING FURTHER PROCEEDINGS (Art. 45.051, CCP)

CAUSE NUMBER: _____

STATE OF TEXAS
VS.

§
§
§

IN THE MUNICIPAL COURT
CITY OF _____
_____ COUNTY, TEXAS

The Court finds that _____, Defendant, (having been found guilty, pled (guilty)(no contest) to the offense of _____, and that the punishment has been set at a fine of \$ _____ and court costs. Court costs in the amount of _____ are hereby ordered to be paid immediately.

Under the authority of Article 45.051, Code of Criminal Procedure, the Court defers further proceedings without entering an adjudication of guilt until the _____ day of _____, 200__.

DEFERRAL PERIOD: _____, 200__ until _____, 200__ (not to exceed 180 days).

CONDITIONS OF DEFERRED DISPOSITION

DEFENDANT SHALL:

- 1. Post a bond in the amount of \$ _____ to secure payment of the fine;
- 2. Submit proof of financial responsibility as required by law to the Court at the termination of the deferral period; said proof showing that Defendant kept in force financial responsibility during the entire deferral period;
- 3. Pay restitution to _____ in the amount of \$ _____ within the deferral period;
- 4. Submit to professional counseling as follows: _____;
- 5. Submit to diagnostic testing for alcohol or a controlled substance or drug as follows: _____;
- 6. Submit to a psychosocial assessment as follows: _____;
- 7. Participate in an alcohol or drug abuse treatment or education program, as follows: _____;
- 8. Pay the costs of diagnostic testing, psychosocial assessment, or participation in a treatment or education program, as follows: _____;
- 9. Perform _____ hours community service at: _____;
- 10. Complete an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse;
- 11. Complete a driving safety course approved by the Texas Education Agency;
- 12. Complete the following course: _____;
- 13. Be examined by the Texas Department of Public Safety as required by Section 521.161(b)(2), T.C. and pay a \$10 fee for the examination to the Department of Public Safety
- 14. Other: _____.
- 15. Present to the Court satisfactory evidence of complying with each requirement imposed by the Judge.

Violation of any of the above noted conditions shall constitute a violation of this agreement.

If Defendant successfully complies with the conditions of the agreement, then this case shall be **DISMISSED** by the Court and shall **NOT** be reported as a conviction, but a special expense fee of \$ _____ (not to exceed amount of fine) will be collected. Failure to comply shall cause this case to result in a **CONVICTION**, payment of a **FINE** of \$ _____ and the conviction will be reported as required by law.

A copy of this Order was delivered to the Defendant on this date.

Agreed to and signed this the _____ day of _____, 200__.

Defendant's Signature

Municipal Court Judge

City of _____
_____ County, Texas

Editor's Note: A person who was under age 17 at the date of the offense may request the Court expunge the records in the above noted cause after successful completion of deferred disposition if the cause is a violation of a Penal Code offense or a violation of a city penal ordinance. (Art. 45.0216(h), CCP)

JUDGMENT – FINAL DISPOSITION OF DEFERRED DISPOSITION (Art. 45.051, CCP)

CAUSE NUMBER: _____

STATE OF TEXAS § IN THE MUNICIPAL COURT
VS. § CITY OF _____
_____ § _____ COUNTY, TEXAS

- On this the ____ day of _____, 200__, on the above numbered and entitled cause
 - The Defendant, not complying with the terms of deferred disposition, is **Ordered** to pay the fine assessed immediately in the amount of \$ _____.
 - The Defendant, not complying with the terms of the deferred disposition, the cash bond posted by the Defendant is **Ordered** forfeited to pay the fine assessed in the amount of \$ _____.
 - It is **Ordered** dismissed on the grounds that the Defendant presented evidence of successful completion of the terms of the deferred disposition.
 - It is **Ordered** that the Defendant pay a special expense fee in the amount of \$ _____.
 - It is **Ordered** that the cash bond to secure payment of the fine posted by Defendant in the amount of \$ _____ shall be refunded.
- If the Defendant fails to comply with the orders of this Judgment, the Defendant shall be committed to the custody of the Chief of Police of the City of _____, Texas until said fine and costs are fully paid. In the event the Defendant defaults in the discharge of this judgment, pursuant to Article 45.048(b), Code of Criminal Procedure, the Court specifies that the Defendant remain in jail:

_____ hours (*not less than eight or more than 24*) to earn.
_____ (*minimum Dollar amount \$50**) to satisfy the fine and costs.

It is further Ordered and Adjudged by the Court that execution may issue against the property of the said Defendant for the amount of such fine and costs.

(municipal court seal) Judge, Municipal Court Date
City of _____
_____ County, Texas

*Effective 1/04

REV. 8/03

Figure: 37 TAC §15.89(b)

Arrest Title	Driver Responsibility Points
Aggravated assault with motor vehicle	Yes
ALR CMV .04 > ADM	No
ALR CMV HZMT .04 > ADM	No
ALR-CMV HZMT REF-ADM	No
ALR-CMV REFUSAL-ADM	No
Backed up on shoulder (or roadway) of controlled access highway	Yes
Bus driver failed to activate warning signal/equipment	Yes
Bus failed to stop at RR crossing	Yes
Bus shifting gears while crossing RR tracks	Yes
Changed lane when unsafe	Yes
Coasting	Yes
Coasting (truck, truck tractor or bus, specify) with clutch disengaged	Yes
Consume alcohol while driving	Yes
Criminal negligent homicide with motor vehicle--1st or 2nd degree	Yes
Crossed RR with heavy equipment without notice	Yes
Crossed RR with heavy equipment without stop (or safety)	Yes
Crossing fire hose without permission	Yes
Crossing physical barrier	Yes
Cut across driveway to make turn	Yes
Cut corner left turn	Yes
Cut in after passing	Yes
Did not use designated lane or direction	Yes
Disregard solid green turn signal arrow	Yes
Disregarded flashing red signal (at stop sign, etc.)	Yes
Disregarded flashing yellow signal	Yes
Disregarded lane control signal	Yes
Disregarded no lane change sign	Yes
Disregarded no passing zone	Yes
Disregarded police officer	Yes
Disregarded RR crossing gate or flagman	Yes
Disregarded signal at RR crossing	Yes
Disregarded traffic control device	Yes

Disregarded turn marks at intersection	Yes
Disregarded warning sign at construction	Yes
Drive into block where fire engine stopped	Yes
Driving under influence	No
Driving under influence (DUI)--minor	Yes
Driving under influence of drugs	No
Driving while impaired	No
Driving while intoxicated > 0.16	No
Driving while intoxicated with child younger than 15 yoa	No
Driving while intoxicated--felony	No
Driving while intoxicated--juvenile	No
Driving while intoxicated--misdemeanor	No
Driving while intoxicated--on beach	No
Driving while intoxicated--probated	No
Driving while intoxicated--under 21	No
Driving while license disqualified--CMV	No
Driving while license suspended under provisions of DL laws	No
Driving while license suspended--SR	No
Drove center lane (not passing, not turning left)	Yes
Drove on (or across) streetcar tracks where prohibited	Yes
Drove on sidewalk	Yes
Drove on wrong side--RR crossing	Yes
Drove on wrong side of approaching bridge	Yes
Drove on wrong side of divided highway	Yes
Drove on wrong side of road	Yes
Drove on wrong side road approaching intersection	Yes
Drove on wrong side road approaching RR grade crossing	Yes
Drove on wrong side road awaiting access to ferry	Yes
Drove onto (or from) controlled access highway where prohibited	Yes
Drove through safety zone	Yes
Drove to left of rotary traffic island	Yes
Drove without lights--when required	Yes
Drove wrong way in designated lane	Yes
Drove wrong way on one-way roadway	Yes
Endorsement violation CDL	Yes
Excessive acceleration (NO LONGER OFFENSE 9/01/2003)	No

Exhibition of Acceleration (NO LONGER OFFENSE 9/01/2003)	No
Fail to control speed	Yes
Fail to dim headlights--following	Yes
Fail to dim headlights--meeting	Yes
Fail to drive in single lane	Yes
Fail to give hand signals when required	Yes
Fail to give info/render aid	No
Fail to give one-half of roadway	Yes
Fail to keep to right on mountain road	Yes
Fail to pass left safely	Yes
Fail to pass met vehicle to right	Yes
Fail to pass to right safely	Yes
Fail to signal for stop	Yes
Fail to signal required distance before turning	Yes
Fail to signal turn	Yes
Fail to signal with turn indicator	Yes
Fail to sound horn--mountain road	Yes
Fail to stop--designated point--at stop sign	Yes
Fail to stop--designated point--at yield sign	Yes
Fail to stop and render aid--felony	No
Fail to stop and render aid--misdemeanor	No
Fail to stop at marked RR crossing	Yes
Fail to stop at proper place (at traffic light)	Yes
Fail to stop at proper place (flashing red signal)	Yes
Fail to stop at proper place (not at intersection)	Yes
Fail to stop for approaching train	Yes
Fail to stop for approaching train--hazardous proximity	Yes
Fail to stop for school bus (or remain stopped, specify)	Yes
Fail to stop for streetcar--or stop at wrong location	Yes
Fail to stop--emerging from alley, driveway or bldg.	Yes
Fail to use due care for pedestrian	Yes
Fail to use proper headlight beam	Yes
Fail to yield at stop intersection	Yes
Fail to yield at yield intersection	Yes
Fail to yield for blind or incapacitated person	Yes
Fail to yield right of way	Yes

Fail to yield right of way from private road	Yes
Fail to yield row at open intersection (specify type)	Yes
Fail to yield row leaving (private drive, alley, building)	Yes
Fail to yield row on green arrow signal	Yes
Fail to yield row on green signal	Yes
Fail to yield row on left at obstruction	Yes
Fail to yield row to emergency vehicle	Yes
Fail to yield row to pedestrian at signal intersection	Yes
Fail to yield row to pedestrian in crosswalk	Yes
Fail to yield row to pedestrian in crosswalk--no signal	Yes
Fail to yield row to pedestrian on sidewalk	Yes
Fail to yield row to pedestrian turning right or left at intersection	Yes
Fail to yield row to pedestrian--green arrow signal	Yes
Fail to yield row--changing lanes	Yes
Fail to yield row--turning left (at intersection, alley, private road or driveway)	Yes
Fail to yield row--turning right on red signal	Yes
Fail to yield to vehicle in intersection	Yes
Fail to yield to vehicle leaving highway	Yes
Failed to give way when overtaken	Yes
Failed to signal lane change	Yes
Fleeing from police officer	Yes
Following ambulance	Yes
Following fire apparatus	Yes
Following too closely	Yes
Following too closely--caravan	Yes
Following too closely--truck	Yes
Head lamps glaring not adjusted	Yes
Heavy equipment disregarded signal of train	Yes
Illegal backing	Yes
Illegal pass on right	Yes
Illegally passed streetcar	Yes
Impeding traffic	Yes
Improper turn	Yes
Improper turn or stop hand signal	Yes
Improper use of auxiliary driving lamps	Yes
Improper use of auxiliary passing lamps	Yes

Improper use of lighting—hwy. equip.	Yes
Improper use of spot lamps	Yes
Improper use of turn indicator	Yes
Increased speed while being overtaken	Yes
Interfere with streetcar	Yes
Intoxication assault	No
Intoxication assault motor vehicle	No
Intoxication manslaughter	No
Intoxication manslaughter motor vehicle	No
Involuntary manslaughter with motor vehicle	Yes
Leaving scene of accident	Yes
Leaving scene of accident—vehicle damage	Yes
Made U-turn on curve or hill	Yes
Murder—with motor vehicle	Yes
Negligent collision	Yes
No commercial driver license (CDL)	No
No double trailer endorsement (CDL)	No
No driver license	No
No hazmat endorsement (CDL)	No
No motorcycle endorsement	No
No passenger vehicle endorsement (CDL)	No
No tank vehicle endorsement (CDL)	No
No school bus endorsement (CDL)	No
Obstructed view through windshield	Yes
Obstructing traffic	Yes
Open Container DRIVER	Yes
Operate vehicle more than one passenger-minor	Yes
Operate vehicle where prohibited	Yes
Operate vehicle with child in open bed	Yes
Passed streetcar on left without reducing speed or without caution	Yes
Passed vehicle stopped for pedestrian	Yes
Passed—insufficient clearance	Yes
Passengers/load obstruct driver's view or control	Yes
Passing authorized emergency vehicle	Yes
Permitted/operated unsafe vehicle	Yes
Person(s) riding in trailer or semi-trailer	Yes

Prohibited motor vehicle on controlled-access highway	Yes
Racing--drag racing--acceleration contest, etc.	Yes
Ran red light	Yes
Ran stop sign	Yes
Reckless driving	Yes
Restriction violation--CDL	Yes
Slower vehicle failed to keep to right	Yes
Speed under minimum	Yes
Speeding	No
Speeding > 10% above posted speed limit	Yes
Speeding--15 miles or over (CDL)	Yes
Speeding--school zone	Yes
Too many riders on motorcycle	Yes
Turned across dividing section	Yes
Turned left from wrong lane	Yes
Turned right from wrong lane	Yes
Turned right too wide	Yes
Turned so as to impede or interfere with streetcar	Yes
Turned when unsafe	Yes
Unauthorized use of siren, bell or whistle	Yes
Unsafe speed (too fast for conditions)	Yes
Unsafe start from parked, stopped or standing position	Yes
Use of school bus signal for wrong purpose	Yes
Veh. hauling explosives (or flammable materials) failed to stop at RR crossing	Yes
Veh. hauling explosives failed to reduce speed at RR crossing	Yes
Vehicle without required equipment or in unsafe condition	Yes
Violate DL restriction	Yes
Violate DL restriction on occupational license	Yes
Violate operating hours-minor	Yes
Violated out of service order	Yes
Wrong side road--not passing	Yes
Wrong side, 4 or more lane, two-way roadway	Yes

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**TEXAS MUNICIPAL COURTS
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1-800-252-3718
FAX (512) 435-6118

**JUVENILES AND
ALCOHOL OFFENSES**

Presented by

**Margaret Robbins
Program Director
TMCEC**

Juveniles and Alcohol Offenses

Presented by
Margaret Robbins, Program Director
TMCEC

Objectives

- ♦ Explain differences between juvenile & minor
- ♦ Explain differences between DUI and other ABC offenses
- ♦ List procedures for processing ABC offenses
- ♦ Properly report ABC offenses to DPS

Juveniles and Minors

THE DIFFERENCE

- ♦ Juveniles (children)
 - Under the age of 17 and at least age 10
- ♦ Minors
 - Alcoholic Beverage Code offenses – under age 21

Parents

- ◆ **Parent includes:**
 - Parent
 - Person standing in parental relationship
 - Managing conservator
 - Custodian

Appearance

- ◆ **Juveniles (all offenses)**
 - Under age 17 must be in open court with a parent for all proceedings
- ◆ **Minors**
 - ABC offenses -- all must be in open court

Appearance

- ◆ **Juvenile residing in another county**
 - Court of jurisdiction may give permission for a municipal court or JP court in county where child lives to take plea (parent's appearance still required)

Appearance

- ◆ **Court**
 - **Determines sophistication and maturity of juvenile**
 - **Gives notice of change of address to:**
 - Child
 - Adult

Appearance

- ◆ **Parents**
 - **Required to be in open court with child for all court proceedings if under age 17**
 - **Court required to summon**
 - **Court may waive presence after diligence used to acquire appearance**

Juvenile FTA

- ◆ **Court may order DPS to suspend to deny issuance of DL**
- ◆ **Prosecutor may file FTA**
- ◆ **Court may issue non-secure custody warrants**

**Minor FTA
At least age 17**

- ♦ Prosecutor may file FTA
- ♦ Warrants may be issued

Parents

- ♦ If child younger than 18, court may require parent to attend alcohol awareness course with child
- ♦ Court may order parent to do any act or refrain from doing any act that will increase likelihood of child completing alcohol awareness class

Penalties

- ♦ Alcoholic Beverage Code Minor Offenses except DUI (include PI under age 21) – 1st offense
 - Fine - \$500
 - Alcohol awareness course
 - Driver's license suspension or denial
 - 30 days; effective the 11th day after judgment
 - Community service
 - 8-12 hours

Penalties

- ◆ **Alcoholic Beverage Code Minor Offenses except DUI – 2nd offense**
 - **Fine - \$500**
 - **Alcohol awareness course discretionary**
 - **Driver's license suspension or denial**
 - 60 days; effective the 11th day after judgment
 - **Community service**
 - 20-40 hours

Penalties

- ◆ **Alcoholic Beverage Code – DUI**
 - **Fine - \$500**
 - **Alcohol awareness course**
 - Required for 1st offense
 - Discretionary for 2nd offense
 - **Community service**
 - 20 – 40 hours 1st offense
 - 40 – 60 hours 2nd offense

DL Suspension or Denial

- ◆ **Court required to order**
- ◆ **Order is part of court judgment**
- ◆ **Clerk notifies DPS of court's order with DIC-15 form**
- ◆ **Notification of the DL suspension or denial notifies DPS of conviction**

Alcohol Awareness Program

- ♦ 90 days to take
- ♦ If fails to complete, court conducts show cause hearing
 - Judge may grant another 90 days to take

Alcohol Awareness Program

- ♦ If minor completes, court may reduce fine to not less than half of initial fine
- ♦ If minor fails to complete, court shall order DL suspended or denied issuance
 - Clerk notifies DPS of court order with DIC-15
 - Suspension for a period not to exceed six months

Failure to Pay

- ♦ Under age 17
- ♦ Court sets show cause hearing under Article 45.050, C.C.P.
- ♦ Court may
 - Transfer juvenile to juvenile court for contempt
 - Retain jurisdiction

Failure to Pay

- ◆ Under age 17 (retains jurisdiction)
 - If found in contempt
 - Fine up to \$500 and/or
 - Order DPS to suspend or deny issuance of DL

Failure to Pay

- ◆ Minor age 17 and under age 21 when offense occurred
 - Issue capias pro fine

Deferred Disposition

- ◆ Prosecutor may use to enhance
- ◆ If two prior convictions of ABC offenses, not eligible if at least age 17
- ◆ If two prior convictions for DUI, not eligible
- ◆ If two prior convictions for minor consuming, not eligible

Deferred Disposition

- ◆ Court required to notify DPS of order of deferred when ordered; use DIC-15 form
- ◆ Court required to order alcohol awareness program
- ◆ Court required to order community service except for DUI

Deferred Disposition

- ◆ Under age 17, failure to complete
 - Set juvenile for contempt hearing under Article 45.050, C.C.P.
 - Failure to complete alcohol awareness program, court must order
 - DL suspended or denied for not more than six months
 - Clerk notifies DPS of courts order on DIC-15

Deferred Disposition

- ◆ Age 17 and older, failure to complete
 - Good practice to set for show cause hearing
 - Failure to complete alcohol awareness program, court must order
 - DL suspended or denied for not more than six months
 - Clerk notifies DPS of courts order on DIC-15

Expunction

- ◆ **Completed deferred disposition**
 - Petition district court
- ◆ **One conviction**
 - On or after age 21
 - Petition municipal court
 - January 1, 2006, court must charge \$30 fee—city keeps

Expunction

- ◆ **Court may conduct hearing or not**
- ◆ **After court orders, clerk must**
 - Send copy of order to DPS, alcohol awareness program provider, community service provider, and any other agency in order
 - Destroy records in municipal court

Reports

- ◆ **DPS**
 - Alcoholic Beverage Code convictions
 - Alcoholic Beverage Code, except DUI – DL suspensions or denials
 - Failure to complete the alcohol awareness program

Reports

- **DPS**
 - Failure to complete Alcoholic Beverage Code community service (sanction)
 - Alcoholic Beverage Code order of deferred disposition
 - Failure to appear
 - Failure to pay

Reports

- **Texas Commission on Alcohol and Drug and Abuse**
 - Report as required by commission

NOT THE END

JUVENILES AND ALCOHOLIC BEVERAGE CODE OFFENSES

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ALCOHOLIC BEVERAGE CODE

Section 106.01, A.B.C., defines minor to mean a person under age 21. A minor who is at least age 10 and under age 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 over alcohol offenses is given to municipal courts in Article 4.14(b)(2), C.C.P. The statute says that municipal court has jurisdiction over cases that arise under Chapter 106, Alcoholic Beverage Code, that do not include confinement as an authorized sanction. The penalty provisions regarding Alcoholic Beverage Code offenses committed by a minor are found in Sections 106.041 and 106.071 of the Alcoholic Beverage Code. These sections provide that first and second offenses are fine-only offenses, but convictions for third and more offenses of a minor at least age 17 include confinement as part of the penalty. Section 106.071(c), A.B.C., provides that if it is shown at the trial of a defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an Alcoholic Beverage Code offense, the penalty is a fine of not less than \$250 or more than \$2,000 and/or confinement in jail for a term not to exceed 180 days. If this evidence is shown at the trial, the municipal court would not have jurisdiction over the case.

Appearance

A. Minor's Appearance

The Alcoholic Beverage Code provides specific procedures for handling minors charged with alcohol offenses. All minors must appear in open court to plead guilty to an Alcoholic Beverage Code offense. (Section 106.10, A.B.C.) Minors under the age of 18 must appear in open court with a parent. (Section 106.11, A.B.C.)

B. Parent's Appearance

If the minor is under the age of 18, parent, managing conservator, or custodian must appear with his or her child in open court. If the parent, managing conservator, or custodian resides within the city, the court must summon him or her to be present at all proceedings in the case. (Section 106.11(b), A.B.C.) If the parent or legal guardian resides outside of the city, the court must give written notice to the minor's parent or legal guardian. (Section 106.11(c), A.B.C.) A written notice is probably sufficient if the defendant is at least 17 years of age. However, if the minor is under the age of 17, Article 45.0215, C.C.P., requires the court to summon the parent, guardian, or conservator.

When a court is unable to locate or to compel the presence of a parent or legal guardian, the court, after determining that diligent effort was used, may waive the presence of the parent or guardian. (Section 106.11(d), A.B.C.) See Part 9B of this guide for more information on summoning parents and guardians.

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 (Section 106.02);
- Attempt to Purchase Alcohol by a Minor (Section 106.025);
- Consumption of Alcohol by a Minor (Section 106.04);
- Driving under the Influence of Alcohol by Minor (DUI) (Section 106.041);
- Possession of Alcohol by a Minor (Section 106.05); and
- Misrepresentation of Age by a Minor (Section 106.07).

Penalty

A. Alcoholic Beverage Code Offenses Involving a Minor, Except DUI

1. Fine

Except for the offense of driving under the influence of alcohol by a minor (DUI), the penalties for the above listed offenses are found in Section 106.071, A.B.C. See Part 4C(2) in this guide for penalties for DUI. The penalties discussed in this section also apply to persons under the age of 21 charged with the offense of public intoxication. (Section 49.02(e), P.C.)

Section 106.071, A.B.C., provides that first and second offenses are Class C misdemeanors. Since the Alcoholic Beverage Code does not define Class C misdemeanor, the court must use the Penal Code definition, which provides for a punishment of a fine not to exceed \$500. (Section 12.23, P.C.) This is also the amount of fine for subsequent offenses, except when a minor is at least 17 years of age and has two prior convictions for any of the following offenses: purchase, attempt to purchase, possession, consumption of alcohol, or misrepresentation of age by a minor. If this is the situation and it is shown at the trial that the defendant is 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, then the current offense is punishable by a fine of not less than \$250 or more than \$2,000 and/or confinement in jail for a term not to exceed 180 days. (Section 106.071(c), A.B.C.) Hence, the municipal court would lack jurisdiction. Although the penalty is not enhanced for third and subsequent offenses for defendants under the age of 17, municipal court must waive jurisdiction unless the court has a case manager program under Article 45.056, C.C.P. (Section 51.08(d), F.C.) See Part 1B of this guide for more information on waiver of jurisdiction. See Part 4D(1) for information on deferred disposition used for enhancing a charge to a subsequent offense.

2. Sanctions

a. Community Service

In addition to a fine, a minor convicted of possession, consuming, purchasing or attempting to purchase alcohol, misrepresentation of age by a minor, or public intoxication (under age 21) must perform community service. If the conviction is for a first time offense, the minor must perform between eight and 12 hours of community service. If the conviction is for a subsequent offense, the minor must perform between 20 and 40 hours of community service. (Section 106.071(d), A.B.C.) Community service must be related to the education about or prevention of misuse of alcohol if those programs are available in the community where the court is located. If there are no programs available, the court may order community service that it considers appropriate for rehabilitative purposes. (Section 106.071(e), A.B.C.)

b. Alcohol Awareness Program

Alcohol awareness programs must be approved by the Texas Commission on Alcohol and Drug Abuse. (Section 106.115, A.B.C.) Courts can locate a program in their area by calling the Commission at 800/832-9623.

The court must require a minor convicted for the first time of possessing, consuming, purchasing or attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21) to attend an alcohol awareness program. If a conviction is for a subsequent offense, the court has the discretion whether to require participation in an alcohol awareness program. Also, under Section 106.115(d)(2), A.B.C., the court may order the defendant's parent, conservator, or guardian to refrain from doing anything that would increase the likelihood that the minor will not complete the alcohol awareness program.

A minor has 90 days to complete the alcohol awareness program and return to the court with evidence of attendance. (Section 106.115(c), A.B.C.) If the minor completes the alcohol awareness program, the judge may lower the fine to not less than one-half of the originally assessed amount. (Section 106.115(c), A.B.C.) If the minor fails to present evidence of completion within 90 days, the court should set the minor for a show cause hearing and notify the minor of the hearing. If the minor is under the age of 18, the court must summon the parent or legal guardian to the hearing. At the hearing, the judge may or may not grant an extension. If a

judge grants an extension, the case is reset for 90 days later. If the court does not grant the extension, the court should explain to the defendant the court is going to order the Texas Department of Public Safety to deny issuance or suspension of his or her driver's license for failing to complete the program. (Section 106.115(d), A.B.C.)

After the judge orders the suspension or denial of issuance, if the court is not automated, the clerk reports the suspension to DPS on form DIC-15. Otherwise, the court reports electronically by a code assigned by DPS. The suspension period may not exceed six months. (Section 106.115, A.B.C.) To compute the time for the six months suspension, Section 311.014(c), G.C., provides that if a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation began, unless there are not that many days in the concluding month, in which case, the period ends on the last day of that month.

It is a good idea for a court to notify the minor and his or her parents by sending a copy of the suspension order. This is not required, but it will demonstrate the seriousness of the matter and help clear up any misunderstandings that might arise.

c. Driver's License Suspension or Denial

In addition to a fine, community service, and an alcohol awareness program, the court must order DPS to suspend or deny issuance of a driver's license of a minor convicted of any of the following offenses: minor possessing, consuming, purchasing, attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21). (Section 106.071(d)(2), A.B.C.) The suspension or denial is for a period of 30 days if the minor has not been previously convicted. If it is a second conviction, the suspension or denial is for 60 days. If it is a third or more conviction, the suspension or denial is for 180 days. (Section 106.071(d)(2), A.B.C.)

The driver's license suspension takes effect on the 11th day after the date the minor was convicted. (Section 106.071(h), A.B.C.) When a minor is convicted, clerks should immediately notify DPS of the suspension order so that DPS will have the notice before the 11th day after judgment.

To report the order of suspension to DPS, courts that report manually must use DPS form DIC-15. Also, it is a good idea for the courts to notify the minor and his or her parents by sending a copy of the suspension order and the DIC-15 form. Again, this is not required, but it demonstrates the seriousness of the matter and helps to clear up any misunderstanding that might arise.

3. 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 the minor to complete additional requirements. See Part 9G of this guide for a list of those requirements.

B. Driving under the Influence of Alcohol by Minor (DUI)

1. Fine

The offense of driving under the influence of alcohol by a minor (DUI) is a Class C misdemeanor. Since the Alcoholic Beverage Code does not define Class C misdemeanor, the court must use the Penal Code definition, which provides for a maximum fine of \$500. (Section 12.23, P.C., and Section 106.041, A.B.C.)

Section 106.041 provides that first and second offenses are Class C misdemeanors, which is also the amount of fine for third and subsequent offenses, except when a minor is at least 17 years of age and has two prior convictions for DUI. If this is the situation and it is shown at trial that the defendant is a minor who is not a child who has been previously convicted at least twice of the offense of DUI, then the current offense is punishable by a fine of not less than \$500 or more than \$2,000 and/or confinement in jail for a term not to exceed 180 days. (Section 106.071(c), A.B.C.) Hence, the municipal court would lack jurisdiction. Although the penalty is not enhanced for third and subsequent offenses for defendants under the age of 17, municipal

court must waive jurisdiction unless the court has a juvenile case manager program under Article 45.056, C.C.P. (Section 51.08(d), F.C.)

See Part 4D of this guide for information on how deferred disposition affects how DUI is charged and how many times deferred disposition may be granted for DUI.

2. Sanctions

a. Community Service

In addition to a fine, the court must require the minor to perform community service. If the conviction is for a first DUI offense, the minor must perform between 20 and 40 hours of community service. If the conviction is for a subsequent offense, the minor must perform between 40 and 60 hours of community service. Community service must be related to education about or prevention of misuse of alcohol. (Section 106.041(d), A.B.C.)

b. Alcohol Awareness Program

In addition to a fine and community service, the court must require the minor convicted of DUI to attend an alcohol awareness program on a first conviction. (Section 106.041(d), A.B.C.) If the conviction is for a subsequent offense, the court does not have to, but may, require completion of an alcohol awareness program. (Section 106.115(a), A.B.C.) Also, the court may order the minor's parent, conservator, or guardian to refrain from doing anything that would increase the likelihood that the minor will not complete the alcohol awareness program. (Section 106.115(d)(2), A.B.C.)

A minor must complete the program and show proof of completion within 90 days of the final conviction. If the minor completes the program, the judge may reduce the fine to half of the original fine. (Section 106.115(c), A.B.C.) If a minor fails to present the evidence within the 90 days, the court should set the defendant for a show cause hearing and notify the defendant of the hearing. If the defendant is under the age of 18, the court must summon the parent or legal guardian to the hearing. At the hearing, the judge has the discretion to grant or not grant an extension. If a judge grants an extension, the case is reset for 90 days later. If the court does not grant the extension, the court should explain about the driver's license suspension for failing to complete the program. If the minor fails to complete the program, the court must order the Texas Department of Public Safety to suspend or deny issuance of the driver's license for a period not to exceed six months. Section 311.014(c), G.C., provides that if a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation began, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

c. License Suspension or Denial

The court does not order the Texas Department of Public Safety to suspend the minor defendant's driver's license as a sanction upon conviction. The peace officer, however, who stopped the defendant initiates an administrative license revocation hearing that is handled in the same manner as driving while under the influence (DWI).

d. 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 the minor to complete additional requirements. See Part 9G of this guide for a list of those requirements.

Deferred Disposition

A. 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. (Sections

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.

B. 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, A.B.C., (Punishment for Alcohol Related Offense by Minor) applies is not eligible to receive a deferral of final disposition of a subsequent offense. 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. (Section 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. (Section 106.04(d), A.B.C.)

C. Alcohol Awareness Program

When a court grants deferred disposition to a minor charged with an Alcoholic Beverage Code offense or public intoxication (municipal court has jurisdiction if the person is at least age 17), the court must require the minor to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse. (Section 106.115, A.B.C.)

D. 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 community service. (Section 106.071(d)(1), A.B.C.)

Expunction

A minor's conviction of an alcohol-related offense may be expunged. Expunge means to erase, remove, or wipe out. To be eligible, the minor must not have been convicted of more than one alcohol-related offense and is now 21 years old. (Section 106.12(a), A.B.C.) To expunge the offense, the person must file with the municipal 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. (Section 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 a relation to the case, 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. (Section 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. (Section 106.12(c), A.B.C.) Beginning January 1, 2006, the court will be required to collect a \$30 fee when the defendant files an application for expunction. This fee will be deposited into the city's general revenue fund for use and benefit of the city.

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.

GENERAL PROCEDURES

A. Juvenile's Appearance

1. Required in Open Court

Article 45.0215, C.C.P., requires that defendants under age 17 must appear in open court. This rule applies regardless of how the person under 17 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 with a parent.

2. Determining Sophistication and Maturity of Juvenile

At the time of appearance of the juvenile, the court should make notes of the juvenile's sophistication and maturity. The notes should be placed in the court file. The reason for these notes is that if a juvenile fails to pay a fine or violates another court order, when the juvenile turns age 17 before the court may issue a *capias pro fine*, the court must consider the juvenile's sophistication and maturity.

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 in writing with the current address and residence of the child. The obligation does not end when the child reaches age 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 or final disposition not requiring a finding of guilt. 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 providing notice to the child and parent during the child and parent's initial appearance before the court;
- a peace officer providing notice to the child when taking the child into custody and releasing a child under Article 45.058(a), C.C.P., which provides for nonsecure custody; and
- a peace officer providing notice at the time of issuance of a citation under Section 543.003, T.C., or Article 14.06(b), C.C.P.

It is an affirmative defense to 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 age 17 resides in a county other than the county in which the alleged offense occurred, the defendant, with permission of the court, can enter a plea before a judge in the county where the defendant resides. (Article 45.0215(c), C.C.P.) This does not mean that the case is transferred to the other court. The out-of-county court must send the plea to the court with jurisdiction over the case and the child. All other appearances of the juvenile and parent must be in the court in which the case is filed.

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

Parents, managing conservators, or custodians are required to be present at all proceedings involving their child under the age of 17. Even if an attorney appears in court with the child, the court must still require the presence of a parent or guardian. (Article 4.0215, C.C.P.)

Article 45.0215, C.C.P., requires the court to summon the parent, managing conservator, or custodian to be present at all proceedings involving a child who is younger than 17 years of age and has not had the disabilities of minority removed. Marriage removes the disability of minority. Thus, the parents of defendants who are younger than 17 years of age who are married need not be summoned. See Section 1.104, F.C.

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. (Article 45.0215, C.C.P.) The summons must contain a notice to the parent 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. (Article 45.057(e), C.C.P.) Although not required on a parental summons, the summons should also contain a statement about the parents' required notification of change of address that they must provide to the court.

The summons is issued by the judge and served as other summonses are served—by a peace officer. (Article 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 for the service of the summons. This fee is taxed against the defendant.

3. Parent's Failure to Appear

If the parent fails to appear, he or she could be charged with the offense of Failure to Appear at Hearing with Child. (Article 45.057(e), C.C.P.) This charge should not be confused with the Failure to Appear offense in Section 38.10 of the Penal Code, which only applies to a defendant's failure to appear.

4. Waiver of Presence

The court may waive the requirement of the presence of the parent or guardian only if, after diligent effort, the court cannot locate them or compel their presence. (Article 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.

5. 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 in writing with the current address and residence of the child. The obligation does not end when the child reaches age 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 or final disposition not requiring a finding of guilt. 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 the child and parent's initial appearance before the court;
- a peace officer providing notice to the child when taking the child into custody and releasing a child under Article 45.058(a), C.C.P., which provides for nonsecure custody; and
- a peace officer that issues a citation under Section 543.003, T.C., or Article 14.06(b), C.C.P.

It is an affirmative defense to prosecution that the child and parent were not informed of their obligation to provide a current residential address.

C. Failure to Appear

1. Jailing Juveniles

Article 45.050, C.C.P., says that a justice or municipal court may not order the confinement of a person who is a child, as defined by Article 45.058(h), C.C.P., which defines "child" as a person who is at least 10 years of age and younger than 17 years of age and charged with a fine-only offense.

Article 45.060, C.C.P., provides that courts may not order a person under the age of 17 to be taken into secure custody. See the following section on Unadjudicated Children, Now Adults.

Courts may, however, order persons under the age of 17 to be taken into nonsecure custody. Article 45.058, C.C.P., provides procedures for handling these offenders. See Part 9E of this guide for information on custody.

2. Unadjudicated Children, Now Adults

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's 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 (Article 45.057, C.C.P.);
- summon the parents of the juvenile to appear in open court with their child (Articles 45.0215 and 45.057, C.C.P.);
- order the Texas Department of Public Safety to suspend or deny issuance of the juvenile's driver's license (Sections 521.201, 521.294, 729.003, 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. Article 45.202, C.C.P., provides that process issued out of a municipal court may be served and shall be served when directed by the court by a peace officer or a city marshal. 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 file a charge of violation of continuing obligation to appear. The court may issue an arrest warrant for this charge. When the person is arrested, the court may also handle all the unadjudicated charges committed by this person as a juvenile.

D. Violation of a Court Order

1. 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 hearing. The court conducts the hearing to give the child an opportunity to tell why he or she violated the court order.

If the court determines that the child's conduct constitutes contempt, the court makes a decision whether to refer the child to juvenile court for delinquent conduct or to retain jurisdiction. If the court decides to refer the child to juvenile court, the court will do an order referring the child to juvenile court. 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.

For purposes of Article 45.057, C.C.P., "child" has the meaning described in Article 45.058, C.C.P., which defines "child" as a person who is at least 10 years of age and younger than 17 years of age and is charged with or convicted of an offense that municipal court has jurisdiction of under Article 4.14, C.C.P.

2. Capias Pro Fine

Article 45.045, C.C.P. provides that a *capias pro fine* may not be issued for an individual convicted of 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 (the judge should use his or her 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, and it could also include information from the 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 the court order after he or she turned 17 years of age or older 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*.

Therefore, before a court may issue a *capias pro fine* for a person who committed a crime while under the age of 17, the court must have proceeded under Article 45.050, C.C.P. This statute provides rules for finding the juvenile in contempt for violating a court order.

3. Finding of Indigence after Default in Payment

If a defendant defaults in payment of a fine and the court determines that discharging the fine or costs would impose an undue hardship on the defendant, the judge may waive the fine and costs. (Article 43.091, C.C.P.)

E. Custody

1. General Custody Procedures

Article 45.058, C.C.P., provides procedures for handling a child who is at least 10 years of age and younger than 17 years of age and is charged with or convicted of an offense that municipal court has jurisdiction of under Article 4.14; C.C.P., other than public intoxication. The child 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, office, or interrogation room is suitable if the area is not designated, 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, the child cannot be handcuffed to a chair, rail, or any object and he or she 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, processed, and for transportation to be arranged to a juvenile detention facility. Under no circumstances is the child to be held for more than six hours.

2. Referral to Juvenile Court

If the child has been referred to juvenile court, the child may be detained in a juvenile detention facility. (Section 52.027, F.C.)

F. Community Service

Fines and costs imposed by municipal courts, regardless of whether the defendant is an adult or a juvenile, may be discharged by performing community service. (Article 45.049, C.C.P.) A community supervision and corrections department or a court-related service office may provide the administrative duties and other services necessary for the placement in community service programs.

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.

A judge is required to specify in an order requiring community service the number of hours the defendant is required to work. Community service work must be for a governmental entity or a nonprofit organization that provides services to the public that enhances 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 in the performance of the defendant's work and report on the defendant's work to the judge. A judge may not order more than 16 hours per week of community service unless he or she determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant's dependents. A defendant is considered to have discharged not less than \$50 of fines or costs for each eight hours of community service performed.

The municipal judge or 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 intentionally, 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. This includes developing a method of keeping track of defendant's community service orders and completion of services and making certain defendants submit the proper documentation of completion of community service.

If a child fails to perform community service as ordered by the court, the court can hold the child in contempt and assess a fine not to exceed \$500 or order the Department of Public Safety to suspend or deny issuance of a driver's license until the child fully complies. The court may also send the case to the juvenile court for contempt of court for violation of a municipal court order. (Article 45.050, C.C.P.)

G. Optional Rehabilitative Sanctions

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 rehabilitative sanctions.

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. Section 264.302 provides for 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 and if the program involves the expenditure of county funds, that is approved by the county commissioners court, 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 the parent, managing conservator or guardian, by act or omission, contributed to, caused, or encouraged the child’s conduct, to do any act 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 attend one of the above mentioned programs and to pay an amount not greater than \$100 for the costs of the program. (Article 45.057, C.C.P.) Both the child and the parent required to attend a program, class, or function may also have to submit proof of attendance to the court. (Article 45.057, C.C.P.)

An order for a child to attend any special programs is enforceable under Article 45.050, C.C.P. (Article 45.057(f), C.C.P.) Article 45.050 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. 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 hearing. The court conducts the hearing to give the child an opportunity to tell why he or she had violated the court order. If the court determines that the child’s conduct constitutes contempt, the court makes a decision 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. For purposes of Article 45.057, C.C.P., “child” has the meaning described in Article 45.058, C.C.P., which defines “child” as a person who is at least 10 years of age and younger than 17 years of age and is charged with or convicted of an offense that municipal court has jurisdiction of under Article 4.14, C.C.P.

If a parent fails to comply with a municipal court order, the order is enforceable by contempt. (Article 45.057(h), C.C.P.)

H. Early Youth Intervention Services

Early youth intervention services apply to a child who is seven years of age or older and under 17 years of age. Early youth intervention services are for children and their families who are in at-risk situations. The

municipal court may refer a child to these services if the Department of Human Resources has contracted with the county to provide the services. (Section 264.302, F.C.) The services may include:

- crisis family intervention;
- emergency short-term residential care for a child 10 years of age or older;
- family counseling;
- parenting skills training;
- youth coping skills training;
- advocacy training; and
- mentoring.

I. Deferred Disposition

An alternative to a fine is placing the child on deferred disposition. (Article 45.051, C.C.P.) Deferred disposition is available for most offenses. The following are a list of exceptions in which the judge may not grant deferred disposition.

- Traffic offenses committed in a construction maintenance zone when workers are present are not eligible for deferred disposition. (Sections 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. (Section 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. (Section 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. (Section 106.04(d), A.B.C.)

If the offense charged is an alcohol offense including public intoxication, the court must require the minor to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse when granting deferred. (Section 106.115, A.B.C.)

If a minor is charged with minor in possession, minor consuming, minor purchasing alcohol, minor attempting to purchase, misrepresentation of age by a minor or public intoxication (under age 21), the court must require the minor to perform community service when granting deferred. If it is a first time offense, the community service must be not less than eight or more than 12 hours. If the minor has a previous conviction, the minor must perform not less than 20 or more than 40 hours community service as a term of deferral. (Section 106.071, A.B.C.)

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 must pay court costs before the judge may grant deferred disposition. When a 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.

The judge may require any of the following conditions:

- a bond in the amount of the fine assessed but not imposed to secure payment of the fine;
- payment of restitution not to exceed the amount of the fine assessed to the victim, if any;
- submit to professional counseling;
- submit to diagnostic testing for alcohol or a controlled substance or drug;
- submit to 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, or another course as directed by the judge;
- present the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge; and
- comply with any other reasonable condition.

At the end of the deferral period, the defendant must make a personal appearance in court with a parent or guardian. If the defendant presents satisfactory evidence of compliance with the requirements imposed, the judge must dismiss the complaint and show that there is not a final conviction. At this time, the judge may impose a special expense fee up to the amount of fine that was assessed at the beginning of the deferral but not imposed.

If the defendant does not comply with the conditions or present satisfactory evidence of compliance, the court has the option of reducing the fine or imposing the original fine. (Article 45.0511(d), C.C.P.)

Charges dismissed under deferred disposition may be expunged under Chapter 55 of the Code of Criminal Procedure. This expunction is initiated through district court. Article 45.0216(h), C.C.P., however, provides that records of person under the age of 17 relating to a complaint dismissed under Article 45.051, C.C.P., may be expunged under Article 45.0216, C.C.P., except for offenses charged under Chapter 106 of the Alcoholic Beverage Code (alcohol offenses involving minors); Chapter 161 of the Health and Safety Code (tobacco offenses involving minors); and Section 25.094 of the Education Code (the offense of Failure to Attend School).

REPORTS

A. Reports to Juvenile Court

When municipal court has a pending complaint against a child alleging a violation of a misdemeanor offense punishable by fine-only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense, municipal court shall notify the juvenile court of the pending complaint and furnish a copy of the final disposition. (Section 51.08(c), F.C.)

B. Reports to the Department of Public Safety (DPS)

1 Alcoholic Beverage Code Convictions

Municipal courts are required to furnish the Department of Public Safety with the notice of conviction or order of deferred disposition of an Alcoholic Beverage Code offense and an acquittal of the offense of driving under the influence of alcohol by a minor. (Sections 106.117(a)(2), (3) and (4), A.B.C.) The notice must be in a form prescribed by the Department of Public Safety and must contain the driver's license number of the defendant, if the defendant holds a driver's license. (Section 106.117(b), A.B.C.) Courts that report manually are required to use DPS form DIC-15 to file this report.

The Department of Public Safety maintains the information and will provide it to law enforcement agencies and courts as necessary to enable them to carry out their official duties. The information is admissible in any action in which it is relevant. A person who holds a driver's license having the same number that is contained in a record maintained by DPS is presumed to be the person to whom the records relates. The presumption may be rebutted only by evidence presented under oath. (Section 106.117(c), A.B.C.) The information on Alcoholic Beverage Code offenses maintained by DPS is confidential and may not be disclosed except as provided by Section 106.117.

2. Non-Attendance at an Alcohol Awareness Program

If a minor fails to present the evidence of attending an alcohol awareness program within the 90 days of the court order, the court should set the defendant for a show cause hearing and notify the defendant of the hearing. If the defendant is under the age of 18, the court must summon the parent or legal guardian to the hearing. At the hearing, the judge may or may not grant an extension. If a judge grants an extension, the case is reset for 90 days later. If the court does not grant the extension, the court should explain about the driver's license suspension for failing to complete the program. If the minor fails to complete the course, the court must order DPS to suspend or deny issuance of the driver's license for a period not to exceed six months. If the court is not automated, the court must use DPS form DIC-15 to report the order of suspension

C. Report to the Texas Commission on Alcohol and Drug Abuse

The municipal court clerk must furnish to the Texas Commission on Alcohol and Drug Abuse, upon request, notice of a conviction of the following Alcoholic Beverage Code offenses:

- Purchase of Alcohol by a Minor (Section 106.02);
- Attempt to Purchase Alcohol by a Minor (Section 106.025);
- Consumption of Alcohol by a Minor (Section 106.04);
- Driving under the Influence of Alcohol by Minor (Section 106.041);
- Possession of Alcohol by a Minor (Section 106.05); and
- Misrepresentation of Age by a Minor (Section 106.07).

The report must be in the form prescribed by the Commission. (Section 106.116, A.B.C.)

Handling Provisions

There are no special handling provisions for juvenile records. The confidentiality required of juvenile records in juvenile court does not apply to municipal court records. Section 58.007(a), F.C., states that records relating to a child that are required or authorized to be maintained under the laws regulating the operation of motor vehicles or to a record or file relating to a child that is maintained by a municipal or justice court are not subject to rules regarding records and files held by a juvenile court, a juvenile probation department, or prosecuting attorney in juvenile court.

FORMS

ORDER TO TAKE INTO NONSECURE CUSTODY – PERSON WHO COMMITTED OFFENSE UNDER AGE 17
(Art. 45.058, CCP)

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ COUNTY, TEXAS

TO ANY PEACE OFFICER OF THE STATE OF TEXAS:

You are hereby **COMMANDED** to take into nonsecure custody _____, Defendant, and immediately bring (him)(her) before the Court to be dealt with according to law. Said Defendant has been accused of the fine-only misdemeanor offense of: _____ which is against the laws of the State of Texas (and/or against the city ordinances of this city).

Defendant's date of birth is _____. Defendant is to be taken immediately before a Judge of this Court, to a designated place of non-secure custody, or as otherwise provided by Art. 45.058(b), Code of Criminal Procedure.

HEREIN FAIL NOT, but due service and return of this Order of nonsecure custody, showing how you executed the same.

Signed this ____ day of _____, 200__.

(Magistrate)(Judge), Municipal Court

City of _____, Texas

OFFICER'S RETURN

Came to hand the ____ day of _____, 200__, at _____ o'clock, ____m. and executed on the ____ day of _____, 200__, at _____ o'clock, ____m. by _____.

Peace Officer

ADDED 8/03

CAUSE NUMBER: _____

STATE OF TEXAS
VS.

§
§
§

IN THE MUNICIPAL COURT
CITY OF _____
_____ COUNTY, TEXAS

A Minor Child

TO ANY PEACE OFFICER OF THE STATE OF TEXAS - GREETINGS:

YOU ARE HEREBY COMMANDED TO SUMMON _____ *(name of parent, managing conservator, or guardian)*
to personally appear at ____ o'clock, ____ m., on the ____ day of _____, 200____, before the Municipal Court of
the City of _____, _____ County, Texas.

To the person named above:

You are **ORDERED** to personally appear **AND** to bring _____ *(name of child)*,
a minor child, with you to the Municipal Court at the time and place stated above. Failure to appear may be punishable as a Class
C misdemeanor.

"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 the person's service as a witness to a crime."

"Es una ofensa que una persona intencionalmente influya o obligue a un testigo a dar falso testimonio o a eludir el proceso legal. Tambien es una ofensa de delito grave perjudicar o amenazar con perjudicar a un testigo o a una testigo prospectivo en venganza por el servicio de la persona come testigo o para impedir o retardar el servicio de esa persona como testigo a un crimen."

Article 45.057, Code of Criminal Procedure

- (h) A child and parent required to appear before the court have an obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 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 subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt.
- (i) If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice as required under Subsection (h) to the appellate court.

HEREIN FAIL NOT, and make due return hereof, showing how you have executed the same.

WITNESS my official signature, this ____ day of _____, 200__.

Judge, Municipal Court
City of _____

County, Texas

OFFICER'S RETURN

Came to hand the ____ day of _____, 200__, and executed on this the ____ day of _____, 200__, by delivering a copy of the summons to _____, the above named person.

Returned on this the ____ day of _____, 200__.

REV. 11/03

Officer's Signatur

JUDGMENT – DRIVING UNDER THE INFLUENCE OF ALCOHOL BY MINOR – GUILTY (Sec. 106.041, ABC)

CAUSE NUMBER: _____

STATE OF TEXAS § IN THE MUNICIPAL COURT
VS. § CITY OF _____
_____ § _____ COUNTY, TEXAS

On this the ____ day of _____, 200____, the Defendant in the above numbered and entitled cause appeared in person and entered a plea of (guilty) (no contest) and waived a jury trial; and the Court, having heard the evidence and arguments, finds the Defendant guilty of the offense of Driving Under the Influence of Alcohol by a Minor, Section 106.041, Alcoholic Beverage Code.

- The Defendant, being found guilty and assessed a fine of \$ _____, is therefore **Ordered and Adjudged** by the Court that the State of Texas, for the use and benefit of the City of _____, Texas do have and recover from the Defendant the fine in the amount of \$ _____, plus any and all costs required to be paid.
- The Defendant is hereby **Ordered** to pay the fine and costs:
 - immediately.
 - by _____.
 - at designated intervals. See the attached payment plan incorporated as part of this judgment.
- It is further **Ordered** that the Defendant present to the Court evidence of completion of an alcohol awareness course no later than _____, 200__. (Enter a date that is within 90 days of the date of final conviction. Sec. 106.115(c), ABC)
- The Court further finds that the Defendant is younger than 18 years of age and that _____ is the (parent)(guardian) of the Defendant. (Optional) It is therefore **Ordered** that _____ attend the above-mentioned alcohol awareness course with the Defendant and present to the Court evidence of completion of the course no later than _____, 200__.
- The Defendant is further **Ordered** to return to this Court no later than _____, 200__ with evidence that the Defendant has completed _____ hours of community service at _____.

If the Defendant fails to comply with the orders of this judgment, the Defendant shall be committed to the non-secure custody of the Chief of Police of the City of _____, Texas; and it is further **Ordered and Adjudged** by the Court that execution may issue against the property of the said Defendant for the amount of such fine and costs.

(municipal court seal) _____ Judge, Municipal Court Date _____
City of _____
_____ County, Texas

- The Court finds that Defendant completed the alcohol awareness program within 90 days as ordered by this Court.
- It is therefore **Ordered** that the fine ordered to be paid on _____, 200__ is reduced to _____ which is not less than half of the initial of fine assessed.

(municipal court seal) _____ Judge, Municipal Court Date _____
City of _____
_____ County, Texas

Editor's Note: If the Defendant is 17 or older, attach a Judgment/Jail Credit Addendum.

JUDGMENT – DRIVING UNDER THE INFLUENCE OF ALCOHOL BY MINOR – NOT GUILTY (Sec. 106.041, ABC)

CAUSE NUMBER: _____

STATE OF TEXAS § IN THE MUNICIPAL COURT
VS. § CITY OF _____
_____ § _____ COUNTY, TEXAS

On this the ___ day of _____, 200___, the Defendant in the above numbered and entitled cause appeared in person and entered a plea of not guilty and (waived) (demanded) a jury trial; and the (Court) (jury), having heard the evidence and arguments, finds the Defendant (not guilty) (guilty) of the offense of Driving Under the Influence of Alcohol by a Minor, Section 106.041, Alcoholic Beverage Code.

- The Defendant, being found not guilty, is immediately discharged from all further liability for the offense that the Defendant has herein been tried, and the Defendant may go hence without payment of costs.
- The Defendant, being found guilty and assessed a fine of \$ _____, is therefore **Ordered and Adjudged** by the Court that the State of Texas, for the use and benefit of the City of _____, Texas do have and recover from the Defendant the fine in the amount of \$ _____, plus any and all costs required to be paid.
- The Defendant is hereby **Ordered** to pay the fine and costs:
 - immediately.
 - by _____.
 - at designated intervals. See the attached payment plan incorporated as part of this judgment.

It is further **Ordered** that the Defendant present to the Court evidence of completion of an alcohol awareness course no later than _____, 200___. (Enter a date that is within 90 days of the date of final conviction. Sec. 106.115(c), ABC)

- The Court further finds that the Defendant is younger than 18 years of age and that _____ is the (parent)(guardian) of the Defendant. (Optional) It is therefore **Ordered** that _____ attend the above-mentioned alcohol awareness course with the Defendant and present to the Court evidence of completion of the course no later than _____, 200__.

The Defendant is further **Ordered** to return to this Court no later than _____, 200__ with evidence that the Defendant has completed _____ hours of community service at _____.

If the Defendant fails to comply with the orders of this judgment, the Defendant shall be committed to the non-secure custody of the Chief of Police of the City of _____, Texas; and it is further **Ordered and Adjudged** by the Court that execution may issue against the property of the said Defendant for the amount of such fine and costs.

(municipal court seal) Judge, Municipal Court Date
City of _____
_____ County, Texas

- The Court finds that Defendant completed the alcohol awareness program within 90 days as ordered by this Court.

It is therefore **Ordered** that the fine ordered to be paid on _____, 200___ is reduced to _____ which is not less than half of the initial of fine assessed.

(municipal court seal) Judge, Municipal Court Date
City of _____
_____ County, Texas

Editor's Note: If the Defendant is 17 or older, attach a Judgment/Jail Credit Addendum.

JUDGMENT – POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES OR TOBACCO PRODUCT BY MINOR – GUILTY for Offenses Occurring on or after January 1, 1998 (Secs. 161.252 and 161.253, HSC)

CAUSE NUMBER: _____

STATE OF TEXAS VS. _____	§ § §	IN THE MUNICIPAL COURT CITY OF _____ _____ COUNTY, TEXAS
--------------------------------	-------------	--

On this the ___ day of _____, 200__, the Defendant in the above numbered and entitled cause appeared in person and entered a plea of (guilty) (no contest) and waived a jury trial; and the Court, having heard the evidence and arguments, finds the Defendant guilty of the offense of _____.

- The Defendant being found guilty and assessed a fine of \$_____, is therefore **Ordered and Adjudged** by the Court that the State of Texas for the use and benefit of the City of _____, Texas do have and recover from the Defendant the fine in the amount of \$_____, plus any and all costs required to be paid.
- It is further Ordered**, that the Defendant pay all costs; however, the execution of this sentence (fine) is suspended and the Defendant is **Ordered** to present to this Court evidence of completion of a tobacco awareness program approved by the Commissioner of Health no later than _____, 200__. (*Completion date*)
- The Court further finds** that the _____ is the (parent)(guardian) of the Defendant. {Optional} **It is therefore Ordered** that _____ attend the above-mentioned tobacco awareness program with the Defendant and present to the Court evidence of completion of the program no later than _____, 200__. (*Enter same completion date as for Defendant.*)
- The Court finds** that access to an approved tobacco awareness program is not readily available. **It is therefore Ordered** that the Defendant pay the Court cost; however, execution of this sentence is suspended and the Defendant is **Ordered** to return to this Court no later than _____, 200__ with evidence that the Defendant has completed _____ hours of tobacco related community service at _____.

(municipal court seal)

 Judge, Municipal Court Date
 City of _____
 _____ County, Texas

JUDGMENT

- The Defendant, having completed the (tobacco awareness program) (tobacco-related community service), is immediately discharged from all further liability for the above offense, and the Defendant may go hence without payment of the fine.
- The Defendant having failed to complete (a tobacco awareness program) (tobacco-related community service) as ordered by this Court, it is therefore **Ordered and Adjudged** by the Court that the Defendant pay the fine:
 - immediately.
 - by _____.
 - at designated intervals. See the attached payment plan incorporated as part of this judgment.
- (*Case filed as a subsequent offense*) The Defendant having completed the (tobacco awareness program)(tobacco-related community service) as ordered by this Court, it is **Ordered and Adjudged** by the Court the Defendant pay (the fine initially assessed)(the amount of _____ which is not less than one-half of the fine assessed):
 - immediately.
 - by _____.
 - at designated intervals. See the attached payment plan incorporated as part of this judgment.

If the Defendant fails to comply with the orders of this judgment, the Defendant shall be committed to the non-secure custody of the Chief of Police of the City of _____, Texas; and it is **further Ordered and Adjudged** by the Court that execution may issue against the property of the said Defendant for the amount of such fine and costs.

(municipal court seal)

 Judge, Municipal Court Date
 City of _____
 _____ County, Texas

Editor's Note: If the Defendant is 17 or older, attach a Judgment/Jail Credit Addendum.

JUDGMENT – PURCHASE OF ALCOHOL BY MINOR, ATTEMPT TO PURCHASE ALCOHOL BY MINOR, CONSUMPTION BY MINOR, MINOR IN POSSESSION OF ALCOHOL, MISREPRESENTATION OF AGE BY MINOR – GUILTY (Secs. 106.071 and 106.115, ABC)

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

On this the ____ day of _____, 200__, the Defendant in the above numbered and entitled cause appeared in person and entered a plea of (guilty) (no contest) and waived a jury trial; and the Court, having heard the evidence and arguments, finds the Defendant guilty of the offense of _____.

- The Defendant being found guilty and assessed a fine of \$_____, is therefore **Ordered and Adjudged** by the Court that the State of Texas, for the use and benefit of the City of _____, Texas do have and recover from the Defendant the fine in the amount of \$_____, plus any and all costs required to be paid.
- The Defendant is hereby **Ordered** to pay the fine and costs:
 - immediately.
 - by _____.
 - at designated intervals. See the attached payment plan incorporated as part of this judgment.

It is further **Ordered** that the Defendant present to the Court evidence of completion of an alcohol awareness program at _____ no later than _____, 200__. (Enter a date that is within 90 days of the date of final conviction. Sec. 106.115(c), ABC)

- The Court further finds that the Defendant is younger than 18 years of age and that _____ is the (parent)(guardian) of the Defendant. (Optional) It is therefore **Ordered** that _____ attend the above-mentioned alcohol awareness course with the Defendant and present to the Court evidence of completion of the course no later than _____, 200__.

The Defendant is further **Ordered** to return to this Court no later than _____, 200__ with evidence that the Defendant has completed _____ hours of community service at _____.

The Department of Public Safety is hereby **Ordered** to: (select one)

- suspend the Defendant's driver's license no. _____ for _____ days effective the 11th day after the date of this judgment.
- deny the issuance of a driver's license or permit to the Defendant for _____ days effective the 11th day after the date of this judgment.

If the Defendant fails to comply with the orders of this judgment, the Defendant shall be committed to the non-secure custody of the Chief of Police of the City of _____, Texas; and it is further **Ordered and Adjudged** by the Court that execution may issue against the property of the said Defendant for the amount of such fine and costs.

 Judge, Municipal Court Date
 City of _____
 _____ County, Texas

(municipal court seal)

- The Court finds that Defendant completed the alcohol awareness program within 90 days as ordered by this Court. It is therefore **Ordered** that the fine ordered to be paid on _____, 200__ is reduced to _____ which is not less than half of the initial of fine assessed.

 Judge, Municipal Court
 City of _____
 _____ County, Texas

(municipal court seal)

Editor's Note: If the Defendant is 17 or older, attach a Judgment/Jail Credit Addendum.

JUDGMENT - PURCHASE OF ALCOHOL BY MINOR, ATTEMPT TO PURCHASE ALCOHOL BY MINOR, CONSUMPTION BY MINOR, MINOR IN POSSESSION OF ALCOHOL, MISREPRESENTATION OF AGE BY MINOR - NOT GUILTY (Secs. 106.071 and 106.115, ABC)

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

On this the ____ day of _____, 200__, the Defendant in the above numbered and entitled cause appeared in person and entered a plea of not guilty and (waived) (demanded) a jury trial; and the (Court) (jury), having heard the evidence and arguments, finds the Defendant (not guilty) (guilty) of the offense of _____.

- The Defendant, being found not guilty, is immediately discharged from all further liability for the offense that the Defendant has herein been tried, and the Defendant may go hence without payment of costs.
- The Defendant being found guilty and assessed a fine of \$ _____, is therefore **Ordered and Adjudged** by the Court that the State of Texas, for the use and benefit of the City of _____, Texas do have and recover from the Defendant the fine in the amount of \$ _____, plus any and all costs required to be paid.
- The Defendant is hereby **Ordered** to pay the fine and costs:
 - immediately.
 - by _____.
 - at designated intervals. See the attached payment plan incorporated as part of this judgment.

It is further **Ordered** that the Defendant present to the Court evidence of completion of an alcohol awareness program at _____ no later than _____, 200__. (Enter a date that is within 90 days of the date of final conviction. Sec. 106.115(c), ABC)

- The Court further finds that the Defendant is younger than 18 years of age and that _____ is the (parent)(guardian) of the Defendant. (Optional) It is therefore **Ordered** that _____ attend the above-mentioned alcohol awareness course with the Defendant and present to the Court evidence of completion of the course no later than _____, 200__.

The Defendant is further **Ordered** to return to this Court no later than _____, 200__ with evidence that the Defendant has completed _____ hours of community service at _____.

The Department of Public Safety is hereby **Ordered** to: (select one)

- suspend the Defendant's driver's license no. _____ for _____ days effective the 11th day after the date of this judgment.
- deny the issuance of a driver's license or permit to the Defendant for _____ days effective the 11th day after the date of this judgment.

If the Defendant fails to comply with the orders of this judgment, the Defendant shall be committed to the non-secure custody of the Chief of Police of the City of _____, Texas; and it is further **Ordered and Adjudged** by the Court that execution may issue against the property of the said Defendant for the amount of such fine and costs.

 Judge, Municipal Court Date
 (municipal court seal) City of _____
 _____ County, Texas

- The Court finds that Defendant completed the alcohol awareness program within 90 days as ordered by this Court. It is therefore **Ordered** that the fine ordered to be paid on _____, 200__ is reduced to _____ which is not less than half of the initial of fine assessed.

 Judge, Municipal Court Date
 (municipal court seal) City of _____
 _____ County, Texas

Editor's Note: If the Defendant is 17 or older, attach a Judgment/Jail Credit Addendum.

**ORDER OF DRIVER'S LICENSE SUSPENSION FOR FAILURE TO COMPLETE ALCOHOL AWARENESS PROGRAM
(Sec. 106.115(d)(1), ABC)**

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

On the _____ of _____, 20____, Defendant failed to present to this Court evidence of attendance at an alcohol awareness program as ordered in the judgment of the above noted Cause Number. **It is therefore Ordered** that the Department of Public Safety shall (suspend)(deny issuance of) the Defendant's driver's license for _____ days beginning on _____ and ending on _____.

(municipal court seal) _____ Judge, Municipal Court Date _____
City of _____
_____ County, Texas

ORDER OF DRIVER'S LICENSE SUSPENSION FOR FAILURE TO COMPLETE COMMUNITY SERVICE
(Sec. 106.115(d)(1), ABC)

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

On the _____ of _____, 20____, Defendant failed to present to this Court evidence of completion of the community service as ordered in the judgment of the above noted Cause Number. **It is therefore Ordered** that the Department of Public Safety shall (suspend)(deny issuance of) the Defendant's driver's license for _____ days beginning on _____ and ending on _____.

(municipal court seal)

Judge, Municipal Court Date
City of _____
_____ County, Texas

FUNDED BY A GRANT FROM THE
TEXAS COURT OF CRIMINAL APPEALS

TEXAS MUNICIPAL COURTS EDUCATION CENTER

1609 SHOAL CREEK BLVD., SUITE 302 AUSTIN, TEXAS 78701
TELEPHONE (512) 320-8274
1-800-252-3718
FAX (512) 435-6118

Points: Driver Responsibility Program

Presented by

Sherrie Zgabay, Manager
Driver Improvement
Department of Public Safety

OBJECTIVES

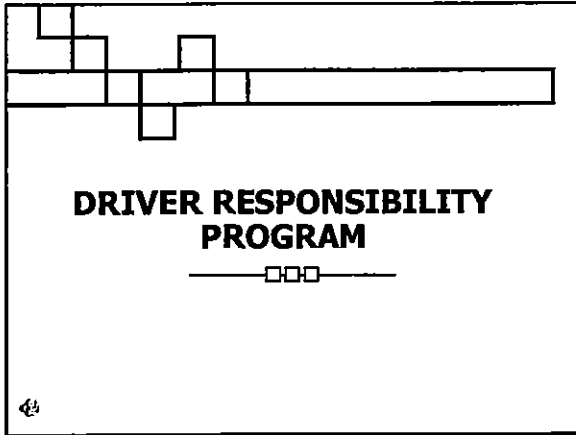
By the end of the session, participants will be able to:

1. Discuss the purpose of the Driver Responsibility Program (DRP) and locate statutory authority for the program.
2. Describe the difference between DRP and other enforcement actions against a driving privilege.
3. Determine how points are calculated and related to surcharge fees.
4. List three resources available that provide information about DRP.


Funded by a grant from the Texas Department of Public Safety.

DRIVER RESPONSIBILITY PROGRAM

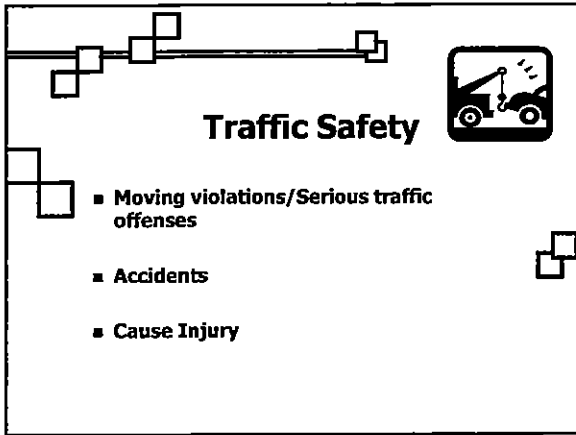
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Traffic Safety

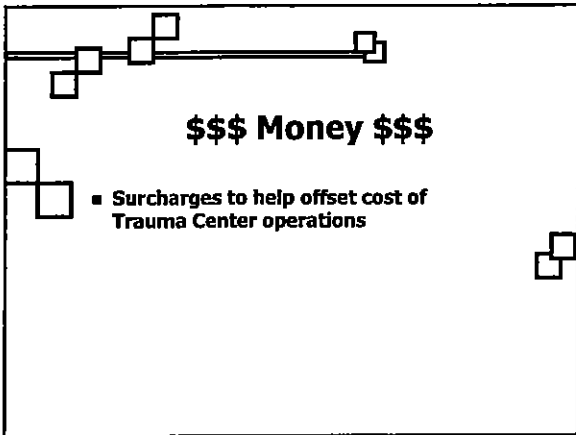


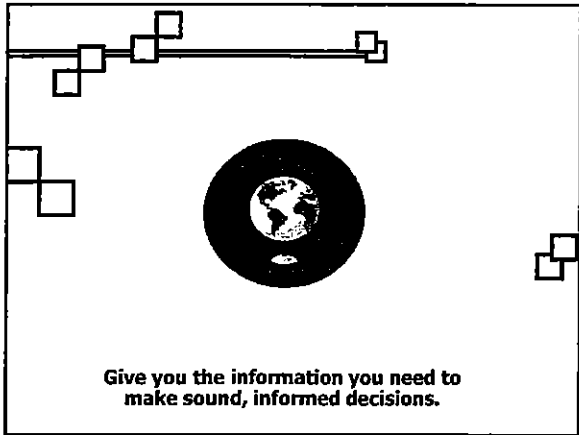
- Moving violations/Serious traffic offenses
- Accidents
- Cause Injury



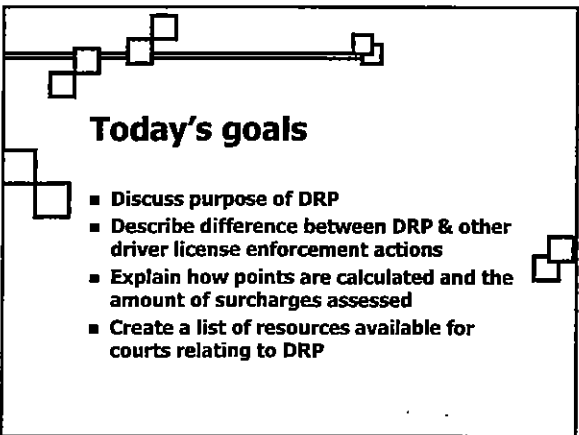
\$\$\$ Money \$\$\$

- Surcharges to help offset cost of Trauma Center operations



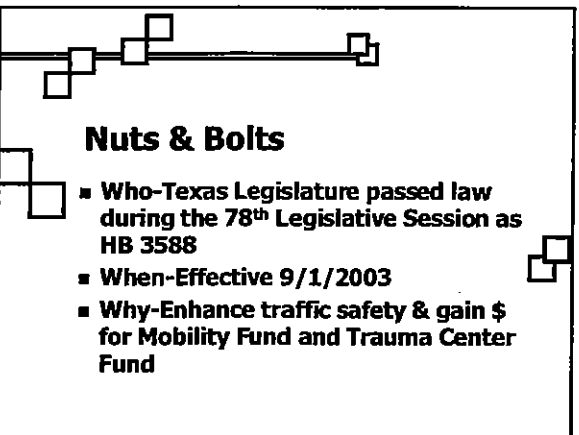


Give you the information you need to make sound, informed decisions.



Today's goals

- Discuss purpose of DRP
- Describe difference between DRP & other driver license enforcement actions
- Explain how points are calculated and the amount of surcharges assessed
- Create a list of resources available for courts relating to DRP



Nuts & Bolts

- Who-Texas Legislature passed law during the 78th Legislative Session as HB 3588
- When-Effective 9/1/2003
- Why-Enhance traffic safety & gain \$ for Mobility Fund and Trauma Center Fund

What is the DRP?

- Surcharge Assessment- based on driver record history
- Failure to pay results in a suspension of driving privileges
- Two methods used to decide who meets the criteria
- Requires payment for three years
- Surcharge is in addition to any other fees

Point System

- Each traffic conviction is assigned two points
- A traffic conviction which resulted in an accident will be assigned three points
- A surcharge of \$100 will be assessed when a driver has accumulated six points in three years.
- Additional \$25 per point will be assessed for every point over six

Moving Violation Conviction

- TAC Title 37, Part 1 Rule 15.89
- Does not include seatbelt violations- does include child safety seat effective 9/1/2005
- Only includes speeding that is 10% over the posted limit or speeding in a school zone

Serious Convictions

- Do not count toward point accumulation and stands alone to create a surcharge

◆ Driving While Intoxicated	\$1000
◆ Second DWI within three years	\$1500
◆ DWI = or > .16	\$2000
◆ DWLI/Suspended	\$ 250
◆ No Liability Insurance	\$ 250
◆ Driving Without a Valid License	\$ 100

Service Fees

- DPS contracted with a third party vendor for collection and allows a service fee charge
- Vendor awarded the contract for DRP is Municipal Services Bureau (MSB)
- MSB charges 4% service fee in addition to the required surcharge
- Other fees apply for credit cards; IA and electronic checks

Process

- Conviction reported by court
- Conviction is applied to driver history
- If no record is found, an unlicensed record is created

Process cont.

- Electronic file is sent to Vendor initiating notification to the driver
- Vendor generates Surcharge Notice on DPS letterhead

DRP Notice includes

- Amount owed and payment options
- Warning that suspension will occur if driver does not comply in 30 days
- A 1-800 telephone number; an email address; web address

What happens next.....

- Failure to pay the required surcharge and applicable service fees, driving privilege is suspended
- Suspension remains in effect until the fee is paid or an installment agreement is established
- May not obtain an occupational driver license

Compliance

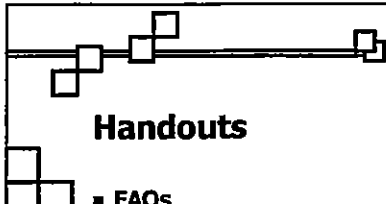
- May pay in full or driver may enter into an installment agreement plan
- Personal check, money order, cashier check, wire transfer or credit card by phone

Driver History

- Driver History will indicate
 - > The date and type of Notice mailed
 - > Compliance information when received
 - > Suspension action


Annual Assessment

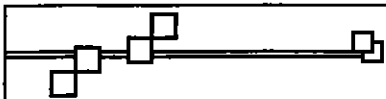
- DPS will review the record annually
- If record still meets criteria, another Surcharge Notice will be mailed
- Dollar amount of surcharge may change based on record at time of review




Handouts

- FAQs
- Moving violation list
- Phone numbers, email address, web site
- Statistics





THE END



DRIVER RESPONSIBILITY PROGRAM

Today's goals

Discuss purpose of DRP

Describe difference between DRP & other driver license enforcement actions

Explain how points are calculated and the amount of surcharges assessed

Create a list of resources available for courts relating to DRP

Nuts & Bolts

Who-Texas Legislature passed law during the 78th Legislative Session as
HB _____

When-Effective _____

Why-Enhance traffic safety & gain \$ for Mobility Fund and Trauma Center
Fund

What is the DRP?

Surcharge Assessment- based on driver record history

Failure to pay results in a _____ of driving privileges

Two methods used to decide who meets the criteria

Requires payment for _____ years

Surcharge is in addition to any other fees

Point System

Each traffic conviction is assigned two points

A traffic conviction which resulted in an accident will be assigned __points

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Do not count toward point accumulation and stands alone to create a surcharge

- ❖ Driving While Intoxicated _____
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- ❖ DWI = or > .16 _____
- ❖ DWLI/Suspended _____
- ❖ No Liability Insurance _____
- ❖ Driving Without a Valid License _____

Service Fees

DPS contracted with a third party vendor for collection and allows a service fee charge

Vendor awarded the contract for DRP is Municipal Services Bureau (MSB)

MSB charges 4% service fee in addition to the required surcharge

Other fees apply for credit cards; IA and electronic checks

Process

Conviction reported by _____

Conviction is applied to driver history

If no record is found, an unlicensed record is created.

Electronic file is sent to Vendor initiating notification to the driver

Vendor generates Surcharge Notice on DPS letterhead

DRP Notice includes

Amount owed and payment options

Warning that suspension will occur if driver does not comply in ___ days

A 1-800 telephone number; an email address; web address

What happens next.....

Failure to pay the required surcharge *and applicable service fees*, driving privilege is suspended

Suspension remains in effect until the fee is paid or an installment agreement is established

May not obtain an occupational driver license

Compliance

May pay in full or driver may enter into an installment agreement plan

Personal check, money order, cashier check, wire transfer or credit card by phone

Driver History

Driver History will indicate

- ›The date and type of Notice mailed
- ›Compliance information when received
- ›Suspension action

Annual Assessment

DPS will review the record annually

If record still meets criteria, another Surcharge Notice will be mailed

Dollar amount of surcharge may change based on record at time of review

Handouts

FAQs

Moving violation list

Phone numbers, email address, web site

Statistics

**CONTACT INFORMATION
DRIVER RESPONSIBILITY PROGRAM**

Submit Payments by Mail:

**Texas DPS-Surcharge Processing
P.O. 16733
Austin, Texas 78761-6733**

Phone Number to MSB:

**1-800-688-6882
512-454-4759**

Web site to access online payment processing:

www.txdps.state.tx.us

Texas DPS Driver Responsibility Surcharge Frequently Asked Questions

Q: What is the Driver Responsibility Program?

A: The Driver Responsibility Program (DRP) can be located TRC Chapter 708 and was enacted by the 78th legislative session (House Bill 3588). This law requires the Department to assess surcharges based on certain traffic offenses. This program does not replace other administrative suspension, or revocation actions that result from these same convictions. The surcharges assessed for this program are in addition to other reinstatement fees required for other administrative actions.

Q: How does DRP work?

A: Surcharges are assessed using one of two methods.

POINTS: Points are assessed to moving violations classified as Class C misdemeanors. DPS will assign points to a person's license as follows upon conviction:

- Two points for a moving violation conviction in Texas or that of another state.
- Three points for a moving violation conviction in Texas or another state that resulted in an accident.

The amount of the surcharge is \$100 when the driver accumulates a total of six (6) points or more on their driver record during a three-year period. The driver must pay a \$100 surcharge for the first six points and \$25 for each additional point.

OTHER: Surcharges are also assessed for certain other convictions as defined by law. The surcharge amount varies based upon the type of violation committed. No points are assessed for these offenses because the surcharge is automatic upon conviction. The following offense information and associated surcharges are listed below:

- Driving While Intoxicated, Intoxication Assault, and Intoxication Manslaughter
 - First time offense = \$1,000
 - Second or subsequent offense = \$1,500
 - DWI 0.16 or greater = \$2,000
- Failure to Maintain Financial Responsibility= \$250
- Driving While License Invalid = \$250
- No Driver License = \$100

Q: How do I know when to pay a surcharge?

A: You will be mailed written notice of the surcharge requirement to the address of record on file with the Department. To change your address you may visit your local Driver License Office or you may be eligible to change your address online at www.texasonline.state.tx.us.

Q: How many points are on my driving history?

A: To obtain a list of the traffic convictions posted to your driving history, a copy of your driver record may be purchased for a fee. Driver Records may be purchased online or by submitting a written request through the mail. Click here for more information on purchasing a copy of your driver record.

Q: How do I know which traffic offenses will result in points?

A: Traffic offenses resulting in points are designated by 37 Texas Administrative Code (TAC) §15.89.

Q: Do offenses which occurred prior to September 1, 2003 count under the Driver Responsibility Program?

A: No. Due to amendments to TRC 708, by HB 2 in the Third Special Session of the 78th Legislative Session, only offenses that occur after September 1, 2003 will be assessed points or surcharges.

Q: One of the traffic convictions on my driving record should actually have been reported as a Driver Safety Course (DDC). How can I have this corrected?

A: Contact the court that reported the information to DPS. DPS must receive written documentation from the court in order to correct the driving record.

Q: I received a Surcharge Notice that says I have a no insurance conviction on my record but that ticket was dismissed by the court.

A: Contact the court that reported the information to DPS. DPS must receive written documentation from the court in order to correct the driving record.

Q: I have multiple convictions for “No Insurance” that require the filing of an SR-22, will I also have to pay a surcharge?

A: Yes. Any violation that occurred on or after September 1, 2003 will incur a surcharge of \$250 each year for 3 years.

Q: I received a Surcharge Notice that says I have a no insurance conviction on my record but I had insurance at the time of the offense.

A: You may contact DPS Customer Service to provide proof of insurance so your record may be updated. However, please note that this will not remove the conviction from your driver record and you will still be required to pay the surcharge.

Q: I received a Surcharge Notice for a DWI conviction. Do I have to pay the full amount at one time to prevent suspension of my license?

A: No. Installment plans are available. Please contact Municipal Services Bureau (MSB) by phone at 1-800-688-6882 or by email at msb@txdps.state.tx.us for more information regarding installment agreements. A fee of \$2.50 will apply to each payment. Please note that once an installment agreement has been made, failing to pay as agreed results in a default and driving privileges will be automatically suspended until the balance is paid in full. An installment agreement is only permitted one time per surcharge requirement.

Q: I just received notice that my driver license is suspended for failing to pay a surcharge. I never received anything from DPS telling me that I owe a surcharge.

A: The Surcharge Notice advising of payment requirement and pending revocation action will be mailed to the address of record as shown on the driver record. State law requires an address change to be updated within 30 days for non-CDL and CDL drivers.

Q: Will a person suspended under DRP be eligible for an occupational license?

A: No. To be eligible for an occupational license, all driver license fees owed to DPS must be paid.

Q: Is a person under a mandatory suspension for a DWI conviction eligible for an occupational license as long as they are making installment plan payments for DRP?

A: Yes. As long as the individual continues to make timely payments on the installment plan they may apply for an occupational license.

Q: What about out of state convictions; will they accrue surcharges?

A: Yes.

- Any conviction for a traffic offense that meets the definition of a moving violation will accrue points.
- Any out of state conviction relating to the operation of a motor vehicle while intoxicated will be assessed the DWI surcharge.

Other conviction based surcharges require convictions under specific Texas statutes, therefore, out of state convictions for DWLI, no DL, and no insurance will not be assessed a surcharge.

Q: I don't have a Texas driver license so why do I have to pay a surcharge?

A: Individuals who have a Texas Identification Card or have an unlicensed driver history who receive convictions that qualify under DRP must pay the surcharge. If these individuals fail to submit the payment DPS will suspend their driving privilege in Texas. This not only prevents issuance of a Texas license but may also affect their ability to obtain or renew a license in other states.

Q: I have received a notice informing me that I have accrued 5 points; what do I need to do?

A: This is an Advisory Notice for informational purposes only. This is to inform the individual that any additional convictions for moving violations will result in a surcharge requirement.

Q: What are service fees and why do I have to pay them?

A: Transportation Code Chapter 708 authorized DPS to contract with a third party to collect surcharges owed and allows the third party vendor to charge a service fee in addition to the surcharge. There are also fees for online credit card processing and electronic check transaction handled by telephone.

Q: I defaulted on my installment plan; what happens now?

A: Driving privileges will be suspended and the suspension will remain in effect until the remaining balance on the defaulted agreement is paid in full. If you default on the installment agreement you are not eligible to enter another installment agreement for the payment of that particular surcharge.

Q: What is the State going to do with the money collected under DRP?

A: The revenue collected will be directed to the Texas Trauma Center Fund and the Texas General Revenue account. Each will receive 49.5% and DPS will receive 1% for administration of the program.

Q: I would like to pay my surcharge by credit card; will this be a payment option?

A: Yes. Currently, the vendor will accept credit card payments via telephone. Specific questions regarding payment should be directed by phone to 1-800-688-6882 or by email to msb@txdps.state.tx.us.

Q: How does the online payment of surcharge process work?

A: The online payment of surcharges is a simple process. The first step is to Login by entering the driver license number or identification card number (or DPS assigned number located on the conviction surcharge notice), date of birth, last name of the individual who owes the surcharge (must be entered exactly as it is listed on file with DPS), and the reference number located on the top right hand side of conviction surcharge notice. This step allows the application to do a real-time query of the surcharge database to determine eligibility and fees.

Q: Can commercial driver license holders use this online service?

A: Yes, commercial driver license holders can use this online service to complete payment of their surcharge fees.

Q: What are online available payment options?

A: The application allows payment via credit cards only. The following four credit cards are accepted:

- Visa
- MasterCard
- Discover
- American Express

Q: What information do I need to make a payment online?

A: In order to make a payment online, the billing name and address, a valid credit card number, and expiration date of the credit card are required.

Q: Can I print the payment receipt after completing the request?

A: Yes, a receipt page is available to print once a request is completed.

Q: Whom do I contact with technical difficulties in operating the site?

A: For technical assistance, you can contact Municipal Services Bureau (MSB) at 1-800-688-6882 from 7AM to 8PM.

Q: How do I contact DPS?

A: You may contact DPS Customer Service at 512-424-2600 or by email by drp@txdps.state.tx.us.

Q: What browser versions does the application support?

A: The application will support any standards-compliant web browser including Internet Explorer Versions 5.0 and higher, Netscape Navigator Version 6.0 and higher, Mozilla, Safari, and Opera 7.

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**TEXAS MUNICIPAL COURTS
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TELEPHONE (512) 320-8274
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FAX (512) 435-6118

**CDLs and COMMERCIAL
MOTOR VEHICLES**

Presented by

**Robin Smith
Presiding Judge
Midland**

Commercial Vehicle Offenses

Judge Robin Smith
Presiding Judge
City of Midland

- A Bit of History
- Commercial Driver's Licenses
- Transportation Code Offenses
- Weight Offenses
- Regulation Offenses
- Excess Motor Carrier Fines
- Masking

A Test

1. Regulation and Rule making authority regarding trucks is done by _____

- A) National Highway Transportation Safety Administration
- B) Federal Motor Carrier Safety Administration
- C) Federal Highway Administration
- D) National Aeronautics and Space Administration

2. Prior to _____, there were no minimum standards for the ability to drive a truck and many states did not require a commercial driver's license.

- A) 1951
- B) 1962
- C) 1973
- D) 1986

3. Driver's have been required to have a CDL in order to drive a commercial motor vehicle since April 1, _____.

- A) 1988
- B) 1990
- C) 1992
- D) 1994

4. The blood alcohol concentration at which a commercial motor vehicle driver is prima facie considered driving while impaired is _____.

- A) .02%
- B) .04%
- C) .08%
- D) .10%

5. A person holding a CDL, upon conviction of a motor vehicle law in another state, must notify the Department of Public Safety:

- A) within 10 days of conviction.
- B) within 30 days of conviction.
- C) within 45 days of conviction.
- D) is not required to notify the DPS.

6. Operating a Commercial motor vehicle without the proper license is punishable by:

- A) a fine of up to \$200
- B) a fine of up to \$500
- C) a fine of \$100 - \$2000
- D) a fine of \$100 - \$500 and 3 -180 days in jail

7. A person holding a commercial driver's license will be disqualified for 60 days if they commit:
- A) 2 serious violations within a 3 year period
 - B) two violations at railroad crossings within one year
 - C) a violation of a penal offense involving the sale of drugs
 - D) operating a motor vehicle under the influence

8. Cities that may enforce weight regulations are cities with a population of
- A) more than 25,000
 - B) more than 50,000 or bordering Mexico
 - C) more than 100,000
 - D) all peace officers can enforce CMV weight regulations

9. Cities may keep how much of the fines collected under the enforcement of commercial motor vehicle regulations:
- A) 50%
 - B) 90 %
 - C) 110 % of the cost of enforcement
 - D) All fines subject to population limitations of smaller cities

10. Over _____ persons have qualified for a CDL in the United States.

- A) 4 million
- B) 5 million
- C) 6.5 million
- D) 8 million

Why do we regulate trucks differently?

■ How many large trucks are registered in the United States (2003)?

Almost 8 million trucks and 776,500 buses

■ There were a total of 436,000 crashes involving large trucks reported.

■ There were 4,289 fatalities where a large truck was involved.

- Fatalities for trucks were 2.3 per 100 million miles traveled compared to 1.5 for all vehicles
- The average cost per truck crash in 2003 was \$62,613

United States

- The Federal Motor Carrier Safety Administration was established on January 1, 2000.
 - Develops and enforces data-driven regulations that balance motor carrier (truck and bus companies) safety with industry efficiency;
 - Harnesses safety information systems to focus on higher risk carriers in enforcing the safety regulations;
 - Targets educational messages to carriers, commercial drivers, and the public; and
 - Partners with stakeholders including Federal, State, and local enforcement agencies, the motor carrier industry, safety groups, and organized labor on efforts to reduce bus and truck-related crashes.

Texas

- Commercial Vehicle Enforcement began in Texas in 1927 with 18 License and Weight Inspectors and one Chief Inspector.
- It was called the State Highway Patrol but was a division of the Highway Department
- In 1935, The Texas Department of Public Safety was created.

- The Public Safety Commission created the License and Weight Service in 1938.
- Currently has 442 commissioned officers, 115 vehicle inspectors and 12 non-compliance review inspectors (569 total).
- In 2003 the License and Weight Service name was changed to Commercial Vehicle Enforcement

Commercial Driver's Licenses

- ### Who is eligible?
- 18 years of age
 - Live in the State of Texas
 - Pass knowledge test
 - Pass skill test
 - Must not have a CDL from another state
 - Must not be suspended in another state

Classes of License

- **Class A**
 - Combination of vehicles with a gross weight rating of 26,001 or more, if the gross weight of the towed vehicle exceeds 10,000 pounds
- **Class B**
 - A single vehicle with a gross weight rating of 26,001 pounds or more; or
 - A single vehicle with a gross weight rating of 26,001 pounds or more towing a vehicle with a gross vehicle weight of 10,000 pounds or less
 - A vehicle designed to transport 24 or less passengers (including the driver)

- **Class C –**
 - Other vehicles not described in Class A or B licenses
 - A vehicle designed to transport 16-23 passengers
 - Vehicles used in the transportation of hazardous materials that is required to be placarded
- Drivers may drive vehicles in lesser classes than their own license

Driving a commercial motor vehicle without a CDL

- Up to a \$500 fine

Transportation Code 522.011

**Driving a commercial motor vehicle
after denial or disqualification**

- \$100- \$500 fine; and
- 72 hours to 6 months in jail

- Subsequent convictions are class A misdemeanors (fine not to exceed \$4,000 and/or up to 1 year in jail)

Transportation Code 521.457 & 522.071

Disqualifications

Applies to violations
committed while driving any
vehicle

Disqualification for 60 days

- Two serious violations that occur within a three year period
- One violation of a law that regulates the operation of a motor vehicle at a railroad crossing

Transportation Code 522.081

Serious Violations

- Speeding 15 miles or more above the limit
- Reckless driving
- Violation of law resulting in a fatal accident
- Improper or erratic lane change
- Following too closely
- Driving without the proper license or endorsements

Transportation Code Section 522.003 (25)

Disqualification for 120 days

- Three serious violations arising from separate incidents within a three year period
- Two violations of a law that regulates the operation of a motor vehicle at a railroad crossing

Disqualification for one year

- Three violations of a law that regulates the operation of a motor vehicle at a railroad crossing
- One conviction of DWI
- One conviction of leaving the scene of an accident
- Using a motor vehicle in the commission of a felony

Disqualification for one year

- Causing the death of a person through negligent operation of a motor vehicle
- Driving a commercial motor vehicle while their license is revoked, suspended, cancelled, or disqualified
- For refusing to submit to a breath or blood sample
- Driving with a controlled substance present or an alcohol level of .04 in a commercial vehicle or .08 in another vehicle

Disqualification for three years

- Committing one year disqualification offenses while transporting hazardous materials
- Refusing a test while transporting hazardous material
- operating with a drug present or an alcohol level of .04 while transporting hazardous materials

Disqualification for life

- Convictions of two or more one year violation offenses
- Using a motor vehicle in the commission of a felony involving the manufacture or distribution of a controlled substance
- Committing a combination of one-year disqualifying acts in separate incidents

Municipal Enforcement of Commercial Vehicle Offenses

Municipalities

- Municipal police officers may enforce:
 - Transportation Code offenses committed by trucks
 - including Loose Materials Violations (Transportation Code 722.003)

Weight Enforcement

- Cities with:
 - Population of 100,000 or more
 - Population of 74,000 or more in a county of 1.5 million
 - Certification for administrative enforcement

Weight offenses (Transportation Code 621.506)

- Municipal courts may now handle all fine only weight violations
 - Standard weight violations (\$100-\$150 fine)
 - 5,000 to 10,000 pounds heavier than allowable (\$300 - \$500 fine)
 - 10,000 pounds heavier than allowable (\$500-\$1000 fine)
 - 2nd offense within one year (fine may double)

- Court must promptly report convictions
- If the offense is for excess weight of 5,000 pounds or more, one-half the fine must be sent to the Comptroller
- If the offense took place within 20 miles of an international border, the entire fine must be deposited in the municipal treasury for road maintenance

Enforcement of Administrative Regulations

- Administrative Regulations are adopted by the Director of the Department of Public Safety
 - Consistent with Federal regulations
 - Most Federal Regulations are followed
 - Major exception is the hours of service regulation
 - Found in Texas Administrative Code (37 T.A.C. Chapter 4)

- Only certain cities are eligible to enforce
 - 100,000 or more population
 - 25,000 or more population in a county with a population of 2 million
 - less than 25,000 but in a county with 2.4 million people and contains, or adjacent to, an international port
 - in a county bordering Mexico

- Must be eligible and complete training and certification of the police department and officers
 - Completion of North American Standard Roadside Inspection Course
 - On the job training including 32 roadside inspections
 - Hazardous materials requires additional course and on the job training and inspections

Cities Authorized

- | | |
|---------------|-----------------|
| ■ Arlington | ■ Irving |
| ■ Austin | ■ Lancaster |
| ■ Baytown | ■ LaPorte |
| ■ Beaumont | ■ Laredo |
| ■ Dallas | ■ Missouri City |
| ■ Del Rio | ■ Pasadena |
| ■ Desoto | ■ Pearland |
| ■ Elsa | ■ Plano |
| ■ El Paso | ■ Richardson |
| ■ Fort Worth | ■ San Antonio |
| ■ Friendswood | ■ Seabrook |
| ■ Houston | ■ Shoreacres |

Regulation offenses

- Are class "C" misdemeanors
- It is an offense to not permit an inspection of a commercial motor vehicle
- Civil penalties and administrative penalties may also be assessed by the Attorney General or the Department of Public Safety

Disposition of Fines

- A city may keep the equivalent of 110% of the previous year's cost of enforcement
- Cost of enforcement includes major equipment, personnel, vehicle maintenance, fuel and other directly attributable costs

Transportation Code 644.102

- Costs of car, fuel, salary, etc:
 - \$120,000
 - Multiply 120,000 x 110 = 132,000
 - City may keep \$132,000 and forward excess to comptroller

Masking

Deferral

Code of Criminal Procedure 45.051

- (f) [version 2] – This article does not apply to: (2) a traffic offense committed by a person who:
- (A) holds a commercial driver's license; or
 - (B) held a commercial driver's license when the offense was committed.

Driving Safety Course

Code of Criminal Procedure 45.0511

- (s) This article does not apply to an offense committed by a person who:
- (1) holds a commercial driver's license; or
 - (2) held a commercial driver's license when the offense was committed.

Attorney General Opinion JC-0042

A prosecutor may not enter into an agreement with an offender whereby the prosecutor will "defer" prosecution in exchange for the offender's agreement to contribute money to an organization of the prosecutor's choice.

Attorney General Opinion JC-0119

A county attorney may not condition an offer of pretrial diversion upon a payment of \$1,500 by the offender to a nonprofit organization incorporated by the county attorney and his assistant county attorneys.

Judicial Conduct Commission

In 1999, a Beasley Municipal Court Judge was given a Public Warning for accepting recommended dismissals from a prosecutor when a defendant would make a donation to the City of Beasley's "Public Safety Committee"

Special Rules exist for

- School Buses
- Concrete Transportation
- Agricultural Transportation
- Milk Transportation
- Power Pole Transportation
- Pole and Pipe Transportation
- Recyclable Material Transportation
- and many others

Good Luck!



Federal Motor Carrier Safety Administration - Commercial Driver's License Program (CDL/CDLIS)
<http://www.fmcsa.dot.gov/registration-licensing/cdl/cdl.htm>

BEFORE THE COMMERCIAL DRIVER'S LICENSE PROGRAM

It is widely recognized that driving certain commercial motor vehicles (CMVs) requires special skills and knowledge. Prior to implementation of the Commercial Driver's License (CDL) Program, in a number of States and the District of Columbia, any person licensed to drive an automobile could also legally drive a tractor-trailer or a bus. Even in many of the states that did have a classified licensing system, a person was not skills tested in a representative vehicle. As a result, many drivers were operating motor vehicles that they may not have been qualified to drive. In addition, many drivers were able to obtain driver's licenses from more than one State and hide or spread convictions among several driving records and continue to drive.

COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

The Commercial Motor Vehicle Safety Act of 1986 was signed into law on October 27, 1986. The goal of the Act is to improve highway safety by ensuring that drivers of large trucks and buses are qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways. The Act retained the State's right to issue a driver's license, but established minimum national standards which States must meet when licensing CMV drivers.

The Act corrects the situation existing prior to 1986 by making it illegal to hold more than one license and by requiring States to adopt testing and licensing standards for truck and bus drivers to check a person's ability to operate the type of vehicle he/she plans to operate.

It is important to note that the Act does not require drivers to obtain a separate Federal license; it merely required States to upgrade their existing testing and licensing programs, if necessary, to conform with the Federal minimum standards.

The CDL program places requirements on the CMV driver, the employing motor carrier and the States.

THE DRIVER

Drivers have been required to have a CDL in order to drive a CMV since April 1, 1992.

The Federal Highway Administration (FHWA) has developed and issued standards for testing and licensing CMV drivers. Among other things, the standards require States to issue CDLs to their CMV drivers only after the driver passes knowledge and skills tests administered by the State related to the type of vehicle to be operated. Drivers need CDLs if they are in interstate, intrastate, or foreign commerce and drive a vehicle that meets one of the following definitions of a CMV:

Classes of License:

The Federal standard requires States to issue a CDL to drivers according to the following license classifications:

Class A -- Any combination of vehicles with a GVWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

Class B -- Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.

Class C -- Any single vehicle, or combination of vehicles, that does not meet the definition of Class A or Class B, but is either designed to transport 16 or more passengers, including the driver, or is placarded for hazardous materials.

Endorsements and Restrictions:

Drivers who operate special types of CMVs also need to pass additional tests to obtain any of the following endorsements on

their CDL:

- T - Double/Triple Trailers (Knowledge test only)
- P - Passenger (Knowledge and Skills Tests)
- N - Tank Vehicle (Knowledge Test only)
- H - Hazardous Materials (Knowledge Test only)
- X - Combination of Tank Vehicle and Hazardous Materials

If a driver either fails the air brake component of the general knowledge test or performs the skills test in a vehicle not equipped with air brakes, the driver is issued an air brake restriction, restricting the driver from operating a CMV equipped with air brakes.

THE STATES

Knowledge & Skills Tests:

States develop their own tests which must be at least as stringent as the Federal standards. Model driver and examiner manuals and tests have been prepared and distributed to the States to use, if they wish.

- The general knowledge test must contain at least 30 questions.
- To pass the knowledge tests (general and endorsement), applicants must correctly answer at least 80 percent of the questions.
- To pass the skills test, applicants must successfully perform all the required skills (listed in 49 CFR 383.113). The skills test must be taken in a vehicle representative of the type of vehicle that the applicant operates or expects to operate.

Third Party Skills Testing:

Other States, employers, training facilities, governmental departments and agencies, and private institutions can serve as third party skills testers for the State.

- Tests must be the same as those given by the State.
- Examiners must meet same qualifications as State examiners.
- States must conduct an on-site inspection at least once a year.
- At least annually, State employees must evaluate the programs by taking third party tests as if they were test applicants, or by testing a sample of drivers tested by the third party and then comparing pass/fail rates.
- The State's agreement with the third party skills tester must allow the FHWA and the State to conduct random examinations, inspections, and audits without prior notice.

Grandfathering Provision:

States have the option to "grandfather" drivers with good driving records from the skills test according to the following criteria:

Driver has a current license at time of application; and Driver has a good driving record and previously passed an acceptable skills test; or driver has a good driving record in combination with certain driving experience .

"Good driving record" means:

A driver can certify that, during the 2-year period immediately prior to applying for a CDL he/she:

- Has not had more than one license;
- Has not had any license suspended, revoked, or canceled;
- Has not had any convictions in any type of motor vehicle for major disqualifying offenses;
- Has not had more than one conviction for any type of motor vehicle for serious traffic violations;
- Has not had any violation of State or local law relating to motor vehicle traffic control arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault.

"Driving experience" means :

A driver can certify and provide evidence that:

- He/she is regularly employed in a job requiring operation of CMV, and that either:
- He/she has previously taken a behind-the-wheel skills test in a representative vehicle; or
- He/she has operated a representative vehicle for at least 2 years immediately preceding application for a CDL.

Commercial Driver's License Document:

A State determines the license fee, the license renewal cycle, most renewal procedures, and continues to decide the age, medical and other driver qualifications of its intrastate commercial drivers. Interstate drivers must meet the longstanding Federal driver qualifications (49 CFR 391).

All CDLs must contain the following information:

- The words "Commercial Driver's License" or "CDL;"
- The driver's full name, signature, and address;
- The driver's date of birth, sex, and height
- Color photograph or digitized image of the driver;
- The driver's State license number;
- The name of the issuing State;
- The date of issuance and the date of the expiration of the license;
- The class(es) of vehicle that the driver is authorized to driver;
- Notation of the "air brake" restriction, if issued;
- The endorsement(s) for which the driver has qualified;

States may issue learner's permits for purposes of behind-the-wheel training on public highways as long as learner's permit holders are required to be accompanied by someone with a valid CDL appropriate for that vehicle and the learner's permits are issued for limited time periods.

Waiver Provisions:

All active duty military drivers were waived from the CDL requirements by the Federal Highway Administrator. A State, at its discretion, may waive firefighters, emergency response vehicle drivers, farmers and drivers removing snow and ice in small communities from the CDL requirements, subject to certain conditions.

In addition, a State may also waive the CDL knowledge and skills testing requirements for seasonal drivers in farm-related service industries and waive certain knowledge and skills testing requirements for drivers in remote areas of Alaska. The drivers are issued restricted CDLs. A State can also waive the CDL hazardous materials endorsement test requirements for part-time drivers working for the pyrotechnics industry, subject to certain conditions.

OTHER REQUIREMENTS

There are a variety of other requirements related to this legislation which affect the commercial drivers, their employing motor carriers and the States.

Penalties:

The Federal penalty to a driver who violates the CDL requirements is a civil penalty of up to \$2,500 or, in aggravated cases, criminal penalties of up to \$5,000 in fines and/or up to 90 days in prison. An employer is also subject to a penalty of up to \$10,000, if he or she knowingly uses a driver to operate a CMV without a valid CDL.

CDLIS Clearinghouse:

States must be connected to the Commercial Driver's License Information System (CDLIS) and the National Driver Register (NDR) in order to exchange information about CMV drivers, traffic convictions, and disqualifications. A State must use both the CDLIS and NDR to check a driver's record, and the CDLIS to make certain that the applicant does not already have a CDL. *Members of the enforcement community seeking access to CDLIS data should visit the FMCSA Technical Support Web site. Carriers needing CDLIS data should seek a commercial company that provides a clearinghouse service for this information, or contact the driver's State of licensure.*

BAC Standards:

The FHWA has also established 0.04% as the blood alcohol concentration (BAC) level at or above which a CMV driver is deemed to be driving under the influence of alcohol and subject to the disqualification sanctions in the Act. States maintain a BAC level between .08% and .10% for non-CMV drivers.

Employer Notifications:

Within 30 days of a conviction for any traffic violation, except parking, a driver must notify his/her employer, regardless of the nature of the violation or the type of vehicle which was driven at the time.

If a driver's license is suspended, revoked, canceled, or if he/she is disqualified from driving, his/her employer must be notified. The notification must be made by the end of the next business day following receipt of the notice of the suspension, revocation, cancellation, lost privilege or disqualification.

Employers may not knowingly use a driver who has more than one license or whose license is suspended, revoked or canceled, or is disqualified from driving. Violation of this requirement may result in civil or criminal penalties.

Disqualifications:

- For conviction while driving a CMV, drivers must be disqualified and lose their privilege to drive for 60 to 120 days:
- Two or more serious traffic violations within a 3-year period. These include excessive speeding, reckless driving, improper or erratic lane changes, following the vehicle ahead too closely, and traffic offenses in connection with fatal traffic accidents 90 days to 5 years.
- One or more violations of an out-of-service order within a 10-year period. 1 Year
- Driving under the influence of a controlled substance or alcohol; or
- Leaving the scene of an accident; or Using a CMV to commit a felony. 3 Years:
- Any of the 1-year offenses while operating a CMV that is placarded for hazardous materials. Life
- Second offense of any of the 1-year or 3-year offenses; or Using a CMV to commit a felony involving manufacturing, distributing, or dispensing controlled substances.
- States have the option to reduce certain lifetime disqualifications to a minimum disqualification period of 10 years if the driver completes a driver rehabilitation program approved by the State.
- If a CDL holder is disqualified from operating a CMV, the State may issue him/her a license to operate non-CMVs. Drivers who are disqualified from operating a CMV can not be issued a "conditional" or "hardship" CDL or any other type of limited driving privileges to continue driving a CMV.
- For disqualification purposes, convictions for out-of-state violations will be treated the same as convictions for violations that are committed in the home State. The CDLIS will ensure that convictions a driver receives outside his or her home State are transmitted to the home State so that the disqualifications can be applied.

CURRENT STATUS OF THE CDL PROGRAM

Over 8 millions drivers have passed the knowledge and skills tests and obtained a CDL. Approximately 11 percent of these CDL drivers have been disqualified at least once during the period of April 1992 through June 1996.

Building on the success of the CDL program, the FMCSA is exploring ways to enhance and improve the effectiveness of the CDL program. Some of the current enhancements and future enhancements being considered include:

Current:

- Driver Data Exchange With Canada And Mexico.
- CDL Judicial Outreach Project (JOP).

Future:

- Graduated Commercial Licenses.
- Third Party CDL Knowledge Testing.
- Merging Medical Fitness Determination Into CDL Process.
- Simulator Validation for Training & Testing.

Evaluating Commercial Driver's License Program Vulnerabilities A study of the states of Illinois and Florida

PDF Files may be viewed with Adobe Acrobat Reader



Traffic Crashes

- In 2001, there were 3,739 motor vehicle traffic fatalities in Texas. 26.9% involved alcohol. (2001 DPS Motor Vehicle Traffic Accident Data)
- Nationwide, there were approximately 6,316,000 traffic crashes in 2002. 38,309 of these crashes were fatal, 1,929,000 caused non-fatal injuries, and 4,348,000 resulted only in property damage. (National Highway Transportation Safety Agency 2002)
- Nationally, 42,815 people were killed in traffic crashes and 2,926,00 were injured (National Highway Transportation Safety Agency 2002)
- The overwhelming majority of drivers involved in fatal crashes were male. For every 100,000 licensed male driver, 42.83 are involved in fatal crashes. For every 100,000 licensed female driver, only 15.27 are involved in fatal crashes. (National Highway Transportation Safety Agency 2002)
- In 2001, 460 pedestrians were killed in Texas. (2001 DPS Motor Vehicle Traffic Accident Report)
- In 2002, 4,808 pedestrians nationwide were killed in traffic fatalities. (National Highway Transportation Safety Agency Traffic Safety Facts 2002)
- Motor vehicle crashes are the leading cause of death nationally for persons of every age from 2 and from 4 to 33. Motor vehicle crashes ranked 8th overall as a cause for death. (National Highway Transportation Safety Agency 2001)
- In 2003, the Texas Highway Patrol issued more than 528,000 speeding citations and made 32,712 DWI arrests. (Texas DPS Annual Report 2003)

Commercial Driver License

All drivers who operate a commercial motor vehicle are required to have a commercial driver license. CDL drivers must be 21 years old to drive a commercial motor vehicle across state lines. CDL drivers can drive within the state at age 18. The total number of CDL holders in 2001 was 772,118--this includes people licensed to drive large trucks, 18-wheelers and school buses.

Different Classes of CDLs

Class A: Any combination of vehicles with a gross combination weight rating of 26,001 pounds or more, provided the gross vehicle weight rating of the vehicle or vehicles towed exceeds 10,000 pounds.

Class B: Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more, any one of those vehicles towing a vehicle that does not exceed 10,000 pounds gross vehicle weight rating, and any vehicle designed to transport 24 passengers or more, including the driver.

Class C: Any single vehicle or combination of vehicles that is not a Class A or Class B if the vehicle is: 1) designed to transport 16 to 23 passengers including the driver; or 2) used in the transportation of hazardous materials that require the vehicle to be placarded under federal regulation 49 CFR, part 172, Subpart F.

Applying for a Texas CDL

A driver currently licensed in Texas will be required to present the current driver license, proof of Social Security Number (example: original Social Security card or tax return), proof of liability insurance if the driver owns any vehicles, as well as an application and a qualification certification form.

CDL drivers moving to Texas from another state must present Texas registration on any vehicles they own. In addition, they must surrender the valid out-of-state CDL to waive CDL testing. In addition, to maintain a Hazardous Materials endorsement, the last Hazmat test date must be less than two years old to waive that test.

DPS will conduct a National Driver Register and Commercial Driver License Information System check to verify a "clear" status before a CDL will be issued.

Fees for A Texas CDL

An original CDL costs \$60 for six years. A driver with a valid Texas driver license who converts to a CDL will be given a \$4 credit for each full year remaining on the current license.

Applicants pay \$10 for each change in the class or type of license, endorsements, or restrictions or to upgrade the class of vehicle on a CDL.

The fee for a duplicate license is \$10.

Hazardous Materials Endorsement

CDL drivers who want a hazmat endorsement must pass an additional multiple choice test that checks knowledge of handling hazardous materials as cargo. Hazmat and CDL tests are given at any DPS driver license office.

A driver who wishes to maintain the hazmat endorsement must take the hazmat test each time the CDL is renewed (each 5 years). In 2001, CDL drivers with hazardous materials endorsements totaled 340,000.

Return to Trucking and Vehicle Storage Facilities
Registration, Permits and Licensing
Routing and Roadway Information
General Information

General Single-Trip Permits

Q: When do I need a permit?

A: When your load exceeds 8'6" wide or 14' high, or when your trailer exceeds 59' long in combination with a truck/tractor or a combination truck/trailer length of 65, or when you exceed 80,000 pounds or exceed legal axle group weights. A permit is also required when exceeding a 3' front overhang or a 4' rear overhang.

Q: How do I apply for a permit?

A: Application procedures vary depending on the type of permit needed. In general, applications are accepted over the Internet and by telephone, facsimile and mail. For specific application procedures, select *Oversize/Overweight Permits and Temporary Registration* from the MCD navigation bar, and select a specific permit type.

Q: How much does a single trip permit cost?

A: Fees vary depending on the size, weight and type of load being moved, as follows.

Overwidth

- General Single Trip Permit \$30
- Portable Building \$7.50
- Manufactured Housing \$20

Overweight:

- 80,001 to 120,000 pounds \$50 + \$30 permit fee (\$80 total)
- 120,001 to 160,000 pounds \$75 + \$30 permit fee (\$105 total)
- 160,001 to 200,000 pounds \$100 + \$30 permit fee (\$130 total)
- 200,001 pounds and above* \$125 + \$30 permit fee (\$190 total)

* Loads exceeding 200,000 are also required to pay a \$35 vehicle supervision fee. Contact MCD at 1-800-299-1700 for additional information concerning these loads.

Q: How do I pay for an oversize/overweight permit?

A: TxDOT accepts the following forms of payment:

- MasterCard, Visa, Discover, and American Express (\$1 service charge)
- PAC - permit account card (\$1 service charge)
- pre-established escrow account
- personal or business check, cashier's check, or money order, payable to the Texas Department of Transportation.

Q: When can I order a permit?

A: The Permit Branch is open from 6 a.m. to 6 p.m. (CST) Monday through Friday, and from 6 a.m. to 2 p.m. on Saturdays. You can also submit permit applications through TxDOT's Central Permitting System over the Internet at any time. Applications for some types of permits offered over the Internet are processed and returned automatically, 24/7. Other types require permit officer intervention and those Internet applications are processed during regular office hours.

Q: What are the permit restrictions on weekends and holidays?

A: Permit loads are not restricted on **weekends** unless a specific holiday (see below) falls on a weekend or if the department restricts a specific load for safety purposes.

Permit movement is restricted on the following **holidays** for loads exceeding 14' wide, 16' high, and 110'

long, with the exception of manufactured housing. The transport of manufactured housing is not allowed on the actual holiday.

2002 Holidays

- New Years Day - Tuesday, January 1st only
- Memorial Day - Monday, May 27th only
- Independence Day - Thursday, July 4th only
- Labor Day - Monday, September 2nd only
- Thanksgiving Day - Thursday, November 28th only
- Christmas Day - Wednesday, December 25th only

2003 Holidays

- New Years Day - Wednesday, January 1st only
- Memorial Day - Monday, May 26th only
- Independence Day - Friday, July 4th only
- Labor Day - Monday, September 1st only
- Thanksgiving - Thursday, November 27th only
- Christmas Day - Thursday, December 25th only

Q: When do I need an escort?

A: You need an escort under the following circumstances:

- over 14' wide = one escort
- over 16' wide = two escorts
- over 17' high = one escort with a height pole
- over 110' long = one escort
- over 125' long = two escorts
- over 20' front overhang - one escort
- over 20' rear overhang - one escort
- Manufactured homes over 16' wide = one escort
- Manufactured homes over 18' wide = two escorts
- Combination of any two over dimensions = two escorts

Q: When do I need an oversize/overweight surety bond?

A: An oversize/overweight surety bond is needed if you are hauling an oversize and/or overweight load and your vehicle does not exceed 26,000 lbs. gross weight, registered weight, or gross weight rating. If your vehicle does exceed 26,000 lbs. gross weight, registered weight, or gross weight rating and you are not registered as a Texas motor carrier you also need an oversize and overweight surety bond in order to obtain a permit. The bond ensures that the State of Texas will be reimbursed for any damage to the highway infrastructure caused by your vehicle and/or load. Mileage permits and portable building are exempt from surety bond requirements.

Q: Do I need a permit to move my own manufactured home?

A: Yes. Prior to moving your manufactured home, you must obtain a permit as described under "General Single Trip Permits." If moving a manufactured home from a residential site, you must include tax status documentation with your permit application.

Q: Does a manufactured home need a license number?

A: No.

Q: Why do you need starting and ending addresses on applications for manufactured home permits?

A: This information is required by state law and is used by county taxing authorities.

Q: How are permit fees spent?

A: 46% of permit fees collected in fiscal year 2000 were deposited to the State Highway Fund (Fund 06), while the remaining 54% was deposited to the state's General Fund (Fund 01). The distribution of permit fees is laid out in the Texas Transportation Code.

Specialty Permits

Q: When do I need a super heavy permit?

A: A superheavy permit is required when

- total gross weight exceeds 254,300 pounds (an engineering analysis is required)
- total gross weight exceeds 200,000 pounds and total length is 95' or less
- the load exceeds the maximum permissible weight on any axle or axle group that requires a route study and bridge analysis.

Q: What is the maximum weight I can get on each axle of my unit when using a quarterly hubometer permit or single trip mileage permit?

A: TxDOT requires an affidavit of exception for units exceeding maximum permissible weights (i.e., 46,000 pounds tandem, 60,000 pounds for triple). After completing the affidavit of exception and weighing the unit, a customer may fax it in for the Motor Carrier Division (MCD) to review. If the weights fail, we will determine the maximum allowed weight. From that allowable weight, you can determine how much weight to remove per axle and possibly what items that can be removed.

Q: What are the maximum dimensions allowed on a quarterly hubometer permit?

A: 12' wide, 14'6" high, and 95' long.

Q: If I travel over the state line with a hubometer, am I charged for that mileage also?

A: Mileage is recorded even when the unit crosses state lines. The fee formula takes this into account with the highway use factor.

Q: How long does it take to get a weight tolerance permit (also known as "1547" permits)?

A: There can be up to a four to five week turn-around time from the date a complete application is received by TxDOT.

Q: Is there a temporary weight tolerance permit?

A: No, state law does not allow for the issuance of a temporary weight tolerance permit.

[General Single-Trip Permits](#) | [Specialty Permits](#) | [Temporary Vehicle Registration](#) | [Motor Carrier Registration](#)

Temporary Vehicle Registration

Q: Do I need to show proof of vehicle liability insurance when applying for Temporary Vehicle Registration?

A: Yes. State law requires an applicant to provide proof of liability insurance when applying for temporary registration.

Q: Will I be issued a paper license plate for temporary vehicle registration?

A: No, a paper plate will not be issued. However, temporary registration permits must be kept in the permitted vehicle.

Q: Do I need to provide the complete Vehicle Identification Number (VIN)?

A: Yes, a complete Vehicle Identification Number is required on all applications for temporary registration

[General Single-Trip Permits](#) | [Specialty Permits](#) | [Temporary Vehicle Registration](#) | [Motor Carrier Registration](#)

[Specialty Permits](#) | [Temporary Vehicle Registration](#) | [Motor Carrier Registration](#)

Motor Carrier Registration

Q: Who is required to register with TxDOT as a motor carrier?

A: You must register as a motor carrier when you:

- Operate a vehicle designed or used to transport cargo and having a gross weight, registered weight,

- or gross weight rating of greater than 26,000 pounds
- Transport hazardous materials in a quantity that requires placarding
- Operate a vehicle designed to transport more than 15 passengers, including the driver
- Operate a tow truck, regardless of vehicle weight
- Transport household goods on a for-hire basis, regardless of vehicle weight
- Operate a commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in, or a citizen of, a country other than the United States.

Q: How do I register with TxDOT as a motor carrier?

A: To register as a motor carrier (other than a household goods carrier), you must:

- Submit a completed Original Texas Motor Carrier Application, Form 1899
- Have your insurance company file proof on insurance that meets minimum levels on a:
 - Form E – for auto liability insurance
 - Form H and I – for on-hook cargo insurance for towing companies that perform non-consent tows
- include required fees with your application.

Applications that do not have the required insurance filing(s) and fees will be returned.

Depending on the cargo type you select, this registration will allow you to:

- Operate a tow truck
- Transport intrastate passengers for hire
- Transport cargo in:
 - Intrastate private carriage
 - Intrastate for-hire carriage
 - Interstate for-hire carriage of exempt commodities
 - Interstate private carriage.

Q: How much does it cost to register?

A: Motor Carrier Registration Fees* are as follows:

Fee Type	Motor Carrier Registration			
	7-Day	90-Day	Annual	Biennial (2-year)
Application Fee	\$5	\$25	\$100	\$100
Vehicle Fee	\$10 per vehicle	\$10 per vehicle	\$10 per vehicle	\$20 per vehicle
Tow Truck vehicle fee	\$25 per vehicle	\$25 per vehicle	\$25 per vehicle	\$50 per vehicle
Automobile Liability Insurance Filing Fee (Form E)	\$100**	\$100**	\$100**	\$100**
On-hook cargo insurance for towing companies that perform non-consent tows	\$100**	\$100**	\$100**	\$100**

*see household goods carriers for information on those fees.

**payable by the carrier or the insurance company

Credit will be given for fees paid under the Single State Registration System.

Q: Which forms of payment does TxDOT accept for motor carrier registration?

A: Fees are payable by:

- MasterCard, Visa, Discover and American Express (\$1 fee)
- Personal or business check, cashier's check, or money order, payable to the Texas Department of

- Transportation
- Escrow account.

Q: Are motor carrier registration requirements different for household goods carriers?

A: Yes, requirements for household goods carriers are different from general motor carrier requirements.

Q: What are the automobile liability insurance and on-hook cargo insurance requirements for a motor carrier?

A: Required auto liability insurance levels are as follows:

Type of vehicle	Minimum Insurance Levels
Tow trucks (gross vehicle weight 26,000 lbs. Or less).	\$ 300,000
Tow trucks that perform non-consent tows (on-hook cargo insurance)	\$50,000 per truck
Buses designed or used to transport more than 15 passengers (including the driver), but less than 26 passengers (not including the driver).	\$ 500,000
Commercial motor vehicles which are buses with a seating capacity of 15 passengers or less (including the driver) operated by a foreign motor carrier and foreign motor private carrier as defined in 49 U.S.C. §13102.	\$ 1,500,000
Buses designed or used to transport 26 passengers or more (not including the driver).	\$ 5,000,000
Commercial motor vehicles which are buses with a seating capacity of 16 passengers or more (including the driver) operated by a foreign motor carrier or foreign motor private carrier as defined in 49 U.S.C. §13102.	\$ 5,000,000
Farm trucks (gross vehicle weight 48,000 lbs. or more).	\$ 500,000
Commercial motor vehicles (gross vehicle weight in excess of 26,000 lbs.), including tow trucks.	\$ 500,000
Commercial motor vehicles, as defined in 49 C.F.R. §390.5, operated by a foreign motor carrier or foreign motor private carrier as defined in 49 U.S.C. §13102.	\$ 750,000
Commercial motor vehicles - Oil listed in 49 C.F.R. §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 C.F.R. §171.8 and listed in 49 C.F.R. 172.101, but not mentioned below.	\$ 1,000,000
Commercial motor vehicles- Hazardous substances, as defined in 49 C.F.R. §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or any quantity of Division 1.1, 1.2, and 1.3 materials, any quantity of Division 2.3, Hazard Zone A material; in bulk Division 2.1 of 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR §173.403.	\$ 5,000,000

Q: Where do I send motor carrier registration applications and renewals?

A: Regular mail should be sent to TxDOT - MCD, P. O. Box 12984, Austin, TX 78711-2984. Customers may also fax information to 512/465-3595, or fax forms directly to our scanning system at 512/465-3521. If you fax an application and fees are due, you must provide a credit card or escrow account number.

Q: Do you take walk-in registration applications?

A: Applications may be dropped off at our office, but will not be processed while you wait.

Q: How long does it take to process an application?

A: In general, a complete application takes approximately 10 working days to process. If your application is incomplete and we request additional information, the amount of time it takes to process your application will increase.

Q: How do I check the status of my application?

A: Call us at 1-800-299-1700. From the automated telephone menu, select option 2, followed by option 1.

Q: How long does it take TxDOT's Motor Carrier Division to receive regular mail?

A. Generally 3 to 5 days, but it may take as long as 10 days.

Q: How do I get copies of documents and what are the copy/research charges?

A: The Motor Carrier Division keeps records for a limited retention period, and not all records are available. Copies of documents can be requested under the Public Information Act. Fees are based upon the amount of time it takes to research a record, as well as other factors.

Q: How do I register my interstate authority?

A: File a Single State Registration System application, Form 1892 (call 1-800-299-1700 and select Option 1 from the automated menu to have the form faxed to you). You also need to identify the states in which you intend to operate and the number of vehicles you will operate in each state, and pay the appropriate fees. A fee schedule is located on the back of the application. You will also need to file a copy of the BMC 91 or BMC 91X, a BOC3, and a copy of the authority issued by the Federal Motor Carrier Safety Administration.

Q: How do I obtain information regarding requirements for commercial drivers licenses, drug testing, drivers license equipment safety, and signs for my vehicle?

A: With the exception of signage requirements for household goods carriers, these requirements are under the jurisdiction of the Texas Department of Public Safety (DPS) for operations in Texas.

For operations that cross state lines, contact the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA).

You can also contact these agencies by calling our One-Stop Shop at 1-800-299-1700 (from the automated menu, select Option 7 for DPS or Option 8 for FMCSA).

Q: How are motor carrier registration fees spent?

A: Texas motor carrier registration fees are deposited to the Texas General Fund (Fund 001).

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Texas Legal Size and Weight Limits

The State of Texas has established legal size and weight limits for vehicles and the loads when operating on state-maintained roads and bridges. These dimensions include:

Width Limits

- Width is measured from the outside points of the widest extremities, excluding safety devices.

Explanation	Measurement
Legal width limit	8', 6" (102")
Maximum width permitted on holidays	14', except for manufactured housing
Maximum width permitted on controlled access highways* (Interstate Highway System)	16', except for manufactured housing
Maximum width permitted without route and traffic studies and certification by applicant on file	20'
Maximum width permitted for new houses	34'
Maximum width permitted for existing houses	40'
Maximum width permitted for new tanks	34'
Maximum width permitted for existing tanks	40'
Maximum width permitted for portable buildings	No limit
Maximum width for manufactured housing	No limit
* - <i>Controlled access highways are those highways that must be entered from an access road, not from a stop sign. Traffic can cross the highway only by way of an overpass or underpass. Controlled access highways are usually considered to be the Interstate Highway System.</i>	

- One escort is required for all loads exceeding 14' up to 16' wide. Two escorts are required for all loads exceeding 16' wide. The escort must precede the load on a two-lane highway to warn oncoming traffic of the approaching overwidth load. The escort must follow the load on a roadway of four or more lanes to warn approaching traffic of the overwidth load ahead.
- Loads exceeding 20' in width must physically inspect a proposed route and certify to the Motor Carrier Division by letter or facsimile that the overwidth load can safely negotiate the route.
- There are special requirements for manufactured housing.

Height Limits

Explanation	Measurement
Legal height limit	14'
Maximum height permitted on holidays	16'
Maximum height permitted without a route and traffic study and route certification by applicant on file	less than 19'

- One escort is required for loads exceeding 17' in height. The escort must be equipped with a height pole to accurately measure overhead obstructions.
- Front and rear escorts are required for loads exceeding 18' in height.
- Loads 19' or higher must physically inspect a proposed route and certify to the Motor Carrier Division by letter or facsimile that the overheight load can safely negotiate all power, communication, and cable television lines, and all other low vertical obstructions.

Length Limits

Vehicle(s) Type		Legal Length	Maximum Permit Length
Truck or single vehicle		45'	75'
Truck and trailer combination		65'	180'
Commercial truck and semitrailer combination transporting automobiles or boats		overall length unlimited, trailer limited to 59'	
Combinations such as truck, travel trailer & boat or motor home, boat and towing a car		65'	
Truck and trailer combination hauling oil field equipment		overall length unlimited, trailer limited to 59'	180'
Truck-tractor		unlimited	unlimited
Truck-tractor combination		overall length unlimited, trailer limited to 59'	180'
Semitrailer	Single unit	59'	—
	2 trailers	28', 6"	—
Front overhang		3'	25'
Rear overhang		4'	30'
Maximum overall length		180'	
Maximum length permitted without route and traffic study and route certification by applicant on file		125'	

- One escort is required for loads exceeding:
 - 110', but not exceeding 125' long
 - 20' front or rear overhang
- Front and rear escorts are required for loads exceeding 125' in length.
- NOTE: The overall length indicated on the permit includes any overhang, but the amount of the overhang must be noted on the permit.

Weight

- The basis for maximum legal weight is the number of axles. This information, in conjunction with the Permissible Weight Table, is used to determine maximum legal weight for a vehicle. The following terms are used in relation to weight:
 - drive axles—the axles which power a vehicle
 - inner bridge distance—the distance from the center of the first drive axle to the center of the last trailer axle
 - outer bridge distance—the distance from the center of the steering axle of the truck to the center of the last trailer axle
 - steering axle—the front axle of the truck (legal weight and permitted weight are the same on steering axles)
 - tandem axle weight—the total weight transmitted to the road by two or more consecutive axles whose centers may be included between two parallel transverse vertical planes spaced more than 40" and not more than 96" apart, across the full width of the vehicle.
- Maximum legal gross weight cannot exceed 80,000 pounds.
- Maximum legal weight for a single axle cannot exceed 20,000 pounds.
- Maximum legal weight for a tandem axle group cannot exceed 34,000 pounds.
- Tires may not carry a weight greater than the weight specified and marked on the sidewall of the tire.

- **Permissible Weight Table Information**

This table provides a guide to determine the maximum weight on any group of two or more consecutive axles. The table may be applied to inner axle groups such as the drive axles and the trailer or trailers, or the entire combination of axles from the steering axle of the power unit to the last trailing axle of the trailer.

The number for gross weight in pounds is the required distance in feet between the extremes of any group of two or more consecutive axles. The remaining column indicates the maximum weight for various numbers of axles in the group of axles being considered.

The maximum weights shown in the table are based on either of these formulas:

- $W=500 [(LN/(N-1)) +12N+36]$
- L=length & N=# of axles

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Permissible Weight Table

Distance in Feet	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles
4	34,000					
5	34,000					
6	34,000					
7	34,000					
8	34,000	34,000				
8+	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500				
11		44,500				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,500	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,900*	54,000	59,000		
19		51,400*	54,500	60,000		
20		52,800*	55,500	60,500	66,000	
21		54,000*	56,000	61,000	66,500	
22		54,000*	56,500	61,500	67,000	
23		54,000*	57,500	62,500	68,000	
24		54,000	58,700*	63,000	68,500	74,000
25		54,500	59,650*	63,500	69,000	74,500
26		55,500	60,600*	64,000	69,500	75,000
27		56,000	61,550*	65,000	70,000	75,500
28		57,000	62,500*	65,500	71,000	76,500
29		57,500	63,450*	66,000	71,500	77,000

30		58,500	64,000*	66,500	72,000	77,500
31		59,000	65,350*	67,500	72,500	78,000
32		60,000	66,300*	68,500	73,000	78,500
33			67,250*	68,500	74,000	79,000
34			68,200*	69,000	74,500	80,000
35			69,150*	70,000	75,000	
36			70,100*	70,500	75,500	
37			71,050*	71,050	76,000	
38			72,000*	72,000*	77,000	
39			72,000*	72,500	77,500	
40			72,000*	73,000	78,000	
41			72,000*	73,500	78,500	
42			72,000*	74,000	79,000	
43			72,000*	75,000	80,000	
44			72,000*	75,500		
45			72,000	76,000		
46			72,500	76,500		
47			73,500	77,500		
48			74,000	78,000		
49			74,500	78,500		
50			75,500	79,000		
51			76,000	80,000		

*These figures were carried forward from Article 6701d-11, Section 5(a)(4) when Senate Bill 89 of the 64th Texas Legislature amended it on December 16, 1974. The amendment provided that axle configurations and weights that were lawful as of that date would continue to be legal under the increased weight limits.

+These figures apply only to an axle spacing greater than 8 feet but less than 9 feet.

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Handling Government Documents

Presented by

Ted Wood
Special Counsel for Trial Courts
Office of Court Administration

OBJECTIVES

By the end of the session, participants will be able to:

1. Define government documents. (Section 201.003, Local Government Code)
2. Determine which documents the judge is custodian of under Rule 12 and which documents the clerk is custodian.
3. Explain the dos and don'ts of handling government documents.
4. Explain the rules for records retention and the city's ordinance requirements.
5. List when records may be destroyed. (Chapter 202, Local Government Code)
6. List the how records can be destroyed. (Chapter 202, Local Government Code)
7. Explain the consequences of illegally destroying records. (Section 37.10, Penal Code)

Handling Government Documents

October 2005

Quiz

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QUESTIONS

- (1) In the context of a municipal court, the term "judicial records" refers to:
 - a) all of the records kept by the court.
 - b) only those records kept by the court that have to do with cases filed in the court.
 - c) all records kept by the court except those that have to do with cases filed in the court.

- (2) "Judicial records" can be thought of as being the same thing as:
 - a) records of the judiciary.
 - b) administrative records.
 - c) court case records.

- (3) Which of the following records are not "judicial records"?
 - a) a procedure manual published by the TMCEC
 - b) an internal memo from the judge to the clerk
 - c) an order suspending a juvenile's driver's license for failure to attend school
 - d) logs of long distance telephone calls

- (4) Who is the custodian of "judicial records" kept by a municipal court?
 - a) the judge
 - b) the clerk

- (5) Who is the custodian of "court case records" kept by a municipal court?
 - a) the judge
 - b) the clerk

- (6) Records of the judiciary:
- a) are considered to be local government records.
 - b) are not considered to be local government records.
- (7) A city:
- a) is required to have a records management program.
 - b) may (but is not required to) establish a records management program.
- (8) A custodian of municipal court records:
- a) need not adhere to the city's records management program.
 - b) must comply with the city's records management program.
- (9) Who is supposed to administer a city's records management program?
- a) the city manager
 - b) the city's designated records management officer
 - c) the city's designated records management officer, except for the municipal court's separate records management program which is administered by the municipal court clerk
 - d) the county clerk of the county in which the municipality is located
- (10) Which of the following statements is correct?
- a) A records management officer can never be the custodian of records.
 - b) There should only be one records management officer in a city, but the city can have multiple records custodians.
 - c) "Records management officer" and "custodian of records" are simply two different titles for the same thing.
 - d) None of the above statements is correct.
- (11) Who makes the decision as to whether a court case record should be released pursuant to an open records request?
- a) the judge
 - b) the clerk
 - c) the city manager
 - d) the records management officer
- (12) The processing of court cases in municipal court:
- a) constitutes the transaction of government business.
 - b) is not the transaction of government business – only the city council transacts government business on the municipal level.
- (13) A records custodian has a duty to:
- a) adequately document the transaction of government business.
 - b) maintain the records in the custodian's care.
 - c) cooperate with the records management officer
 - d) do all of the above.
 - e) do none of the above.

- (14) Municipal court records are to be maintained and preserved:
- a) for the use of the court.
 - b) for the use of the public.
 - c) for both of the above.
 - d) for none of the above.
- (15) Municipal court records:
- a) may be taken home by the clerk if the clerk is behind on processing cases and needs to catch up.
 - b) may be taken home by the judge if the judge works part-time.
 - c) may be taken out of the court by the attorney for a defendant in a criminal case.
 - d) should never be taken out of the court.
- (16) Municipal court records are:
- a) public property.
 - b) the property of the municipal court.
 - c) the private property of the clerk.
 - d) the private property of the judge.
 - e) either (c) or (d), depending on the type of municipal court record.
- (17) Court case records must be kept by the records custodian:
- a) permanently (*i.e.*, forever).
 - b) until the case is final (*i.e.*, there is no more possibility of an appeal).
 - c) for one year after the judgment in the case.
 - d) for the length of time dictated by the city's records control schedule.
- (18) Judicial records must be kept by the records custodian:
- a) permanently (*i.e.*, forever).
 - b) for the length of time dictated by the city's records control schedule.
- (19) What state agency publishes records retention schedules?
- a) Office of Court Administration
 - b) Attorney General's Office
 - c) Texas Building and Procurement Commission
 - d) Texas State Library and Archives Commission
- (20) Once the retention period for a municipal court record is over, the relevant record:
- a) may be destroyed.
 - b) may be destroyed only if it is preserved on microfilm or is stored electronically.
 - c) need not be stored in the municipal court offices but must be stored somewhere (such as in an off-site storage facility).

- (21) How may a municipal court record that is open to the public be destroyed?
- a) burning the record
 - b) throwing away the record in the office trash
 - c) shredding the record
 - d) burying the record in a landfill
 - e) (a), (c) and (d) only
- (22) A municipal court record:
- a) must be maintained on paper.
 - b) may be retained on microfilm or on an electronic medium in addition to retaining the record on paper.
 - c) may be retained on microfilm or on an electronic medium instead of retaining the record on paper.
- (23) Generally, criminal case papers must be retained for _____ year(s) from the date of the offense.
- a) one
 - b) two
 - c) three
 - d) five
 - e) ten
 - f) twenty
- (24) Parking or pedestrian violation tickets that have been cleared by payment, dismissal or other action must be retained for:
- a) thirty days.
 - b) six months
 - c) one year
 - d) five years
- (25) Judicial records _____ controlled by a records retention schedule.
- a) are
 - b) are not
- (26) The charge for providing a copy of a municipal court record by a municipal court clerk should be set by:
- a) state statute.
 - b) municipal ordinance.
 - c) the municipal judge.
 - d) the city's records management officer.
 - e) the relevant records custodian.
- (27) What should the charge be for allowing someone to look at a government record (as opposed to making a copy of the record)?
- a) no charge
 - b) same charge as for a copy of the record

- (28) Rule 12 of the Texas Rules of Judicial Administration sets out the cost for copies of:
- a) all municipal court records.
 - b) court case records.
 - c) judicial records.
 - d) records of the judiciary.
- (29) There is no limit on what may be charged for:
- a) a judicial record.
 - b) a court case record.
 - c) both (a) and (b).
 - d) neither (a) nor (b).
- (30) What state agency prescribes amounts that may be charged for the provision of public information?
- a) Texas General Services Commission
 - b) Texas Building and Procurement Commission
 - c) Texas State Library and Archives Commission
 - d) Texas Ethics Commission
- (31) A records custodian:
- a) may in some cases reduce the charge for a copy of a judicial record.
 - b) may in some cases waive the charge for a copy of a judicial record.
 - c) may do both (a) and (b)
 - d) may never waive or reduce the charge for a copy of a judicial record.
- 32) As a practical matter, municipal courts often charge the amount prescribed by the relevant state agency (see Question 30) for providing public information. What is the prescribed charge by the relevant state agency for a standard paper copy (one side of the page)?
- a) 10 cents
 - b) 25 cents
 - c) 50 cents
 - d) 1 dollar
- 33) Charging for the time involved in locating and compiling judicial records is:
- a) not allowed.
 - b) always permissible.
 - c) permitted only under certain circumstances.

ANSWERS

- (1) c Rule 12.2(d), Texas Rules of Judicial Administration
Judicial record means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record. A record is a document, paper, letter, map, book, tape, photograph, film, recording, or other material, regardless of electronic or physical form, characteristics, or means of transmission.
- (2) b Any record kept by a municipal court is a "record of the judiciary." But the term is not synonymous with the term "judicial record." Rather, records of the judiciary are of two types:
1. judicial records
 2. court case records
- (3) c Answers a, b, and d are examples of administrative records.
- (4) a Rule 12.2(e), Texas Rules of Judicial Administration
Records custodian means the person with custody of a judicial record determined as follows:
- (1) The judicial records of a court with only one judge, such as any trial court, are in the custody of that judge. Judicial records pertaining to the joint administration of a number of those courts, such as the district courts in a particular county or region, are in the custody of the judge who presides over the joint administration, such as the local or regional administrative judge.
 - (2) The judicial records of a court with more than one judge, such as any appellate court, are in the custody of the chief justice or presiding judge, who must act under this rule in accordance with the vote of a majority of the judges of the court. But the judicial records relating specifically to the service of one such judge or that judge's own staff are in the custody of that judge.
- (5) b Government Code, Section 29.010(c) (affects non-record municipal courts)
The clerk shall keep minutes of the proceedings of the court, issue process, and generally perform the duties for the municipal court that a county clerk performs for a county court.

Government Code, Section 30.00009(a) (affects municipal courts of record) (in pertinent part)

The municipal clerk shall keep the records of the municipal courts of record, issue process, and generally perform the duties that a clerk of a county court exercising criminal jurisdiction performs for that court.

Local Government Code, Section 192.006

(a) The county clerk is the custodian of the records of the county court in civil and criminal cases and in matters of probate. The county clerk shall record each act and proceeding of the county court, record under direction of the judge each judgment of the court, and record the issuance of and return on each execution issued by the court.

(b) The county clerk shall keep the records of the county court properly indexed and arranged.

(6) a Local Government Code, Section 201.003(8)

“Local government record” means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. The term does not include:

- (A) extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government;
- (B) notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience;
- (C) blank forms;
- (D) stocks of publications;
- (E) library and museum materials acquired solely for the purposes of reference or display;
- (F) copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552, Government Code, or other state law; or
- (G) any records, correspondence, notes memoranda, or documents, other than a final written agreement described by Section 2009.054(c), Government Code, associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

- (7) a Local Government Code, Section 203.021
 The governing body of a local government . . . shall:
 (1) establish, promote, and support an active and continuing program for the efficient and economical management of all local government records.
- Local Government Code, Section 203.026(a)
 On or before January 1, 1991, each governing body by ordinance or order, as appropriate, shall establish a records management program to be administered by the records management office.
- (8) b Local Government Code, Section 203.022
 (a) Custodians of records in each local government shall:
 . . .
 (3) maintain the records in the custodian's care and carry out their preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the local government's records management program
- (9) b Local Government Code, Section 203.025
 (a) On or before June 1, 1990, the governing body of each local government shall designate a records management officer by:
 (1) designating an individual; or
 (2) designating an office or position, the holder of which shall be the records management officer.
- (10) b Local Government Code, Section 203.026(b)
 The ordinance or order must provide methods and procedures to enable the governing body, custodians, and the records management officer to fulfill the duties and responsibilities set out in Sections 203.021, 203.022, and 203.023 concerning the management and preservation of records.
- (11) a
- (12) a
- (13) d Local Government Code, Section 203.022(a)
 Custodians of records in each local government shall:
 (1) cooperate with the records management officer in carrying out the policies and procedures established by the local government for the efficient and economical management of records and in carrying out the requirements of this subtitle;
 (2) adequately document the transaction of government business and the services, programs, and duties for which the custodian and the custodian's staff are responsible; and

- (3) maintain the records in the custodian's care and carry out their preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the local government's records management program and the requirements of this subtitle and rules adopted under it.
- (14) c Margaret Robbins, *Custodian of the Records*, MUNICIPAL COURT RECORDER, November 2003.
Clerks preserve and maintain the court records not only for the court, but for the public.
- (15) d Margaret Robbins, *Custodian of the Records*, MUNICIPAL COURT RECORDER, November 2003.
Court records should be available for the court's utility and for the public's access and review. Therefore, court records should never be taken out of the court. Judges who work part-time should be available long enough to sign the court paperwork at the court facilities. Clerks who are behind on processing cases should not take records home to work on in the evenings. Records that are taken home or records that are lost might appear to management and the public as if the clerk has something to hide. The responsibility for public records is a great responsibility and should be taken seriously.
- (16) a Local Government Code, Section 201.005
(a) Local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of this subtitle and Subchapter J, Chapter 441, Government Code.
(b) A local government officer or employee does not have, by virtue of the officer's or employee's position, any personal or property right to a local government record even though the officer or employee developed or compiled it.
- (17) d Local Government Code, Section 203.041
(a) On or before January 4, 1999, the records management officer shall prepare and file with the director and librarian:
(1) a records control schedule listing the following records and establishing a retention period for each as provided by Section 203.042:
(A) all records created or received by the local government or elective county office

Local Government Code, Section 201.003(16)

"Retention period" means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

Local Government Code, Section 203.042

(a) A retention period for each record on the records control schedule shall be determined by the governing body . . .

(b) A retention period may not be less than:

(1) a retention period prescribed by a state or federal law, regulation, or rule of court; or

(2) a retention period for the record established on a records retention schedule issued by the commission.

(18) b See Answer (17) above.

(19) d Government Code, Section 441.151(4)

"Director and librarian" means the executive and administrative officer of the Texas State Library and Archives Commission.

Government Code, Section 441.158

(a) The director and librarian, under the direction of the commission, shall prepare and distribute free of charge to records management officers of affected local governments the records retention schedules for each type of local government, including a schedule for records common to all types of local government. The commission shall adopt the schedules by rule.

(b) Each records retention schedule must:

(1) list the various types of records of the applicable local government;

(2) state the retention period prescribed by a federal or state law, rule of court, or regulation for records for which a period is prescribed; and

(3) prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the commission.

(20) a Local Government Code, Section 202.001

(a) A local government record may be destroyed if:

(1) the record is listed on a records control schedule accepted for filing by the director and librarian as provided by Section 203.041 and either its retention period has expired or it has been microfilmed and stored electronically in accordance with the requirements of Chapters 204 and 205.

- (21) e Local Government Code, Section 202.003
 (a) A local government record may be destroyed by burning, shredding, pulping, or burial in a landfill or by sale or donation for recycling purposes except as provided by Subsection (b).
 (b) Records to which public access is restricted under Chapter 552, Government Code, or other state law may be destroyed only by burning, pulping, or shredding.
- (22) c Local Government Code, Section 204.002
 Any local government record may be maintained on microfilm in addition to or instead of on paper or other media, subject to the requirements of this chapter and the rules adopted under it.
- Local Government Code, Section 205.002
 Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media, subject to the requirements of this chapter and rules adopted under it.
- (23) d Local Schedule LC, Retention Schedule for Records of Justice and Municipal Courts, Texas State Library and Archives Commission
- (24) b Local Schedule LC, Retention Schedule for Records of Justice and Municipal Courts, Texas State Library and Archives Commission
- (25) a Local Schedule GR, Retention Schedule for Records Common to All Local Governments
- (26) b Government Code, Section 552.266
 The charge for providing a copy made by a municipal court clerk shall be the charge provided by municipal ordinance.
- (27) a There is no statute explicitly stating that municipal courts must allow free access to records but the following statute applicable to county court records held by county clerks provides some helpful guidance:
- Local Government Code, Section 118.065
 (a) This subchapter does not limit or deny any person full and free access to any document referred to in this subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents.
 (b) A person may, without paying any charge, exercise the right provided by this section under the reasonable rules of the county clerk at all reasonable times during the hours in which the clerk's office is open to the public.

- (28) c Rule 12.7(a), Texas Rules of Judicial Administration
Cost. The cost for a copy of a judicial record is either:
 (1) the cost prescribed by statute, or
 (2) if no statute prescribes the cost, the actual cost, as defined in Section 111.62, Title 1, Texas Administrative Code, not to exceed 125 percent of the amount prescribed by the General Services Commission for providing public information under Title 1, Texas Administrative Code, Sections 111.63, 111.69, and 111.70.
- (29) b See answer to Question 28 above.
- (30) b
- (31) c Rule 12.7(b), Texas Rules of Judicial Administration
Waiver or Reduction of Cost Assessment by Records Custodian. A records custodian may reduce or waive the charge for a copy of a judicial record if:
 (1) doing so is in the public interest because providing the copy of the record primarily benefits the general public, or
 (2) the cost of processing collection of a charge will exceed the amount of the charge.
- (32) a Rule 111.63(b)(1), Part 5, Title 1, Texas Administrative Code
 Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.
- (33) c Rule 111.63, Part 5, Title 1, Texas Administrative Code
 (d) Labor charge for locating, compiling, and reproducing public information
 (1) The charge for labor costs incurred in processing a request for public information is \$15 an hour, which includes fringe benefits. The labor charge includes the actual time to locate, compile, and reproduce the requested information.
 (2) A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:
 (A) Two or more separate buildings that are not physically connected to each other; or
 (B) A remote storage facility.



Records Management Publications

Texas State Library and Archives Commission



Services to Government Agencies > Records Management Publications

Local Schedule LC

Retention Schedule for Records of Justice and Municipal Courts

Effective February 1, 1992

Preface

This schedule establishes mandatory minimum retention periods for the records listed. No local government office may dispose of a record listed in this schedule prior to the expiration of its retention period. A records control schedule of a local government may not set a retention period for a record that is less than that established for the record on this schedule. The originals of records listed in this schedule may be disposed of prior to the expiration of the stated minimum retention period if they have been microfilmed or electronically stored pursuant to the provisions of the Local Government Code, Chapter 204 or Chapter 205, as applicable, and rules of the Texas State Library and Archives Commission adopted under authority of those chapters. Actual disposal of such records by a local government or an elective county office is subject to the policies and procedures of its records management program.

Destruction of local government records contrary to the provisions of the Local Government Records Act of 1989 and administrative rules adopted under its authority, including this schedule, is a Class A misdemeanor and, under certain circumstances, a third degree felony (Penal Code, Section 37.10). Anyone destroying local government records without legal authorization may also be subject to criminal penalties and fines under the Open Records Act (Government Code, Chapter 552).

Introduction

The Government Code, Section 441.158, provides that the Texas State Library and Archives Commission shall issue records retention schedules for each type of local government, including a schedule for records common to all types of local government. The law provides further that each schedule must state the retention period prescribed by federal or state law, rule of court, or regulation for a record for which a period is prescribed; and prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the commission.

Local Schedule LC sets mandatory minimum retention periods for records series (identified in the Records Series Title column) that are usually found in justice and/or municipal courts. If the retention period for a record is established in a federal or state law, rule of court, or regulation, a citation to the relevant provision is given; if no citation is given, the authority for the retention period is this schedule.

The retention period for a record applies to the record regardless of the medium in which it is maintained. Some records listed in this schedule are maintained electronically in many offices, but electronically stored data used to create in any manner a record or the functional equivalent of a record as described in this schedule must be retained, along with the hardware and software necessary to

access the data, for the retention period assigned to the record, unless backup copies of the data generated from electronic storage are retained in paper or on microfilm for the retention period.

Unless otherwise stated, the retention period for a record is in calendar years from the date of its creation. The retention period, again unless otherwise noted, applies only to an official record as distinct from convenience or working copies created for informational purposes. Where several copies are maintained, each local government should decide which shall be the official record and in which of its divisions or departments it will be maintained. Local governments in their records management programs should establish policies and procedures to provide for the systematic disposal of copies.

If a record described in this schedule is maintained in a bound volume of a type in which pages are not designed to be removed, the retention period, unless otherwise stated, dates from the date of last entry.

If two or more records listed in this schedule are maintained together by a local government and are not severable, the combined record must be retained for the length of time of the component with the longest retention period. A record whose minimum retention period on this schedule has not yet expired and is less than permanent may be disposed of if it has been so badly damaged by fire, water, or insect or rodent infestation as to render it unreadable, or if portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible. If the retention period for the record is permanent on this schedule, authority to dispose of the damaged record must be obtained from the director and librarian of the Texas State Library. The Request for Authority to Destroy Unscheduled Records (Form SLR 501) should be used for this purpose.

Requests for Authority to Destroy Unscheduled Records (SLR 501), whose submission to the director and librarian of the Texas State Library is required by the Local Government Code, Section 203.045, need not be filed for records shown as exempt from the requirement.

Certain records listed in this schedule are assigned the retention period of AV (as long as administratively valuable). This retention period affords local governments the maximum amount of discretion in determining a specific retention period for the record described. Although AV may be used as a retention period on a records control schedule of a local government, it is in the best interests of any records management program that fixed retention periods be assigned for each records series. AV records tend to accumulate and go unmanaged.

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Abbreviations Used In This Schedule

AV - As long as administratively valuable

FE - Fiscal year end

US - Until Superseded

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Part 1: Civil and Criminal Records

Part 2: Inquest Records

Part 3: Vital Statistics Records

Part 4: Miscellaneous Records

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Records of Justice and Municipal Courts

Retention note: Notwithstanding any retention periods set in this schedule, all case papers, dockets, or other records of a municipal or justice court dated 1876 or earlier must be retained permanently. This schedule also recommends, but does not require, that criminal dockets dated from 1877 to 1920 be retained permanently for historical reasons.

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Part 1: Civil and Criminal Records

2350-01 Appeal or Transfer Record-Record or register of cases appealed from a court and/or records of case transfers as a result of an examining trial. RETENTION: AV. (Exempt from destruction request requirement)

2350-02 Bail Bond Records-Ledgers or books recording the setting or taking by the court of bail or recognizance bonds. RETENTION: 3 years.

2350-03 Case Papers (including documentation maintained by a court arising from the actions of its judge as a magistrate)

- a) Administrative hearing case papers. RETENTION: 1 year after judgment rendered or proceedings terminated. (Exempt from destruction request requirement)
- b) Civil case papers (including small claims and scire facias). RETENTION: 10 years after case closed.

Retention note: Case papers of cases dismissed for want of prosecution, on motion of the plaintiff, or for other reasons within the power of the court need only be retained for 4 years from the date the case was originally filed.

c) Criminal case papers (including traffic offenses and violations of municipal ordinances) except: RETENTION: 5 years from date of offense.

- 1. Papers in cases dismissed for want of prosecution or for other reasons within power of the court. RETENTION: 5 years from date of offense.
- 2. Unserved arrest warrants for misdemeanors within jurisdiction of the court. RETENTION: 4 years after issuance.

Retention note: Prior to the purging and disposal of any unserved arrest warrants under this item number, the warrants must be dismissed by the judge in a manner permitted by law. If a judge dismisses unserved warrants at any time prior to 4 years after issuance, they still must be retained until the

expiration of the retention period.

3. Parking or pedestrian violation tickets that have been cleared by payment, dismissal, or other action. RETENTION: 6 months. (Exempt from destruction request requirement, unless the tickets must be retained for FE + 3 years)

Retention note: It is an exception to the 6-month retention period that if the tickets are used as vouchers for direct posting to receipt journals or ledgers, the tickets must be retained for FE + 3 years.

4. Examining trial case papers. RETENTION: AV. (Exempt from destruction request requirement)

Retention note: If copies of statutory warnings are maintained only as carbons in bound volumes, the volumes must be retained for 5 years after last entry.

2350-04 Dockets and Docket Sheets

Retention Note: a) The retention periods in this record group also apply to docket sheets or the record equivalent in purpose to a docket in those courts that do not maintain dockets in bound volumes.

b) If any docket listed under (a)-(f) contains records of inquests, it must be retained permanently.

a) Civil docket (including small claims and scire facias). RETENTION: PERMANENT. [By rule of court-Rules of Civil Procedures, Rule 26.]

b) Criminal docket (including traffic offenses and violations of municipal ordinances). RETENTION: 5 years.

c) Civil and criminal docket (recording cases of both types in one volume). RETENTION: PERMANENT. [By rule of court-Rules of Civil Procedure, Rule 26.]

d) Administrative hearing docket. RETENTION: PERMANENT. [By rule of court-Rules of Civil Procedure, Rule 26.]

e) Execution docket. RETENTION: PERMANENT. [By rule of court-Rules of Civil Procedure, Rule 26.]

f) Examining trial dockets. RETENTION: 5 years.

g) Call dockets or docket sheets or any other working copy or preliminary version of a docket or docket sheet for the use of clerks, bailiffs, or judges before entry of the information into any of the dockets noted under (a)-(f). RETENTION: AV after entry of information into court docket. (Exempt from destruction request requirement)

2350-05 Fee Books-Books or ledgers detailing fees or costs accrued in cases heard by the court and status of payment or waiver of costs or fees, if maintained separately from dockets. RETENTION: FE + 5 years.

2350-06 Jury Records

a) Jury venire lists. RETENTION: 1 years. (Exempt from destruction request requirement)

b) Juror information and reply forms. RETENTION: 1 year. (Exempt from destruction request requirement)

2350-07 Process Logs/Process Registers-Stub books, carbon books, logs, or registers listing warrants, subpoenas, summonses, or citations issued by or under the authority of the court. RETENTION: 5 years.

2350-08 Reports to State Agencies

a) Statistical reports to the Texas Judicial Council. RETENTION: 3 years.

b) Juror information and reply forms. RETENTION: 1 year. (Exempt from destruction request requirement)

c) Traffic conviction abstracts and reports of death arising from traffic accidents submitted to the Texas Department of Public Safety. RETENTION: AV. (Exempt from destruction request requirement)

2350-09 Witness Record-Register of witnesses subpoenaed, attached, or recognized in criminal cases, if maintained separately from the criminal dockets. RETENTION: 5 years.

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Part 2: Inquest Records

2375-01 Fire Inquest Records

a) Case papers. RETENTION: AV. (Exempt from destruction request requirement)

b) Docket or record. RETENTION: PERMANENT.

2375-02 Inquest Records

a) Case papers.

1. Arising from inquests or inquest hearings initiated August 31, 1987 or earlier. RETENTION: Destroy at option. (Exempt from destruction request requirement)

2. Arising from inquests or inquest hearings initiated September 1, 1987 and after. RETENTION: PERMANENT. [By law-Code of Criminal Procedure, art. 49.15(b).]

Retention Note: Prior to September 1, 1987 case papers arising from an inquest were forwarded by the justice to the district clerk. Since that date case papers are retained and become a part of the inquest docket or record and only an inquest summary report is forwarded. The only case papers retained by a justice of the peace or other magistrate before September 1, 1987 are likely to be copies of materials forwarded. Creation and retention of copies was not required

by law.

b) Docket or record. RETENTION: PERMANENT. [By law-Code of Criminal Procedure, art. 49.15(b).]

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Part 3: Vital Statistics Records

Retention Notes: a) Since 1927, each justice of the peace precinct serves as a primary registration district for the registry of births and deaths, unless, by agreement, the county clerk assumes primary registration duties. The records in this section arise from the duties of justice of the peace as a local registrar.

b) This section applies to and is binding upon city clerks or secretaries who serve as local registrars of vital statistics.

2400-01 Birth and Death Record (combination of the Birth Record and Death Record). RETENTION: PERMANENT. [By law-Health and Safety Code, Section 191.026.]

2400-02 Birth Record (Register of Births)-Recorded or bound duplicate copies of birth certificates, delayed birth certificates, or amended birth certificates. RETENTION: PERMANENT. [By law-Health and Safety Code, Section 191.026.]

2400-03 Burial Transit Permit Records-Stub, copies, or lists for burial transit permits issued. RETENTION: 2 years.

2400-04 Death Record (Register of Deaths)-Recorded or bound duplicate copies of death certificates, fetal death certificates, or amended death certificates. RETENTION: PERMANENT. [By law-Health and Safety Code, Section 191.026.]

2400-05 Disinterment Record

a) Copies of disinterment permits. RETENTION: PERMANENT.

b) Applications for permits. RETENTION: 2 years.

2400-06 Notifications of Death of Persons Under 55-Abstracts, transcripts, or copies of death certificates from the Bureau of Vital Statistics of persons under age 55 (or under 18 prior to May 1987), whose birth certificates are recorded in an office of a local registrar. RETENTION: Until notation made in Birth Record. (Exempt from destruction request requirement)

2400-07 Reports of Death-Reports of death filed by funeral directors or persons acting as such. RETENTION: Until receipt of death certificate. (Exempt from destruction request requirement)

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Part 4: Miscellaneous Records

Retention Note: For financial, personnel, or administrative records of a justice or

municipal court not listed in this section see Local Schedule GR.

2425-01 Acknowledgment Record-Record of acknowledgments or proofs of instruments taken by justices of the peace. RETENTION: 10 years.

2425-02 Cost Deposit Records-Journal, ledger, or similar records detailing receipts to and disbursements from monies deposited to cover costs in civil proceedings. RETENTION: FE + 5 years.

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TITLE 1

ADMINISTRATION

PART 5

TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 111

EXECUTIVE ADMINISTRATION DIVISION

SUBCHAPTER C

COST OF COPIES OF PUBLIC INFORMATION

RULE §111.62

Definitions

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Actual cost--The sum of all direct costs plus a proportional share of overhead or indirect costs. Actual cost should be determined in accordance with generally accepted methodologies.

- (2) Client/Server System--A combination of two or more computers that serve a particular application through sharing processing, data storage, and end-user interface presentation. PCs located in a LAN environment containing file servers fall into this category as do applications running in an X-window environment where the server is a UNIX based system.

- (3) Commission--The Texas Building and Procurement Commission.

- (4) Governmental Body--As defined by §552.003 of the Texas Government Code.
 - (A) A board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

 - (B) A county commissioners court in the state;

 - (C) A municipal governing body in the state;

 - (D) A deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

 - (E) A school district board of trustees;

 - (F) A county board of school trustees;

 - (G) A county board of education;

 - (H) The governing board of a special district;

 - (I) The governing body of a nonprofit corporation organized under Chapter 67 that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under the Texas Tax Code, Chapter 11, §11.30;

 - (J) The part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds;

(K) A local workforce development board created under §2308.253 of the Texas Government Code;

(L) A nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(M) Does not include the judiciary.

(5) Mainframe Computer--A computer located in a controlled environment and serving large applications and/or large numbers of users. These machines usually serve an entire organization or some group of organizations. These machines usually require an operating staff. IBM and UNISYS mainframes, and large Digital VAX 9000 and VAX Clusters fall into this category.

(6) Midsize Computer--A computer smaller than a Mainframe Computer that is not necessarily located in a controlled environment. It usually serves a smaller organization or a sub-unit of an organization. IBM AS/400 and Digital VAX/VMS multi-user single-processor systems fall into this category.

(7) Nonstandard copy--Under §§111.61 - 111.71 of this title, a copy of public information that is made available to a requestor in any format other than a standard paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM are examples of nonstandard copies. Paper copies larger than 8 1/2 by 14 inches (legal size) are also considered nonstandard copies.

(8) PC--An IBM compatible PC, Macintosh or Power PC based computer system operated without a connection to a network.

(9) Standard paper copy--Under §§111.61 - 111.71 of this title, a copy of public information that is a printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which information is recorded is counted as a single copy. A piece of paper that has information recorded on both sides is counted as two copies.

(10) Archival box--A carton box measuring approximately 12.5" width x 15.5" length x 10" height, or able to contain approximately 1.5 cubic feet in volume.

Source Note: The provisions of this §111.62 adopted to be effective September 18, 1996, 21 TexReg 8587; amended to be effective November 5, 2000, 25 TexReg 10727; amended to be effective January 16, 2003, 28 TexReg 439; amended to be effective February 11, 2004, 29 TexReg 1189

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TITLE 1

ADMINISTRATION

PART 5

TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 111

EXECUTIVE ADMINISTRATION DIVISION

SUBCHAPTER C

COST OF COPIES OF PUBLIC INFORMATION

RULE §111.63

Charges for Providing Copies of Public Information

(a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §111.64 of this title (relating to Requesting an Exemption).

(b) Copy charge.

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.

(2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

- (A) Diskette--\$1.00;
- (B) Magnetic tape--actual cost;
- (C) Data cartridge--actual cost;
- (D) Tape cartridge--actual cost;
- (E) Rewritable CD (CD-RW)--\$1.00;
- (F) Non-rewritable CD (CD-R)--\$1.00;
- (G) Digital video disc (DVD)--\$3.00;
- (H) JAZ drive--actual cost;
- (I) Other electronic media--actual cost;
- (J) VHS video cassette--\$2.50;
- (K) Audio cassette--\$1.00;

(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper--See also §111.69 of this title)--\$.50;

(M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic--actual cost.

(c) Labor charge for programming. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

(1) The hourly charge for a programmer is \$28.50 an hour, which includes fringe benefits. Only programming services shall be charged at this hourly rate.

(2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with §552.231 of the Texas Government Code.

(3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of §552.261(b) of the Texas Government Code.

(d) Labor charge for locating, compiling, and reproducing public information.

(1) The charge for labor costs incurred in processing a request for public information is \$15 an hour, which includes fringe benefits. The labor charge includes the actual time to locate, compile, and reproduce the requested information.

(2) A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

(A) Two or more separate buildings that are not physically connected with each other; or

(B) A remote storage facility.

(3) A labor charge shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) To determine whether the governmental body will raise any exceptions to disclosure of the requested information under the Texas Government Code, Subchapter C, Chapter 552; or

(B) To research or prepare a request for a ruling by the attorney general's office pursuant to §552.301 of the Texas Government Code.

(4) When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, blackout, or otherwise obscure confidential information in order to release the public information. A labor charge shall not be made for redacting confidential information for requests of 50 or fewer pages, unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Texas Government Code, Chapter 552, §552.261(b).

(6) For purposes of paragraph (2)(A) of this subsection, two buildings connected by a covered or open sidewalk, an elevated or underground passageway, or a similar facility, are not considered to be separate buildings.

(e) Overhead charge.

(1) Whenever any labor charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(3) The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: Labor charge for locating, compiling, and reproducing, $\$15.00 \times .20 = \3.00 ; or Programming labor charge, $\$28.50 \times .20 = \5.70 . If a request requires one hour of labor charge for locating, compiling, and reproducing information ($\$15.00$ per hour); and one hour of programming labor charge ($\$28.50$ per hour), the combined overhead would be: $\$15.00 + \$28.50 = \$43.50 \times .20 = \8.70 .

(f) Microfiche and microfilm charge.

(1) If a governmental body already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. The Texas State Library and Archives Commission has the capacity to reproduce microfiche and microfilm for governmental bodies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm are encouraged to contact the Texas State Library before having the reproduction made commercially.

(2) If only a master copy of information in microform is maintained, the charge is \$.10 per page for standard size paper copies, plus any applicable labor and overhead charge for more than 50 copies.

(g) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services for requests that qualify for labor charges under current law.

(2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional labor charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the governmental body, the boxes must still be

searched for records that are responsive to the request, a labor charge is allowed according to subsection (d)(1) of this section.

(h) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to public information requests.

(3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge shall determine which category(ies) of computer system(s) used to fulfill the public information request most closely fits its existing system(s), and set its charge accordingly. Type of System--Rate: Mainframe--\$10 per CPU minute; Midsize--\$1.50 per CPU minute; Client/Server--\$2.20 per clock hour; PC or LAN--\$1.00 per clock hour.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge should be made for computer print-out time. Example: If a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows: $\$10 / 3 = \3.33 ; or $\$10 / 60 \times 20 = \3.33 .

(5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with the §552.231 of the Texas Government Code.

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(k) Sales tax. Pursuant to Office of the Comptroller of Public Accounts' rules sales tax shall not be added on charges for public information (34 TAC, Part 1, Chapter 3, Subchapter O, §3.341 and §3.342).

(l) The commission shall reevaluate and update these charges as necessary.

Source Note: The provisions of this §111.63 adopted to be effective September 18, 1996, 21 TexReg 8587; amended to be effective February 20, 1997, 22 TexReg 1625; amended to be effective December 3, 1997, 22 TexReg 11651; amended to be effective December 21, 1999, 24 TexReg 11255; amended

to be effective January 16, 2003, 28 TexReg 439; amended to be effective February 11, 2004, 29 TexReg 1189

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TITLE 1

ADMINISTRATION

PART 5

TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 111

EXECUTIVE ADMINISTRATION DIVISION

SUBCHAPTER C

COST OF COPIES OF PUBLIC INFORMATION

RULE §111.69

Examples of Charges for Copies of Public Information

The following tables present a few examples of the calculations of charges for information:

(1) TABLE 1 (Fewer than 50 pages of paper records): \$.10 per copy x number of copies (standard-size paper copies); + Labor charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

(2) TABLE 2 (More than 50 pages of paper records or nonstandard copies): \$.10 per copy x number of copies (standard-size paper copies), or cost of nonstandard copy (e.g., diskette, oversized paper, etc.); + Labor charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

(3) TABLE 3 (Information that Requires Programming or Manipulation of Data): Cost of copy (standard or nonstandard, whichever applies); + Labor charge; + Overhead charge; + Computer resource charge; + Programming time (if applicable); + Document retrieval charge (if applicable); + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

(4) TABLE 4 (Maps): Cost of paper (Cost of Roll/Avg. # of Maps); + Cost of Toner (Black or Color, # of Maps per Toner Cartridge); + Labor charge (if applicable); + Overhead charge (if applicable) + Plotter/Computer resource Charge; + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

(5) TABLE 5 (Photographs): Cost of Paper (Cost of Sheet of Photographic Paper/Avg. # of Photographs per Sheet); + Developing/Fixing Chemicals (if applicable); + Labor charge (if applicable); + Overhead charge (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

Source Note: The provisions of this §111.69 adopted to be effective September 18, 1996, 21 TexReg 8587; amended to be effective February 11, 2004, 29 TexReg 1189

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ADMINISTRATION

PART 5

TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 111

EXECUTIVE ADMINISTRATION DIVISION

SUBCHAPTER C

COST OF COPIES OF PUBLIC INFORMATION

RULE §111.70

The Texas Building and Procurement Commission Charge Schedule

The following is a summary of the charges for copies of public information that have been adopted by the Commission.

(1) Standard paper copy--\$.10 per page.

(2) Nonstandard-size copy:

(A) Diskette: \$1.00;

(B) Magnetic tape: actual cost;

(C) Data cartridge: actual cost;

(D) Tape cartridge: actual cost;

(E) Rewritable CD (CD-RW)--\$1.00;

(F) Non-rewritable CD (CD-R)--\$1.00;

(G) Digital video disc (DVD)--\$3.00;

(H) JAZ drive--actual cost;

(I) Other electronic media--actual cost;

(J) VHS video cassette--\$2.50;

(K) Audio cassette--\$1.00;

(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper)--\$.50;

(M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic)--actual cost.

(3) Labor charge:

(A) For programming--\$28.50 per hour;

- (B) For locating, compiling, and reproducing--\$15 per hour.
- (4) Overhead charge--20% of labor charge.
- (5) Microfiche or microfilm charge:
 - (A) Paper copy--\$.10 per page;
 - (B) Fiche or film copy--Actual cost.
- (6) Remote document retrieval charge--Actual cost.
- (7) Computer resource charge:
 - (A) Mainframe--\$10 per CPU minute;
 - (B) Midsize--\$1.50 per CPU minute;
 - (C) Client/Server system--\$2.20 per clock hour;
 - (D) PC or LAN--\$1.00 per clock hour.
- (8) Miscellaneous supplies--Actual cost.
- (9) Postage and shipping charge--Actual cost.
- (10) Photographs--Actual cost as calculated in accordance with §111.69(5) of this title.
- (11) Maps--Actual cost as calculated in accordance with §111.69(4) of this title.
- (12) Other costs--Actual cost.
- (13) Outsourced/Contracted Services--Actual cost for the copy. May not include development costs.
- (14) No Sales Tax--No Sales Tax shall be applied to copies of public information.

Source Note: The provisions of this §111.70 adopted to be effective September 18, 1996, 21 TexReg 8587; amended to be effective January 16, 2003, 28 TexReg 439; amended to be effective February 11, 2004, 29 TexReg 1189

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TITLE 1

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PART 5

TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 111

EXECUTIVE ADMINISTRATION DIVISION

SUBCHAPTER C

COST OF COPIES OF PUBLIC INFORMATION

RULE §111.71

Informing the Public of Basic Rights and Responsibilities under the Public Information Act

(a) Pursuant to Texas Government Code, Chapter 552, Subchapter D, §552.205, an officer for public information shall prominently display a sign in the form prescribed by the Texas Building and Procurement Commission.

(b) The sign shall contain basic information about the rights of requestors and responsibilities of governmental bodies that are subject to Chapter 552, as well as the procedures for inspecting or obtaining a copy of public information under said chapter.

(c) The sign shall have the minimum following characteristics:

- (1) Be printed on plain paper.
- (2) Be no less than 8 1/2 inches by 14 inches in total size, exclusive of framing.
- (3) The sign may be laminated to prevent alterations.

(d) The sign will contain the following wording:

(1) The Public Information Act. Texas Government Code, Chapter 552, gives you the right to access government records; and an officer for public information and the officer's agent may not ask why you want them. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. Governmental bodies shall promptly release requested information that is not confidential by law, either constitutional, statutory, or by judicial decision, or information for which an exception to disclosure has not been sought.

(2) Rights of Requestors. You have the right to:

- (A) Prompt access to information that is not confidential or otherwise protected;
- (B) Receive treatment equal to all other requestors, including accommodation in accordance with the Americans with Disabilities Act (ADA) requirements;
- (C) Receive certain kinds of information without exceptions, like the voting record of public officials, and other information;
- (D) Receive a written itemized statement of estimated charges, when charges will exceed \$40, in advance of work being started and opportunity to modify the request in response to the itemized statement;

(E) Choose whether to inspect the requested information (most often at no charge), receive copies of the information, or both;

(F) A waiver or reduction of charges if the governmental body determines that access to the information primarily benefits the general public;

(G) Receive a copy of the communication from the governmental body asking the Office of the Attorney General for a ruling on whether the information can be withheld under one of the accepted exceptions, or if the communication discloses the requested information, a redacted copy;

(H) Lodge a written complaint about overcharges for public information with the Texas Building and Procurement Commission. Complaints of other possible violations may be filed with the county or district attorney of the county where the governmental body, other than a state agency, is located. If the complaint is against the county or district attorney, the complaint must be filed with the Office of the Attorney General.

(3) Responsibilities of Governmental Bodies. All governmental bodies responding to information requests have the responsibility to:

(A) Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures;

(B) Treat all requestors uniformly and shall give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirements;

(C) Be informed about open records laws and educate employees on the requirements of those laws;

(D) Inform requestors of estimated charges greater than \$40 and any changes in the estimates above 20 percent of the original estimate, and confirm that the requestor accepts the charges, has amended the request, or has sent a complaint of overcharges to the Texas Building and Procurement Commission, in writing before finalizing the request;

(E) Inform requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time;

(F) Request a ruling from the Office of the Attorney General regarding any information the governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor;

(G) Segregate public information from information that may be withheld and provide that public information promptly;

(H) Make a good faith attempt to inform third parties when their proprietary information is being requested from the governmental body;

(I) Respond in writing to all written communications from the Texas Building and Procurement Commission regarding charges for the information. Respond to the Office of the Attorney General regarding complaints about violations of the Act.

(4) Procedures to Obtain Information.

(A) Submit a request by mail, fax, email or in person, according to a governmental body's reasonable procedures.

(B) Include enough description and detail about the information requested to enable the governmental body to accurately identify and locate the information requested.

(C) Cooperate with the governmental body's reasonable efforts to clarify the type or amount of information requested.

(5) Information to be released.

(A) You may review it promptly, and if it cannot be produced within 10 working days the public information office will notify you in writing of the reasonable date and time when it will be available;

(B) Keep all appointments to inspect records and to pick up copies. Failure to keep appointments may result in losing the opportunity to inspect the information at the time requested;

(C) Cost of Records.

(i) You must respond to any written estimate of charges within 10 business days of the date the governmental body sent it or the request is considered to be automatically withdrawn;

(ii) If estimated costs exceed \$100.00 (or \$50.00 if a governmental body has fewer than 16 full time employees) the governmental body may require a bond, prepayment or deposit;

(iii) You may ask the governmental body to determine whether providing the information primarily benefits the general public, resulting in a waiver or reduction of charges;

(iv) Make timely payment for all mutually agreed charges. A governmental body can demand payment of overdue balances exceeding \$100.00, or obtain a security deposit, before processing additional requests from you.

(6) Information that may be withheld due to an exception.

(A) By the 10th business day after a governmental body receives your written request, a governmental body must:

(i) Request an Attorney General Opinion and state which exceptions apply;

(ii) Notify the requestor of the referral to the Attorney General; and

(iii) Notify third parties if the request involves their proprietary information;

(B) Failure to request an Attorney General opinion and to notify the requestor within 10 business days will result in a presumption that the information is open unless there is a compelling reason to withhold it.

(C) Requestors may send a letter to the Attorney General arguing for release, and may review arguments made by the governmental body. If the arguments disclose the requested information, the

requestor may obtain a redacted copy.

(D) The Attorney General must render a decision no later than the 45th working day after the attorney general received the request for a decision. The attorney general may request an additional 10 working days extension.

(E) Governmental bodies may not ask the Attorney General to "reconsider" an opinion.

(7) Additional Information on Sign.

(A) The sign must contain contact information of the governmental body's officer for public information, or the officer's agent, as well as the mailing address, phone and fax numbers, and email address, if any, where requestors may send a request for information to the officer or the officer's agent. The sign must also contain the physical address at which requestors may request information in person.

(B) The sign must contain information of the local county attorney or district attorney where requestors may submit a complaint of alleged violations of the Act, as well as the contact information for the Office of the Attorney General and the Texas Building and Procurement Commission.

(C) The sign must also contain contact information of the person or persons with whom a requestor may make special arrangements for accommodation pursuant to the American with Disabilities Act.

(e) A governmental body may comply with Texas Government Code, §552.205 and this rule by posting the sign provided by the Texas Building and Procurement Commission.

Source Note: The provisions of this §111.71 adopted to be effective February 16, 2000, 25 TexReg 1092; amended to be effective January 16, 2003, 28 TexReg 439; amended to be effective February 11, 2004, 29 TexReg 1189

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1-800-252-3718
FAX (512) 435-6118

**WHO IS IN CHARGE
OF WHAT AND WHEN?**

Presented by

**Robin A. Ramsay
Presiding Judge
Denton**

WHOSE JOB IS IT?



ACTIVITY	JUDGE	CLERK	MAGISTRATE	PROSECUTOR	NON-JUDICIAL PERSONNEL
Accept complaints in municipal court					
Accept complaints – Class A & B misdemeanors & felonies					
Approve or dictate charges and language in complaints					
Administer oath to affiant swearing to complaint in municipal court					
Administer oath to affiant swearing to complaint – Class A & B misdemeanors & felonies					
Maintain docket					
Request pleas from defendants					
Accept pleas from defendants					
Accept fines					
Collect fines					
Grant extension or time payment					
Plea bargain or negotiate dismissals					
Sign judgments					
Issue an arrest warrant					
Issue capias or capias pro fine					
Issue summons					
Execute warrant or capias					
Execute summons					
Set bail					
Forfeit bail					
Remit bail					
Hear evidence					
Rule on law or facts					



WHOSE JOB IS IT? (continued)

ACTIVITY	JUDGE	CLERK	MAGISTRATE	PROSECUTOR	NON-JUDICIAL PERSONNEL
Summon jurors					
Grant continuances					
Grant or deny motions					
Determine witnesses to be subpoenaed or called					
Issue subpoenas					
Serve subpoenas					
Dismiss cases					
Prepare state reports					
Determine office policy					
Explain procedures to defendants					
Prepare appeal for transcription to appellate court					
Train employees					
Grant a driving safety course					
Grant deferred disposition					
Give legal advice					
Prepare court budget					
Conduct inquests					
Issue peace bonds					
Conduct examining trials					
Determine probable cause					
Issue emergency mental commitments					
Give magistrate warnings to arrested persons					
Issue emergency protection orders					

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Proper Reporting to the OCA

Presented by

Sandra Mabbett
Judicial Information Specialist
Office of Court Administration

OBJECTIVES

By the end of the session, participants will be able to:

1. Define the purpose of the report. (Section 72.082, Government Code)
2. Complete the report. (Sections 171.1 and 171.2, Texas Administrative Code)
3. Explain the rules for completing the report. (Section 71.035, Government Code)
4. Explain how to report electronically.
5. Determine how to use the statistics reported for court purposes.



Proper Reporting to the



Office of Court Administration

Objectives

- Reporting requirements and reasons for reporting
- Use of information
- What should be reported where?

Legal Requirements

- Texas Government Code, Chapter 71, Section 71.035(b)
- Texas Administrative Code, Sections 171.1 & 171.2

Importance of Caseload Data

- required by law or
- needed to make decisions regarding the jurisdiction, structure, and needs of the court system

Importance of Caseload Data

- Work loads
- Court performance
- Trends
- Comparisons

Court Data Users

- | | |
|--|--------------------------------------|
| City councils | Professors, students |
| City financial/budget officers | Department of Criminal Justice |
| City auditors | Legislative Council |
| Other judges | State Auditor |
| Other clerks | Attorney General's Office |
| Commission on Judicial Conduct | Governor's Office |
| Comptroller | State Bar |
| Office of Court Administration | Legislators & legislative committees |
| Legislative Budget Board | Commissioners courts |
| Department of Public Safety | County auditors/treasurers |
| Department of Transportation | Texas Association of Counties |
| National Center for State Courts | Councils of Governments |
| The media | Law enforcement |
| The general public | Law firms & attorneys |
| Special interest groups: MADD,
United Way | Lobbyists |

General Concerns

Look at your form or computer generated report

- July 2003
- Juvenile section

General Concerns

- Submit a report every month, even when there is **no activity** in the court for that month
- Include only that activity which **occurred during the reporting month**

Filings & Dispositions

- Report only cases over which your court has jurisdiction
- **Do not** include cases handled by judge as a magistrate
- **Do** include juvenile cases over which your court has jurisdiction

Filings & Dispositions

- **VPTAs:** Report as State Law violation
- Call us if you have other questions

Dispositions

- Report only those cases in which the **judge has signed a final judgment**
- **One** disposition per case

Dispositions: Prior to Trial

- Bond Forfeitures

Report only when judge signs **final judgment** on the bond forfeiture

Judgment nisi is not a final judgment

Dispositions: Prior to Trial

■ Fined



- Report cases disposed by payment of fine **without appearing before a judge** (mail, online, in person, or credit card by phone)
- Disposition date is date judgment was signed (includes payment plans)

Dispositions: At Trial

■ Trial by Judge

Trials, of course!

However,.....



Trial by Judge

Include:

- Acceptance of guilty or no contest pleas
- Appearance to plead not guilty but later paid fine
- Appearance to obtain deferral but later paid fine or deferral was revoked

Report when judge signs final judgment

**Trial by Judge:
Finding of Guilty**

Do not include dismissed cases involving guilty/no contest plea before judge or finding of guilt by judge (i.e., deferred disposition)

Dispositions: At Trial

■ **Dismissed at Trial**

Report all cases dismissed at or after trial that are not reported elsewhere as dismissed on the form

Do NOT include driver safety, deferred disposition or compliance dismissals

**Dispositions:
Other Cases Dismissed**

- Driving safety course
- Deferred disposition
- Proof of financial responsibility
- Proof of valid inspection, registration, driver's license

Do not report until the charge is dismissed

Community Service

Report only those cases in which community service was ordered to **satisfy a fine or costs**



Community Service

Do not :

- include cases in which community service is a mandatory sanction for the offense

- report the number of hours ordered or served

Juvenile Elements Added September 1, 2003

Number of cases filed for:

- 1) failure to attend school;
- 2) parent contributing to nonattendance;
- 3) violation of a local daytime curfew ordinance.



Number of **incidents** in which a child violates an order and/or fails to pay under circumstances that would constitute contempt of court and is:

- 1) referred to juvenile court for delinquent conduct or
- 2) held in contempt, fined, and/or denied driving privileges

Magistrate Duties

- Warnings administered to juveniles
- Juvenile statements certified
- Search warrants issued
- Arrest warrants issued
- Magistrate warnings given
- Emergency mental health hearings held
- Magistrate's orders for emergency protection

Total Revenue



- Include fines, fees, court costs, forfeited bonds, etc.
- Report revenue in the month that it was collected



Total Revenue

Do not:

- include amounts retained by collections agencies
- report amounts assessed



DO's

&

DON'Ts

WRONG WAY

DO's



- Use the proper form (July 2003)
- Label the report on both pages with court name, month, year
- Turn in the report in a timely manner, but **turn in even if late.**
- Fill out the front of the form in it's entirety, including the "Prepared By" section

DO's



- Include only that activity which **occurred during the reporting month**
- Fill out the entire form, **including total revenue** (blanks will be interpreted as zeros)
- Submit a report every month, **even when there is no activity in the court for that month**

DO's



- Make sure that the completed form is **legible**
- Keep copies of each report submitted
- Make corrections at any time
- Give us a call if you have questions!

DO's

If your report is computer generated:

- Make sure your **court's name** is on your form or computer printout !!
- Make sure the printout is **legible !!**

DO's



- Make sure that it matches the **latest** municipal court reporting form (July 2003)

DON'Ts



- Create or modify categories on the form
- Enter data in shaded areas
- Use case numbers, negative numbers, or Roman numerals

DON'Ts

- Report number of community service hours ordered
- Enter dollar figures in anything other than the Total Revenue line



DON'Ts

- Submit separate reports
- Send us your traffic tickets or documents that should be sent to DPS



Trial Court Judicial Data Management System



<http://data.courts.state.tx.us>

Status of Online Reporting

As of September 30, 2005:

- 179 district clerks (70 %)
- 194 county clerks (76 %)
- 422 justice of the peace courts (51 %)
- 310 municipal courts (34 %)



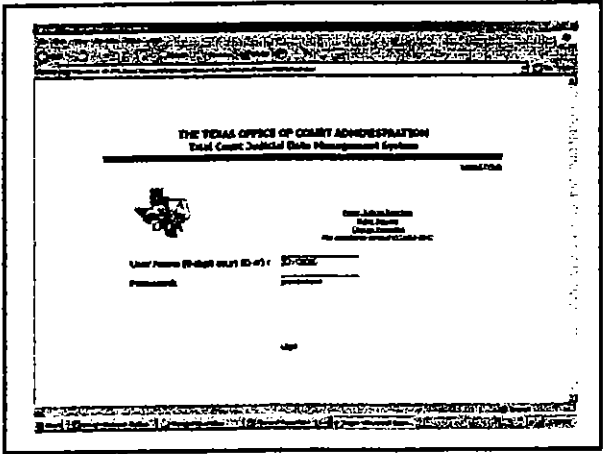
Getting Started

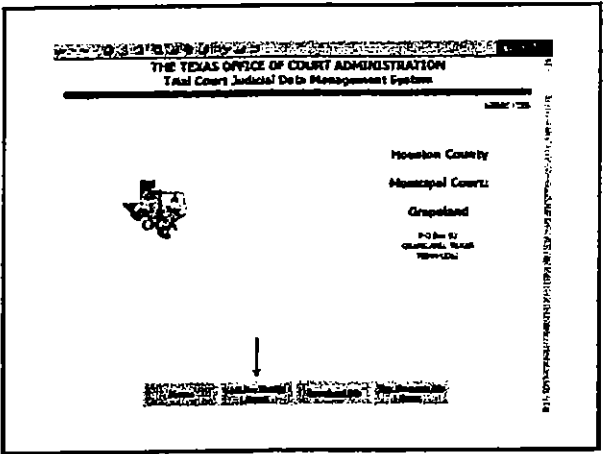


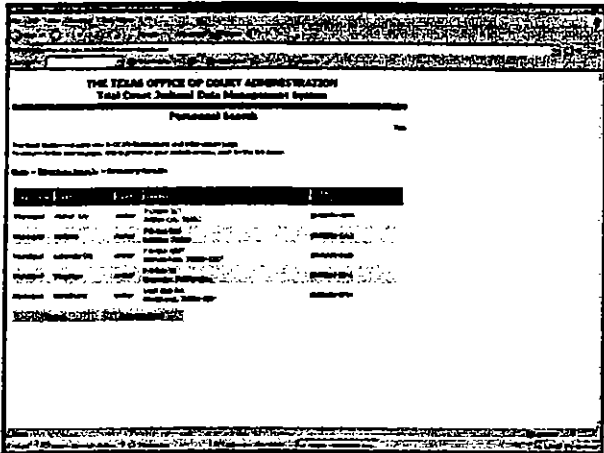
Contact OCA's Help Desk:

(512) 463-1642

to obtain a User ID and password







Contact Information

Municipal Court Reports:

Sandra Mabbett: (512) 463-1640

sandra.mabbett@courts.state.tx.us



OCA Help Desk: (512) 463-1642

Other reporting concerns:

Angela Garcia (512) 463-1625

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FAX (512) 435-6118

Using Differences Constructively: Understanding Psychological Types

Presented by

Hope Lochridge
Executive Director
TMCEC
Austin

The Myers-Briggs Type Indicator instrument (MBTI) is the most widely used psychological instrument in the world. Over 2 million instruments are sold annually and it has become a "household name" associated with a wide variety of uses and applications. It captures the multi-faceted way that our minds process information. By looking at mental processes, the MBTI results provide non-threatening reports that present human interaction and personality preferences in a positive manner. No answer or preference is considered more correct or better than another. Understanding preferences will provide participants with a new way of looking at workplace interactions and conflicts. It will help clerks understand their professional relationships with defendants, co-workers, supervisors, and judges in their courts.

This class is limited to 20 participants. Please sign up at the TMCEC Registration Desk

OBJECTIVES

By the end of the session, clerks will:

1. Be introduced to the concept of type and temperament based on the research of Carl Jung, Isabel Myers, and Katherine Briggs.
2. Participate in a self-assessment using the MBTI instrument that reflects personal and professional preferences.
3. Be able to apply the Myers-Briggs "types" to communication issues, conflict management, problem solving, team building, and learning styles that commonly appear in court.



**Using Differences
Constructively:
Understanding Psychological
Type**

Hope Lochridge
TMCEC Executive Director

What is Type?

- Normal, Innate Differences or Preferences in Normal People
- Focus or Orientation of Energy
Extroversion (E) vs. Introversion (I)
- Looks at our Mental Processes:
Perceiving & Judging
P = Sensing (S) & Initiating (N)
J = Thinking (T) & Feeling (F)
- Our Attitude toward the World
Judging (J) and Perceiving (P)

Objectives

1. Be introduced to the concept of *type* based on the research of Carl Jung, Isabel Myers and Katherine Briggs and *temperament* based on book by David Keirsey.
2. Participate in a self-assessment using the MBTI instrument that reflects personal and professional preferences.
3. Be able to apply the Myers-Briggs "types" to communication issues, conflict management, problem solving, team building, and learning styles that commonly appear in court.

Introductions

- Name & Court
- Position & Number of Years at Court
- What are some examples of conflict and communications problems that occur in your court?

Psychological Type

Defined as an underlying personality pattern resulting from the dynamic interaction of our four preferences, environmental influences, and our OWN choices.

Our Attitude Toward the World

Judging	Perceiving
5 4 3 2 1 0 1 2 3 4 5		
Margaret.....		Hope

Review

- Just a preference
- No right or wrong
- No better or worse
- Don't stereotype others
- Seek acceptance and appreciation
- Type is dynamic - self-balancing, ever changing

Judging	Attitude	Perceiving
<ul style="list-style-type: none"> • Scheduled • Organize their lives • Systematic • Methodical • Makes short & long term plans • Likes things decided • Avoids last minute stresses 		<ul style="list-style-type: none"> • Spontaneous • Flexible • Casual • Open-ended • Adapts, changes course • Likes things loose • Open to change • Feels energized by last minute changes

Gifts of Judgment

- System in doing things
- Order in possessions
- A planned life
- Sustained effort
- Decisiveness
- Exercise of authority
- Settled opinions
- Acceptance of routine

Gifts of Perception

- Spontaneity
- Open-mindedness
- Understanding
- Tolerance
- Curiosity
- Zest for experience
- Adaptability

Review:

- Just a preference
- No right or wrong
- No better or worse
- Don't stereotype others
- Seek acceptance and appreciation
- Type is dynamic - self-balancing, ever changing

Let's Try the Inventory

- Remember choose your preference
- Don't associate only with work or family but with the real you
- OK to leave questions blank if you get stuck
- No right or wrong answer

Extroversion	Introversion
<ul style="list-style-type: none"> • Attuned to the external environment • Prefers to communicate by talking • Works out ideas by talking through them • Broad interests • Sociable and expressive • Takes initiative in work and relationships 	<ul style="list-style-type: none"> • Drawn to their inner world • Prefers communicating in writing • Works out ideas by reflecting on them • Focused in depth on their interests • Private & contained • Takes initiative when situation or issue is very important to them

Write 3-4 sentences about the picture.

Sensing Language Characteristics	
<ul style="list-style-type: none"> • Focus • Prefers • Values • Approach • Effects 	<p>Facts & details, both past & present</p> <p>Practical, real world experience</p> <p>Personal experience</p> <p>Linear or sequential</p> <p>What is literally said or done</p> <p>Presents only the facts</p> <p>Impatient with abstract thought</p> <p>Backtracks when details are omitted</p>

iNtuiting Language Characteristics

- Focus Concepts, possibilities, meanings
- Prefers Big picture; theory
- Values What could be
- Approach Relational; Connecting ideas
- Effects Identifies the meaning between the lines
 - Tends to exaggerate or embellish
 - Appears scattered
 - Rambles
 - Omits the details

Sensing

iNtuition

- | | |
|--|---|
| <ul style="list-style-type: none">• Present realities• Factual & concrete• Focus on real & actual• Remembers specifics• Builds carefully and thoroughly toward conclusions• Understands theories and ideas through practical applications• Trusts experience | <ul style="list-style-type: none">• Oriented to future possibilities• Imaginative, verbally creative• Sees patterns & meanings in data• Moves quickly to conclusions• Follows hunches• Clarifies & theories before putting them into practice• Trusts inspiration |
|--|---|

Sensing Types Need Intuitive Types to

- Bring up new possibilities
- To supply ingenuity on problems
- To read the signs of coming change
- To have enthusiasm
- To tackle difficulties with new zest
- To show that the joys of the future are worth looking for

Intuitive Types Need Sensing Types to

- Bring up pertinent facts
- Apply experience to problems
- Read the fine print in a contract
- Notice what needs attention now
- Keep track of essential details
- Face difficulties with realism
- To remind them that the joys of the present are important

Thinking Language Characteristics

- Focus Results and providing logical support
- Prefers Cause and effect
- Values Logic and consistency
- Approach Objective, analytical and structural
- Effects Sounds cold
Provides long, logical answers
Clarifies by questioning
Tends to be abrupt
Quick to identify inconsistencies

Problem Solving

- The city manager has asked you to identify the criteria to be used to lay off 3 out of 10 employees in court. All have been with the court approximately the same amount of time, doing the same kind of work & have the same level of performance.

Feeling Language Characteristics

- Focus People, relationships, society norms
- Prefers Interaction; face-to-face meetings
- Values Personal relationships; being needed
- Approach Spontaneous; Personal
- Effects Personal connection
Emotional roller coaster
Remarks are taken personally
Tactful interaction
"Should" and "ought to"

Thinking Feeling (Decision Making Function)

- | | |
|--|--|
| <ul style="list-style-type: none">• Analytical• Uses cause & effect reasoning• Solves problems with logic• Reasonable• Can be tough minded• Fair - wants everyone treated equally | <ul style="list-style-type: none">• Empathetic• Guided by personal values• Assesses impacts of decisions on people• Compassionate• May appear tender hearted• Fair as an individual |
|--|--|

Feeling Types Need Thinking Types to

- Analyze
- Organize
- Find the flaws in advance
- Hold consistently to policy
- Stand firm against opposition
- Fire people when necessary

Thinking Types Need Feeling Types

- To Persuade
- To Forecast how others will feel
- To Arouse enthusiasm
- To Teach
- To Sell
- To Appreciate the thinker!

Why There May Be Variance

- Correct 85% of the time.
- May vary because of:
 - Situational basis
 - Environmental - stress
 - May be working on a tertiary or inferior preference (less dominant one)
 - Did you answer as you want to be?
 - Or your parents wants you to be?
 - Age (development vs. lack of differentiation)

Compare Self-Selection to MBTI

Same?
Similar?
Slight?
Different?

Myers-Briggs® Preference Types and Total Percentage within the Population

ISTJ 6% The Trustee Dependable Exacting Factual Logical Organized Practical Realistic	ISFJ 6% The Conservator Accommodating Detailed Devoted Loyal Meticulous Organized Patient	INFJ 1% The Author Compassionate Conceptual Creative Deep Determined Idealistic Intense	INTJ 1% The Scientist Analytical Autonomous Determined Firm Global Independent Logical
ISTP 5% The Artisan Adaptable Adventurous Applied Expedient Factual Independent Logical	ISFP 5% The Artist Adaptable Caring Cooperative Gentle Harmonious Loyal Modest	INFP 1% The Questor Adaptable Committed Curious Deep Devoted Empathetic Gentle	INTP 1% The Architect Autonomous Cognitive Detached Independent Logical Original Precise
ESTP 13% The Promoter Activity-oriented Adaptable Adventurous Alert Easygoing Energetic Outgoing	ESFP 15% The Entertainer Adaptable Casual Cooperative Easygoing Enthusiastic Friendly Outgoing	ENFP 5% The Journalist Creative Curious Energetic Enthusiastic Expressive Friendly Imaginative	ENTP 5% The Inventor Adaptive Analytical Challenging Clever Enterprising Independent Original
ESTJ 13% The Administrator Decisive Direct Efficient Gregarious Logical Objective Organized	ESFJ 13% The Seller Conscientious Cooperative Harmonious Loyal Personable Planful Responsible	ENFJ 5% The Pedagogue Appreciative Congenial Diplomatic Energetic Enthusiastic Expressive Idealistic	ENTJ 5% The Fieldmarshal Challenging Controlled Decisive Energetic Logical Methodical Objective

Seeking Best Fit

- Self discovery
- A life long process
- Dive deeper
 - Read and discuss
 - Ask friends, family & colleagues
 - Look at pairings
 - Further reading: page 43
 - Break your type code
 - Look at temperament

**Don't do unto others as you
would
have done unto you.**

Their Type might be different!

Thank you for participating!

Have a great seminar and safe trip
home!

Dynamic Type Table

(For Using Type Effectively)

<p><u>ISTJ</u></p> <p>Si Te Fi Ne Se Ti Fe Ni</p> <p>Guardian</p> <p>OP: ESTP DO: INFJ</p>	<p><u>ISFJ</u></p> <p>Si Fe Ti Ne Se Fi Te Ni</p> <p>Guardian</p> <p>OP: ESFP DO: INTJ</p>	<p><u>INFJ</u></p> <p>Ni Fe Ti Se Ne Fi Te Si</p> <p>Idealist</p> <p>OP: ENFP DO: ISTP</p>	<p><u>INTJ</u></p> <p>Ni Te Fi Se Ne Ti Fe Si</p> <p>Rational</p> <p>OP: ESTP DO: INFJ</p>
<p><u>ISTP</u></p> <p>Ti Se Ni Fe Te Si Ne Fi</p> <p>Artisan</p> <p>OP: ESTJ DO: INFJ</p>	<p><u>ISFP</u></p> <p>Fi Se Ni Te Fe Si Ne Ti</p> <p>Artisan</p> <p>OP: ESFP DO: INTJ</p>	<p><u>INFP</u></p> <p>Fi Ne Si Te Fe Ni Se Ti</p> <p>Idealist</p> <p>OP: ENFP DO: ISTP</p>	<p><u>INTP</u></p> <p>Ti Ne Si Fe Te Ni Se Fi</p> <p>Rational</p> <p>OP: ENTP DO: ISFP</p>
<p><u>ESTP</u></p> <p>Se Ti Fe Ni Si Te Fi Ne</p> <p>Artisan</p> <p>OP: ISTP DO: INFJ</p>	<p><u>ESFP</u></p> <p>Se Fi Te Ni Si Fe Ti Ne</p> <p>Artisan</p> <p>OP: ISFP DO: INTJ</p>	<p><u>ENFP</u></p> <p>Ne Fi Te Si Ni Fe Ti Se</p> <p>Idealist</p> <p>OP: INFJ DO: ESTP</p>	<p><u>ENTP</u></p> <p>Ne Ti Fe Si Ni Te Fi Se</p> <p>Rational</p> <p>OP: INTJ DO: ESFP</p>
<p><u>ESTJ</u></p> <p>Te Si Ne Fi Ti Se Ni Fe</p> <p>Guardian</p> <p>OP: ISTP DO: INFJ</p>	<p><u>ESFJ</u></p> <p>Fe Si Ne Ti Fi Se Ni Te</p> <p>Guardian</p> <p>OP: ISFP DO: INTJ</p>	<p><u>ENFJ</u></p> <p>Fe Ni Se Ti Fi Ne Si Te</p> <p>Idealist</p> <p>OP: INFJ DO: ESTP</p>	<p><u>ENTJ</u></p> <p>Te Ni Se Fi Ti Ne Si Fe</p> <p>Rational</p> <p>OP: INTJ DO: ESFP</p>

Myers-Briggs® Preference Types and total percentage within the population

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Source: *Please Understand Me* by David Keirsey and Marilyn Bates, Gnosology Books, Ltd.

Editor's Note

The following phrases and statements are the responses to The Sixteen Types questions (no longer used) made by participants in the MBTI Professional Qualifying Program that was first offered by the Institute for Type Development and is now offered by Type Resources. These responses have been consolidated and reduced to short quick to read responses while maintaining the meaning of the phrases and statements.

The data come from groups of people or a single individual. As always when dealing with generalized data, caution should be used when generalizing from these responses to specific people preferring these type codes.

ESFP

Dynamic Pattern: Se, Fi, Te, Ni, Si, Fe, Ti, Ne
Temperament: Artisan

Motto

We're here for a good time, not a long time, so have a good time.
You only live once – make the most of it.
Open ear, Open shoulder, Open heart.

Strengths

Sociable
Good communicator
Happy
Humorous
Gregarious
Practical
Adaptable (to change)
Able to:
Have fun
Make people comfortable

Weaknesses

Easily distracted
Have poor sense of time
Difficulty keeping orderly systems
Get bored quickly
Flip from one idea to another
Find it hard to be objective
Try to please everyone

Job Satisfiers

Working with and helping people
Feeling appreciated and part of the organization
Ability to be myself
Lack of rules and procedures
Not being confined to four walls
Careers in service and/or entertainment
Variety
Stability

Assets to the Group

Catalyst for openness
Sense of ease
Provide optimism
Enable people to feel they are important
Supply harmonizing (unity and teamwork) influence
Desire to get things done
Supply energizing effect
Bring sense of fun and warmth

Common Stressors

Not having control over my environment
Conflict with others
Being in long-term debt
People who take forever to make decisions
Un-energizing, un-talkative people
Unexciting events
Being alone, not by choice
Not being taken seriously

Behaviors Under Stress

Think negatively about self or others
Very strong emotions – crying, yelling,
leaving
Use cuss words
Speak very cutting words
Withdraw

Enjoys

"Fun"
No responsibility
Sports
Picnics
Family
Being with people
Having fun with people
Lunch with others
Dinner parties
Doing lots of things – none perfectly
Thrill seeking

Values

Living life to its fullest
Helping others
Variety in life
Action
Having fun
Friendships
New experiences

Notes:

ESTP

Dynamic Pattern: Se, Ti, Fe, Ni, Si, Te, Fi, Ne

Temperament: Artisan

Motto

Experience the world as it is, without fear or anger.

Let's do it.

Make it happen.

Strengths

Enthusiastic

Present-focused

Alert

Quick to size up a situation

Practical

Skilled at trouble shooting

Good negotiator/mediator

Able to:

Keep things calm in a crisis

Negotiate

Weaknesses

Can be insensitive and not recognize
people's feelings

Impatient with theory

Get bored when subjects aren't
practical

Do not pay attention to detail

Do not open up with others

Have difficulty with written information

Job Satisfiers

Opportunity to work with visible things

(examples include building,
engineering and cooking)

Having a feeling of freedom

Ability to move around to different
locations

Having a variety of assignments

Ability to act on facts and data

Public recognition

Assets to the Group

Deal with reality

Keep people focused

Keep process moving on target, yet not
afraid to change course

Get things done in a steady way

Bring sense of humor

Can tolerate and deal well with people
under stress

Recognizes when there is "something
missing"

Common Stressors

Meeting deadlines
Having meetings all day
Exams
Conflicting commitments

Behaviors Under Stress

Get nasty
Become short tempered
Display sarcasm
Tend to withdraw and get "down on self"
"Run around"/stay away (from office)

Enjoys

Sports and/or outdoor activities
Jogging, walking, hiking, biking
Aerobics
Going to movies
Going out to dinner
Shopping
Travel
Playing games
Listening to music
Dancing

Values

Action
Spontaneity
The "here and now"
Practicality
Physical comforts
Fraternal relationships
Freedom

Notes:

ISTJ

Dynamic Pattern: Si, Te, Fi, Ne, Se, Ti, Fe, Ni
Temperament: Guardian

Motto

We rely on inner strength.
We honor our commitment.

Strengths

Detail oriented
Systematic
Analytical
Logical and objective
Hard-working and persistent
Stable
Trustworthy
Observant
Quiet and modest

Weaknesses

Slow decision makers
Find decisions difficult
Very private
Ultra-conservative
Self deprecating
Can't say "no"
Allow others to take advantage of them

Job Satisfiers

Working independently in a controlled environment
Defined responsibilities
Built-in incentives
Challenges
Fulfilling needs, values and standards
Allowing for self-defining roles

Assets to the Group

Realism and order
Detail focused
Observant
Ability to develop logical and well-planned decisions
Economical
Concern for well being of the group

Common Stressors

Talking about feelings
Dealing with emotions
Being expected to infer what is going on in a situation
Working on too many things at once

Behaviors Under Stress

Hold feelings/stress inside
Appear relatively calm with little emotion shown – then lose control
Become even more introverted

Enjoys

Completing projects (especially if the project has been unfinished for a long time)
Mindless manual recreation
Participative or spectator sports
Playing games
Organizing things

Values

Tradition
Sense of family or belonging
Loyalty
Protecting others
Helping others
Structure and order

Notes:

ISFJ

Dynamic Pattern: Si, Fe, Ti, Ne, Se, Fi, Te, Ni

Temperament: Guardian

Motto

Slow & steady wins the race.

If it's worth doing, it's worth doing well.

Like a good scout, we are loyal, dependable, and responsible.

Strengths

Concerned about others
Tactful
Kind and sympathetic
Realistic
Practical
Follow procedures well
Dependable and loyal
Systematic and thorough
Supportive to those in need
Hardworking

Weaknesses

Workaholic – can't say no
Internalization/bottling-up emotions
Self critical thoughts
Self undervaluing thoughts
Anxiousness
Pessimism
Difficulty with delegation/asking for help
Possible "all work, no play" mentality
Possible resentfulness

Job Satisfiers

Feeling needed
Being empowered to meet individual
and/or group needs
Having the ability to be of help

Assets to the Group

Tactfulness
Harmony building
Sensitivity
Supportiveness
Detail focused, especially when
planning
Dependability
Faithfulness/loyalty
Reliability
Provide order & structure
Will maintain the group
Provide a family focus

Common Stressors

Witnessing aggression towards others
Being or interacting with insensitive people
Disorganization
Not staying on schedule
Randomly flipping from topic to topic
Waiting
Going to large parties
Meeting new people
Shopping in large crowds

Behaviors Under Stress

Withdraw into self
May have difficulty functioning
May get sick
May cry
Can anticipate the worst case scenario
May try to stop everyone else from having control

Enjoys

Camping/being in the woods
Volunteering
Sketching
Making crafts
Sewing or knitting
Interior decorating
Reading – particularly in areas of interest

Values

Tradition
Family
Harmony
Caring for others

Notes:

INTJ

Dynamic Pattern: Ni, Te, Fi, Se, Ne, Ti, Fe, Si

Temperament: Rational

Motto

Willing to completely redesign the wheel to make it more efficient.

Let me dream my dreams, I'll share them with you when I do!

An insight is a precious thing.

There must be a better way.

Strengths

Innovative
Able to solve problems
Intuitive
Persevering and tenacious
Able to streamline
Imaginative
Creative
Able to see consequences
Intelligent
Analytical
Objective
Purposeful
Self-confident

Weaknesses

Stubbornness
Arrogance
Difficulty letting go of an idea
Tendency to give too much information
Defensiveness (especially when not feeling competent to give the best answer)
Tendency to over-schedule
Obliviousness toward others' feelings

Job Satisfiers

Challenges
Problem solving opportunities
Working where innovation is encouraged and where system work is primary
Restructuring systems/processes
Being allowed to use management skills
Creative program development
Optimizing efficiencies

Assets to the Group

Give sense of coherence/stability
Competence
Logical analysis
Leadership
Willingness and ability to explore possibilities
Contribute vision
Offer solutions
Find creative approaches
Make decisions easily
Focus on the task

Common Stressors

Confusion/lack of structure
Too many things going on or too many demands at once
Lack of completion or resolution
Too much group activity
Crowds of people
Small talk
Spontaneous public speaking
Witnessing irresponsibility
No time to reflect
Public personal disclosure

Behaviors Under Stress

Will withdraw in situations when threatened by someone's anger
May become a scared child inside
May outwardly appear cold and unfeeling
May stop thinking
Feelings may come like a volcano of anger

Enjoys

Reading
Running/walking
Gardening
Crossword puzzles
Hand work
Accounting
Physical activity
Strategy games

Values

Competency/expertise
Continuous improvement
Intellectual growth
Autonomy
Logic
Systems

Notes:

INFJ

Dynamic Pattern: Ni, Fe, Ti, Se, Ne, Fi, Te, Si

Temperament: Idealist

Motto

Seeker of wisdom and truth.
Don't keep me on the surface.
Still waters run deep.

Strengths

Able to form close lasting friendships
Considerate
Supportive
Caring
Insightful with regard to people
Able to connect random thoughts to
achieve understanding
Enthusiastic (about new ideas)

Weaknesses

Weaknesses
Overly sensitive
Take things personally
Can be too intense, leading to burnout
May get trapped in desire to please
Hard to get to know
Very vulnerable
Poor with details

Job Satisfiers

Changing the system
Facilitating personal growth
Doing work that has depth
Being personally challenged
Empowering others
Variety of tasks/ responsibilities
New starts
Positions that allow for development of
many skills and abilities

Assets to the Group

See possibilities of the whole group
See possibilities of the individual group
members
Will motivate others (by praise &
affirmation)
Provide great understanding with regard
to people
Provide visionary view
Provide strategic planning capability
Will initiate groups/
projects/organizations,
Provide support to members

Common Stressors

Routine and/or tedious details
Repetitive tasks
Lack of control
Unfeeling arbitrary decisions
Unfairness
Unfaithfulness
Insensitivity
Emotional conflict
Last minute changes in plans
Overbearing, aggressive individuals
Disharmony

Behaviors Under Stress

Will raise voice; may yell
May become defensive
May attack back unless able to control
rage
May become physically ill
May contract a psychosomatic
illnesses
May "go to pieces"

Enjoys

One-on-one conversation
Listening to & playing music
Dancing
Painting
Attending workshops
Going to plays
Walking in the woods & along the
beach
Writing poetry & essays
Being with children
Wading in streams
Playing creative games

Values

Individual people and the uniqueness
each person brings
Diversity
Personal ethics
Working toward the "greater good"

Notes:

ENFP

Dynamic Pattern: Ne, Fi, Te, Si, Ni, Fe, Ti, Se

Temperament: Idealist

Motto

Fly now, pay later.

Getting there is half the fun.

Go for it! Anything is possible.

Strengths

Creative and innovative
Ease with concepts
Enthusiastic and committed
Intuitive
Motivational
Conscious of global view
Optimistic
Perceptive
Humorous
Great communicator
Flexible
Spontaneous
Adaptable/able to "wing" it

Job Satisfiers

Freedom to fulfill self
Variety
Sequentially related careers
Open-ended environment
Being valued for having creativity & imagination
Positions allowing for self-expression
Ability to make significant contribution to persons/society/world

Weaknesses

Need stimulation
Find it difficult to stay with something
Weigh/see too many options
Can appear scattered
Can be oversensitive
Hard to get close to
Impatient with routine
Don't read or follow directions well
Get over-committed
Hold too many interests

Assets to the Group

Add spice
Bring humor
Generate possibilities
Care for people
Can dream up what we should do
Will involve others
Provide nurturing, personal warmth and friendliness
Not concerned with "pecking order"
Can facilitate
Want to serve others

Common Stressors

Following a structure
Schedules, boring routine
Black-and-white thinking
People trying to control me
All work and no play
Disappointments regarding relationships
People not appreciating possibilities
Single-mindedness
Attention to detail
Time management
Nit-picky situations

Behaviors Under Stress

Act irritable to others, impatient
Distract self by moving from activity to activity
Withdraw until pain is so great that I turn to others for help
Get depressed
Get introspective
Organize physical environment

Enjoys

Adventure
Travel
Writing and reading
Music, art, theater and dance
Photography
Outdoor activities, nature
Getting together with friends
Watching the tide at beach,
daydreaming/fantasizing
Conference/workshop junkies.

Values

Bring out the best in others
Imagination
New possibilities
Idealism
Close personal relationships
Trust
Harmony
Authenticity
Fun

Notes:

ENTP

Dynamic Pattern: Ne, Ti, Fe, Si, Ni, Te, Fi, Se
Temperament: Rational

Motto

Don't confuse me with the facts.
What's next? Are we done yet?
Tomorrow is another day.
Do it till you get it right.

Strengths

Creative
Perceptive
Interested in wide variety of topics
Insightful
Give people benefit of the doubt
Visionary
Energetic
Enthusiastic
Self confident
Spontaneous
Able to synthesize information

Weaknesses

Highly critical
Short attention span
Lack follow through
Easily bored
Easily distracted
Take on too many projects
Lack of closure
Trouble making decisions
Low tolerance for details
Can be blunt

Job Satisfiers

Freedom
Flexibility
Independence
Variety
Creative and innovative projects
Minimal routine
Positions that allow for understanding
of theories & systems
Jobs that allow for improvement of
human systems

Assets to the Group

Leadership
Excellent change master
Motivate/encourage others
Add imagination & energy to group
Get things moving
Offer up new ideas
Versatile skills
Analytical input
Synthesize ideas
See big picture
Humorous

Common Stressors

Organizing details
Methodical or detail-oriented situations
Situations where feelings are discussed
Attention to detail
Routine work
Planning a whole day
Listening to people drone on about every little thing or their feelings

Behaviors Under Stress

Zero in on petty details and criticize
Become impatient
Use a range of behaviors to deflect/vent stress and anger
Become very angry and lash out toward those perceived to be incompetent and/or who caused the situation
Walk for hours
Can become hysterical

Enjoys

Doing professional tasks that are liked and doing it well
Putting ideas, people and/or programs together
Going to movies
Giving parties
Being with friends
Traveling
Reading
Doing lots and lots of things

Values

Quick intellect
Intellectual stimulation
Variety
The "big picture"
Entrepreneurial thinking
Seeing all the possibilities

Notes:

ESTJ

Dynamic Pattern: Te, Si, Ne, Fi, Ti, Se, Ni, Fe

Temperament: Guardian

Motto

Find out the facts and move on – love action.

Idle hands are the devil's handiwork.

Fish or cut bait.

Strengths

Organized
Decisive
Endurance/perseverance
Warm when needed
Punctual
Responsible
Realistic
Practical
Loyal
Dutiful
Won't shoot from the hip
Able to lead others

Weaknesses

Can be perceived as cold
Don't like interruptions
Make decisions too quickly
May not consider human factor
Unaware of others' feelings
Impatient
Have difficulty making order out of chaos
May have tunnel vision
Inflexible
Perceiving we don't have a weakness

Job Satisfiers

Organizational work
Working with systems
Positions in applied sciences
Mechanical/building tasks
Group processes where lines of procedure are clear
Careers utilizing motor skill
Logic
Ability to make decisions
Goals
Success
Stability

Assets to the Group

Get job done
Punctual
Know the rules & play by them
Play team ball
Uphold traditions
Keep things on an even keel
Will promote harmony
Will communicate clearly

Common Stressors

Incompetence or stupidity
"Pie in the sky" attitude
Physically messy environments
Inefficiency
Indecision
Constant interruptions
Constant change in priorities
Being forced to make something out of nothing
Dealing with the "feeling" side of people

Behaviors Under Stress

Try to force decisions
Try to determine the issues
Become calm and deliberate
Become wound-up/tight
Passively participate/hide tension
Ignore people
Become problem oriented
Put on blinders to get job done
Will do something physical

Enjoys

Driving and being on the move (but find it hard to separate from duties)
Being with family/playing with children
Working in civic/religiously related activities
Public speaking
Sports
Telling stories
Reading

Values

Tradition
Structure and order
Family
Protecting others
Respect for self and others
Excellence

Notes:

ENTJ

Dynamic Pattern: Te, Ni, Se, Fi, Ti, Ne, Si, Fe

Temperament: Rational

Motto

Competency, acquisition of knowledge

If it is not nailed down, organize it; if they are not nailed down, organize them

Strengths

Energetic
Imaginative
Competent and organized
Logical
Task/goal oriented
Politically astute
Willingness to negotiate
Strong convictions
Loyal
Ability to make tough decisions

Weaknesses

Make decisions for anyone about anything
Can be impulsive
Come across as overpowering
Can be inflexible
Critical of self and others
Desire justice to the extreme
Uncomfortable when not in control
Uncomfortable staying with present situation

Job Satisfiers

Being self employed/owning business
Careers in consulting or trainer
"Start up" or "fix it" jobs
Leadership by competence not gamesmanship
Opportunities to originate and organize concepts
Positions that allow being a ham
The time and ability to bounce ideas off people

Assets to the Group

Bring structure, organization, and direction
Provide leadership
Provide others with appropriate encouragement to use their skills and abilities
Task oriented
Will get activity started
Will bring closure
Able to change when things are going "right"

Common Stressors

People not agreeing with you
Personal failure
People who are late
Working with peers who don't "do their homework"
Social injustices
Inability to persuade others
Rigid routine
Feeling stuck in a dead-end position
Resistance to change
Closed-mindedness

Behaviors Under Stress

Become angry
Become verbally sarcastic
Withdraw
Engage in avoidance, through work/concentrate on something
Throw a tantrum
Show emotion
Appear less open to new ideas
Act more judgmental and less tolerant of others

Enjoys

People watching
Sight seeing
Watching movies about relationships
Talking with friends
Outdoor activities
Socializing with other people from other organizations who are at a similar (or higher) level of responsibility
Going to conferences
Exercise

Values

Competency
Efficiency
Effectiveness
Intellectual growth
Intellectual stimulation
Excellence
Logic
Order and structure
Systems

Notes:

INTP

Dynamic Pattern: Ti, Ne, Si, Fe, Te, Ni, Se, Fi

Temperament: Rational

Motto

I have lots of ideas; just don't ask me to implement them.

I'll handle it; don't worry about me.

Ideas unlimited.

Rather be right than liked.

Strengths

Independent
Quick
Curious and inquisitive
Analytical
Logical
Consistent
Inspirational
Insightful
Adaptable
Able to organize ideas and develop
conceptual frameworks
Conscious of a global view

Job Satisfiers

Working independently
Consistent variety
Learning new things
Decision making capability
Ready access to information
Researching
Intellectual stimulation and interaction
Teaching to interested & motivated
students
Strategic planning
Designing the "grand scheme"

Weaknesses

Oversight of crucial facts
Tendency to overlook feelings of others
Struggle to express emotion
Tendency to become lost in thought
Stubbornness
Bluntness
Shyness
Tendency to become off balance in new
social situations
Disorganization
Poor followers

Assets to the Group

Offer leadership skills
Return group to a logical perspective
Keep options/possibilities open – see all
sides
Design systems for organization
Introduce new perspectives
See possibilities where others can't
Stay persistent
Present creative view
Maintain detachment

Common Stressors

Witnessing incompetence
Not considering all options and information
Unfair situations
Value judgments that do not take differences into account
Personal relationships
Being around people all day
Details
Outward displays of emotion
Small talk
Managing conflict
Chaos

Enjoys

Being with small groups of people (one-on-one chats)
Complex reading
Relaxation tapes
Photography
Gardening
Writing
Journal writing
Seeing plays
Playing chess
Theoretical courses
Conceptual learning

Notes:

Behaviors Under Stress

May attack
Become angry
Become melancholy
Go into isolation
May focus on task and ignore people
Can become hysterical
Can become cold
May cry (in response to kindness)
May get muscle tightness, or shakiness (shaky hands)

Values

Knowledge
Mastery of subject
The "deeper meaning"
Abstract thinking
Logic
Justice
Independence

ISTP

Dynamic Pattern: Ti, Se, Ni, Fe, Te, Si, Ne, Fi
Temperament: Artisan

Motto

Just do it (...and everything will fall into place).
I can and will do it, just leave me alone.
Solidarity with oneself.

Strengths

Adaptable
Practical
Independent
Restrained
In control of emotions
Little need for recognition
Able to:
Negotiate
Bring people to work toward a common goal
Get things done
Collect and organize facts
Determine relevancy

Job Satisfiers

Being able to make decisions
Authority to control situations but not necessarily people
Making contributions
Detailed work
Challenging situations of short duration
Variety

Weaknesses

Tend to give up easily
Lose interest in things
Can get upset easily
Lack self confidence
When criticized, often come across as harsh

Assets to the Group

Ability to analyze or sort out problems
Detail focused
Bring a sense of humor – won't take self too seriously
Negotiation skills
Willingness to compromise
Competence
Level-headed perspective
Trouble shooting skills

Common Stressors

Dealing with inflexible, domineering people
Dealing with negative emotions/feelings
Repetitive tasks
Being pinned down
Dealing with lots of people
Fear of not being understood

Behaviors Under Stress

Appear quiet
Remain cool and calm, controlled temper
Think of ways to make the situation more bearable
Hold emotions in
May react favorably (due to enjoying action oriented) stress

Enjoys

Music
Reading
Traveling off the beaten path
New experiences with some element of risk and lots of choice
Outdoor activities such as hiking, climbing, sailing
Knitting/crocheting
Making things
Gardening
Sports

Values

Efficiency
Autonomy
Freedom
Flexibility

Notes:

INFP

Dynamic Pattern: Fi, Ne, Si, Te, Fe, Ni, Se, Ti

Temperament: Idealist

Motto

We've only just begun, begun, begun . . .

Peace at all costs.

Searching for the end of the rainbow.

The road less traveled.

Strengths

Non-judgmental

Sensitive to others' feelings

Comfortable being with one's self

Articulate

Determined

Spontaneous and energetic

Visionary

Harmony and consensus building

Open to possibilities

Flexible

Weaknesses

Tendency to take on too much

Overly idealistic

Weak in follow through

Overly sensitive

Indecisive/can't say "no"

Tendency to keep things inside

Self undervaluing thoughts

Overly personal reaction to criticism

Avoidance of unvalued tasks

Conflict avoidance

Job Satisfiers

Working toward recreating the Garden of Eden

Activities that help self & others realize potential & balance

Personal growth

Careers allowing insight into human nature

Counseling, ministry social work or teaching

Writing

Whatever the job, it must have meaning

Assets to the Group

Can develop lots of options & be flexible around them

Will tap potential of coworkers, building group into team focusing on strengths

Can challenge institution(s)

Serve as harmonizers and gatekeepers

Observe group dynamics

Creative in generating alternatives

Seek input from others

Can fit parts into big picture

Common Stressors

Decisions that violate values
Deadlines
Juggling family concerns with work concerns
Antagonistic environments
Conflict
Uncooperative people
Spiteful or vindictive people
Witnessing closed mindedness
Rejection
Lack of purpose

Behaviors Under Stress

Retreat inside
Become quiet, self critical and/or ill
Get job done
Feel rage
Speak extremely cruel and cutting remarks to hurt others (and regret it later)
Get irritable, bossy and/or demanding
Lose ability to reason

Enjoys

Sailing
Walking
Going to the beach
Cross country skiing
Creative writing
Going to the theater
Gardening
Spend time with intimate friends

Values

Personal growth
Introspection
Idealism
Uniqueness in individuals
Spirituality
Trust
Harmony
Authenticity
Close personal relationships

Notes:

ISFP

Dynamic Pattern: Fi, Se, Ni, Te, Fe, Si, Ne, Ti
Temperament: Artisan

Motto

Life is a stage, a play in the making
Give me variety or give me death!
It is better to beg for forgiveness than ask for permission.

Strengths

Action oriented
Open and flexible
Enthusiastic
Empathetic
Factual
Observant
Practical
Sensitive to needs of others
Caring
Humorous

Weaknesses

Indecisive
Not visionary
Inability to gain consistency or closure
Disorganized
Difficulty with long-term planning
Tendency to get emotionally overloaded
Procrastination
Unconcerned about procedures or protocol

Job Satisfiers

Variety
Autonomy
Challenges
Working with facts, not theories
Non-competitive work environment
Ability to help others in need
Immediate results
Hands-on work
One-on-one situations

Assets to the Group

Offers practicality
Gives concrete perspectives
Acts as a peacemaker
Shows an action orientation – a “doer”
Works well with all types of people
Provides a “down to earth” and calm demeanor

Common Stressors

Public speaking
Not having the knowledge to answer questions
Large groups of people
Leaving things to the last minute
Statistics
Financial planning
Inability to fully express self
Confrontation
Poor communication
Suddenly having too many tasks

Behaviors Under Stress

Can fly off the handle
May get headaches
Will develop a sense of being overloaded or powerless
May become depressed
May cry
Can become verbally harsh
May project a very different personality

Enjoys

Antique collecting
Bargain hunting at thrift shops
History
Dancing
Eating out
Nature
Sports
Reading (biographies, history)

Values

Friendships
Privacy and personal space
Harmony
Helping others

Notes:

ESFJ

Dynamic Pattern: Fe, Si, Ne, Ti, Fi, Se, Ni, Te
Temperament: Guardian

Motto

Do unto others as you would have them do unto you.
Happiness is caring and sharing
Dependable and practical, like a station wagon.

Strengths

Decisive
Dutiful
Organized
Warm and empathetic
Practical
Punctual
Loyal and dependable
Strong communicator
Tactful
Caring/concerned for others
Harmony building

Weaknesses

Talkative
Overly critical (do-s and don't-s)
Indulgent of others
Inability to cope with disharmony
Narrow-minded
Impulsive
Restless
Vulnerable
Too scheduled
Overly sensitive
"Doom and gloom" mentality

Job Satisfiers

Helping professions (teaching children,
nursing, community service)
Creating a sense of caring
A supportive community
Person-centered interactions
Helping others function
Being able to nurture and care for
people
Clearly established beginnings and ends
Being useful and wanted

Assets to the Group

Will create a harmonious work
environment that is conducive to
openness and sharing
Provide empathy
Offer good listening skills
Will keep the group moving and
organized
Will stick with a project until finished
Will facilitate scheduling
Will ensure all participants have a
chance to participate

Common Stressors

Not having enough money
Finding no people to love
Financial planning
Future planning
Losses
New beginnings
Conflict
Poor communication
Criticism
Impractical/inefficient behavior

Behaviors Under Stress

May become excessively controlling to handle the situation efficiently
May see the worst case scenario and no other possibilities
Retreat from conflict
Internalize any stress
Talk about problems too much
Lose self-esteem
Cry

Enjoys

People events
Hosting parties
Going to lunch with friends
Visiting friends/relatives
Travel
Volunteer work
Small group activities
Personal growth activities
Talking with others
Team sports

Values

Protecting others
Helping others
Harmony
Family
Loyalty
Appreciation of others

Notes:

ENFJ

Dynamic Pattern: Fe, Ni, Se, Ti, Fi, Ne, Si, Te
Temperament: Idealist

Motto

Let's do it with enthusiasm and integrity.
If you're not with me, I'll help you be with me.
Oh world, I cannot hold thee close enough.

Strengths

Valuing people/relationships
Ease in a group of any size
Harmony building
Good listener
Charismatic
A true liking of people
Insightful, curious and creative
Able to:
Naturally lead
Organize people for a project
Offer caring confrontation

Weaknesses

Verbose
Vulnerable
Unrealistic
Don't always want to see unpleasant truths as "true"
Have difficulty being objective
Not detail oriented
Get caught up in others' problems
Tendency to avoid conflict
May have unyielding views about right and wrong

Job Satisfiers

Anything involving people
Facilitating interaction
Networking among people
Activities involving use of empathy
Tasks that include organization of teams
Being "on stage"
Finding new problems to solve
Decision making authority
Fostering others' growth and development

Assets to the Group

Being persuasive and motivational skills
Can create a comfortable atmosphere
Will organize the group and set goals
Can be a decision-maker
Show cooperation and loyalty
Bring enthusiasm
Act as catalyst
Build harmony, group participation and consensus

Common Stressors

Boredom
Lack of closure
Long time periods with no decisions
Lack of harmony
Continual conflict
Conflict that is not immediately addressed
Feeling isolated (shut-out) from people cared about
Not making deadlines
Being needed by too many people or on too many projects

Enjoys

Going to the movies/theater
Going out to eat
Traveling
Going to the seashore or mountains
Anything done with friends
"People talk"
Being with a friend
Being one-on-one at parties
Taking care of self spiritually, emotionally and physically

Behaviors Under Stress

Become rigid
Strategize to get own way
Withdraw to regroup
Plan revenge (rarely carried out)
Blame self
Become depressed, lonely or sad
Shut down
Offer "logical" tirades that can be very cutting

Values

People
Authenticity
Potential in others
Facilitating the potential in others
Personal growth
Personal relationships
Trust
Harmony
Fun

Notes:



SENSING	INTUITIVE
THINKING	FEELING

What kinds of tasks, projects or work activities would you expect your team to do well? What are your strengths?

What tasks might your team dislike or seek to avoid? What blindspots or weaknesses might your team have?

WHAT WE KNOW ABOUT TYPE and TEAMS

Teams with high similarity in type ...

will come to understand each other sooner

will reach quicker decisions

will have to make special effort to appreciate and use differences constructively

will have to guard against "scapegoating" any person who is the only representative of a type preference.

Teams with many different types ...

will reach decisions more slowly and painfully

lengthy deliberations will resolve many issues, resulting in more efficient implementation

will usually out-perform single type or high similarity teams.

"One-sided" teams will succeed if ...

they make the effort to use their non-preferred functions

they view people whose preferences are different from theirs to be resources and valuable assets.

Effects of Each Preference in Work Situations

Extraverted Types

- Like variety and action
- Are often good at greeting people
- Are sometimes impatient with long slow jobs
- Are interested in how others do their jobs
- Often enjoy talking on the phone
- Often act quickly, sometimes without thinking
- Like to have people around in the working environment
- May prefer to communicate by talking rather than writing
- Like to learn a new task by talking it through with someone

Introverted Types

- Like quiet for concentration
- Have trouble remembering names and faces
- Can work on one project for a long time without interruption
- Are interested in the idea behind the job
- Dislike telephone interruptions
- Think before they act, sometimes without acting
- Work alone contentedly
- May prefer communications to be in writing
- May prefer to learn by reading rather than talking or experiencing

Sensing Types

- Are aware of the uniqueness of each event
- Focus on what works now
- Like an established way of doing things
- Enjoy applying what they have already learned
- Work steadily, with a realistic idea of how long it will take
- Usually reach a conclusion step by step
- Are not often inspired, and may not trust the inspiration when they are
- Are careful about the facts
- May be good at precise work
- Can oversimplify a task
- Accept current reality as a given to work with

Intuitive Types

- Are aware of new challenges and possibilities
- Focus on how things could be improved
- Dislike doing the same thing repeatedly
- Enjoy learning new skills
- Work in burst of energy powered by enthusiasm with slack periods in between
- May leap to a conclusion quickly
- Follow their inspirations and hunches
- May get their facts a bit wrong
- Dislike taking time for precision
- Can overcomplexify a task
- Ask why things are as they are

Effects of Each Preference in Work Situations

Thinking Types

- Are good at putting things in logical order
- Respond more to people's ideas than their feelings
- Anticipate or predict logical outcomes of choices
- Need to be treated fairly
- Tend to be firm and tough-minded
- Are able to reprimand or fire people when necessary
- May hurt people's feelings without knowing
- Have a talent for analyzing a problem or situation

Feeling Types

- Like harmony and will work to make it happen
- Respond to people's values as much as to their thoughts
- Are good at seeing the effects of choices on people
- Need occasional praise
- Tend to be sympathetic
- Dislike telling people unpleasant things
- Enjoy pleasing people
- Take an interest in the person behind the job or idea

Judging Types

- Work best when they can plan their work and follow the plan
- Like to get things settled and finished
- May decide things too quickly
- May dislike to interrupt the project they are on for a more urgent one
- Tend to be satisfied once they reach a judgment on a thing, situation, or person
- Want only the essentials needed to begin their work
- Schedule projects so that each step gets done on time
- Use lists as agendas for action

Perceptive Types

- Do not mind leaving things open for last-minute changes
- Adapt well to changing situations
- May have trouble making decisions, feeling they never have enough information
- May start too many projects and have difficulty in finishing them
- May postpone unpleasant jobs
- Want to know all about a new job
- Get a lot accomplished at the last minute under pressure of a deadline
- Use lists as reminders of all the things they have to do someday

Learning Styles Based on Preferences

Extraversion	Introversion
<p>Extraverts work best if they can:</p> <ul style="list-style-type: none"> • Interact in small groups • Talk lessons over with a partner • Demonstrate and model their use of the skills 	<p>Introverts work best if they can:</p> <ul style="list-style-type: none"> • Read lessons over or write them out before discussion • Think before participating • Ask questions before completing tasks or exercises
<p>Extraverted trainers tend to positively evaluate students who are:</p> <ul style="list-style-type: none"> • Active • Energetic • Enthusiastic 	<p>Introverted trainers tend to positively evaluate students who are:</p> <ul style="list-style-type: none"> • Thoughtful • Reflective • Introspective
Sensing	Intuition
<p>Sensors work best if they can:</p> <ul style="list-style-type: none"> • Follow clear directions • View films and audio visuals; have hands-on exercises; and take mini quizzes • Envision practical examples 	<p>Intuitives work best if they can:</p> <ul style="list-style-type: none"> • See global patterns • Have independence and autonomy in the completion of their tasks • Incorporate new approaches
<p>Sensing trainers tend to positively evaluate students who are:</p> <ul style="list-style-type: none"> • Factual • Practical 	<p>Intuitive trainers tend to positively evaluate students who are:</p> <ul style="list-style-type: none"> • Conceptual • Creative

Learning Styles Based on Preferences

Thinking	Feeling
<p>Thinkers work best if they can:</p> <ul style="list-style-type: none"> • Prepare outlines and state the objective first • Develop logical criteria • Receive rapid feedback 	<p>Feelers work best if they can:</p> <ul style="list-style-type: none"> • Identify the most important values • Reduce competition • Respond personally
<p>Thinking trainers tend to positively evaluate students who are:</p> <ul style="list-style-type: none"> • Task focused • Logical • Critical of their own work 	<p>Feeling trainers tend to positively evaluate students who are:</p> <ul style="list-style-type: none"> • Personable • Easy to work with • Positive
Judgment	Perception
<p>Judgers work best if they can:</p> <ul style="list-style-type: none"> • Stick to a routine • Follow specific time lines • Use precise guidelines 	<p>Perceivers work best if they can:</p> <ul style="list-style-type: none"> • Demonstrate originality • Move and be physically active • Allow for spontaneity
<p>Judging trainers tend to positively evaluate students who are:</p> <ul style="list-style-type: none"> • Timely • Precise • Organized 	<p>Perceiving trainers tend to positively evaluate students who are:</p> <ul style="list-style-type: none"> • Creative • Spontaneous • Original

Career Search and the MBTI®

Extraversion

Strengths

- Large network
- Favorable verbal representation
- Confident and outgoing

Pitfalls

- May talk too much
 - May not listen enough
 - May mistake activity for results
-

Introversion

Strengths

- Favorable résumé representation
- Thoughtful and careful
- Concentration on most important objective

Pitfalls

- May spend too much time thinking
 - May appear unenergetic and pensive
 - May not develop or utilize networking
-

Sensing

Strengths

- Accurate self-representation
- Thorough and systematic
- Realistic about job opportunities

Pitfalls

- May not want to try something new
 - May have difficulty with open-ended questions
 - May be too literal in interpreting job requirements
-

Intuition

Strengths

- Optimistic self-representation
- Open to unusual employment possibilities
- Ability to find additional resources and help

Pitfalls

- May procrastinate
 - May not respond well to specific, factual questions
 - May overlook important details about job requirements
-

Career Search and the MBTI®

Thinking

Strengths

- Established job search strategy
- Objective criteria for job requirements
- Well-organized

Pitfalls

- May not take their own feelings into account
- May not weigh the impact of their decisions on others
- May over-rationalize

Feeling

Strengths

- Values-oriented
- Personable and pleasant
- Ability to understand the organizational climate

Pitfalls

- May be overly concerned with pleasing others
- May take job rejections personally
- May relay more personal information than is necessary

Judgment

Strengths

- Organized and systematic
- A step-by-step process for the job search
- Materials and resources available at right time and place

Pitfalls

- May define career choice too soon
- May become impatient with the process
- May be rigid about career goals and plans

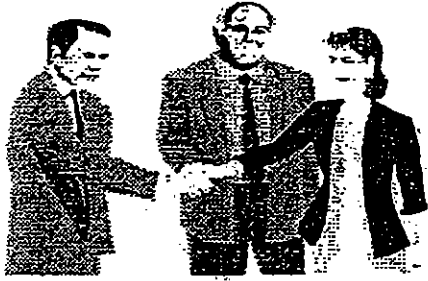
Perception

Strengths

- Ability to see options and seize opportunities when others do not
- Capacity to adjust plans and redefine goals
- Flexible in terms of career outcomes

Pitfalls

- May have difficulty making decisions
 - May spend too much time gathering information
 - May not set realistic time frames
-



SUCCESSFUL COMMUNICATIONS

When presenting, influencing, explaining, or trying to understand:

S's

- >Be factual
- >document successful applications
- reduce risk factors
- >thoroughly work out details in advance
- >show why it makes sense

N's

- >give global scheme
- >don't let opportunity pass
- >use confidence and enthusiasm
- >indicate challenges
- >point out future benefits

T's

- >be logical
- >state principles involved
- >be well organized, moving logically from point to point
- >list the costs and benefits
- >stress competent handling of issue

F's

- >tell who else is for the idea
- >be personable and friendly
- >show how it's helpful
- >say "it's right" to do
- >tell why it's valuable

Fig. 1. Psychological Type—Head, Hands, and Heart (or Knowledge, Skill, and Motivation)

	Extraversion	Introversion	Sensing	Intuition	Thinking	Feeling	Judging	Perceiving
Clarity	<p>Verbal Give them opportunity to discuss it</p>	<p>Written Give them opportunity to process it</p>	<p>Details Provide practical, relevant facts</p>	<p>Patterns Provide meaning behind the facts—the big picture</p>	<p>Impersonal Provide logical, cause and effect reasoning</p>	<p>Personal Provide opinions of people they care about</p>	<p>Organized Provide clear outcomes, priorities, and time frames</p>	<p>Options Provide options and opportunity to question</p>
Competence	<p>Play First Let them act out skills in groups</p>	<p>Prepare First Let them prepare and rehearse first</p>	<p>Process Provide step-by-step process with detailed examples</p>	<p>Principles Provide principles, concepts, and metaphors</p>	<p>Problem Demonstrate how change will solve the problem</p>	<p>People Demonstrate how change will impact others</p>	<p>Schedule Structure training with objectives and schedule</p>	<p>Alternatives Demonstrate alternative solutions and approaches</p>
Commitment	<p>Public Provide opportunity to get on with it, speak out, and be heard</p>	<p>Private Provide opportunity to think about it, process new changes</p>	<p>Practical & Doable Provide opportunity to focus on the present reality</p>	<p>Future Possibilities Provide opportunity to define the future possibilities</p>	<p>Logical & Fair Demonstrate pros and cons with logic and reasoning</p>	<p>Appreciative & Supportive Provide appreciation, support, and testimony from others</p>	<p>Defined Outcomes Provide or encourage specific goals and time frames</p>	<p>General Parameters Provide opportunity to explore options; trust the process</p>

What Functions Seek/Avoid

Team Tasks STs	Team Tasks SFs	Team Tasks NFs	Team Tasks NTs
Seek	Seek	Seek	Seek
<ul style="list-style-type: none"> • Monitoring progress with statistics, graphs, and charts • Managing costs and schedules • Showing measurable results • Using proven methods to increase productivity • Solving problems immediately 	<ul style="list-style-type: none"> • Using tried and true methods • Applying experience to practical jobs • Sharing work equitably • Developing charts that document each person's skills or needs • Reviewing plans and materials others have formulated to see what works best 	<ul style="list-style-type: none"> • Increasing fun, harmony and innovation • Doing work that allows for awareness and growth • Communicating in creative ways • Trying exercises that provide insight into things that matter to people • Working with diversity to improve output 	<ul style="list-style-type: none"> • Positioning the team for the future • Linking systems, strategies and models • Finding opportunities for organizational growth and development • Conducting long term impact studies of complex problems • Debating challenging questions
Avoid	Avoid	Avoid	Avoid
<ul style="list-style-type: none"> • Participating in self-awareness activities • Brainstorming with no practical outcome • Hypothesizing about the future • Using untried and unperfected methods • Not concentrating on work 	<ul style="list-style-type: none"> • Using new and untested procedures • Debating the merits of various theories • Analyzing and predicting the outcomes of strategic models • Criticizing in an open forum, especially in relation to team members they know • Treating people as interchangeable parts of a machine 	<ul style="list-style-type: none"> • Working with costs, schedules and figures • Performing control functions like accounting • Setting up hierarchies and authority chains • Playing politics • Dealing with documentation and paperwork 	<ul style="list-style-type: none"> • Doing someone else's work • Engaging in popularity contests • Working with administrative details • Performing repetitious tasks • Participating in self-awareness activities

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**COURT COSTS AND
AVOIDING FRAUD**

Presented by

**Rene Henry
Financial Analyst Specialist
Austin**

MUNICIPAL COURTS

Fiscal 2006

Financial Management

Presented By

**Rene Henry
OFFICE OF COURT ADMINISTRATION
512.463.1625**

1. For which of the following does the city retain five percent as a service fee?
 - A. Consolidated court cost
 - B. Juror reimbursement fee
 - C. Time payment fee
 - D. State traffic fine
 - E. None of the above

2. The consolidated court cost is higher on municipal ordinance violations punishable by a fine not to exceed \$2,000 than it is on municipal ordinance violations punishable by a fine not to exceed \$500.
 - A. True
 - B. False

3. The state traffic fine applies to all offenses under Title 7 in the Transportation Code.
 - A. True
 - B. False

4. What is the amount of the child safety court cost for the offense of Fail to Stop for School Bus?
 - A. \$20
 - B. \$25
 - C. \$30
 - D. Either A or B, depending upon the city's population

5. The \$5 arrest fee applies only when someone is arrested and taken to jail.
 - A. True
 - B. False

6. The \$5 arrest fee applies when a charge is initiated by a filed complaint.
 - A. True
 - B. False

7. There can only be one \$50 warrant fee per conviction.
 - A. True
 - B. False

8. Who would be entitled to the \$50 warrant fee if your judge issues a warrant, it is executed by a sheriff's deputy from an adjoining county, and the sheriff's office requests the fee 10 days after execution?
 - A. The adjoining county
 - B. The State of Texas
 - C. Your city
 - D. None of the above

9. Which of the following require an ordinance be passed by the governing body before they can be imposed?
 - A. Municipal court building security fee
 - B. Municipal court technology fee
 - C. Juvenile case manager court cost
 - D. All of the above
 - E. A and B, but not C

10. Which of the following has to be maintained in a separate fund?
 - A. Municipal court building security fee
 - B. Municipal court technology fee
 - C. Juvenile case manager court cost
 - D. All of the above
 - E. A and B, but not C

11. For which of the following are basic court costs and fees optional?
 - A. Mandatory driving safety
 - B. Permissive driving safety

- C. Deferred disposition
 - D. Tobacco awareness program
 - E. None of the above
12. Court costs and fees apply to all Deferred Disposition cases.
- A. True
 - B. False
13. On Deferred Disposition cases, court costs and fees should be collected:
- A. When the case is dismissed
 - B. Anytime during the deferral period
 - C. Up front
 - D. After deferred is granted, but before the case is dismissed
14. Amounts collected must be allocated to state court costs and fees first, local court costs and fees second, and then to the fine.
- A. True
 - B. False
15. The Excess Highway Fines Law applies to:
- A. Cities under 5,000 population
 - B. Only Transportation Code, Title 7 offenses
 - C. Only Transportation Code, Title 7, Subtitle C offenses
 - D. A and B, but not C
 - E. A and C, but not B
16. Overweight vehicle offenses under Transportation Code, Section 621.506 of more than 10,000 pounds heavier than the vehicle's allowable weight must be filed in justice court.
- A. True
 - B. False

17. The time payment fee applies:
- A. Per person
 - B. Per conviction
 - C. A or B, depending on the judge
 - D. A or B, depending on how the agreement is written
18. Which of the following does not apply to parking and pedestrian offenses?
- A. Municipal court building security fee
 - B. Consolidated court cost
 - C. Juror reimbursement fee
 - D. B and C, but not A
 - E. None of the above
19. For which of the following does the expanded conviction definition not apply?
- A. Consolidated court cost
 - B. State traffic fine
 - C. Juvenile case management court cost
 - D. Time payment fee
 - E. Arrest fee
20. Local revenue from the \$5 arrest fee and the \$50 warrant fee goes to the police department.
- A. True
 - B. False
21. If accepted by the judge and supporting documentation exists, "processing" a warrant could include which of the following:
- A. Peace officer sending a letter to the defendant
 - B. Court clerk sending a letter to the defendant
 - C. Peace officer entering the warrant in a local data bank

- D. Court clerk entering the warrant in a local data bank
 - E. A and C, but not B and D
 - F. B and D, but not A and C
22. The \$30 state traffic fine is set to expire September 1, 2007.
- A. True
 - B. False
23. Which of the following is part of Subtitle C – Rules of the Road?
- A. Expired registration
 - B. Failure to maintain financial responsibility
 - C. Expired inspection certificate
 - D. Expired driver's license
 - E. None of the above
24. Which of the following is true concerning the special expense warrant fee under Code of Criminal Procedure, Article 45.203?
- A. An ordinance is required
 - B. The fee only applies to Failure to Appear (Penal Code, Section 38.10) and Violation of Promise to Appear (Transportation Code, Section 543.009)
 - C. The fee applies when a warrant is "processed"
 - D. The amount of the fee is not to exceed \$25
25. Basic court costs and fees (e.g., consolidated court cost, juror reimbursement fee, and state traffic fine) are based on:
- A. The date of offense
 - B. The date of conviction
 - C. Either A or B, depending on the judge
 - D. None of the above
26. Which of the following is not true about jail time credit?

- A. The rate is at least \$50 for each period of time
 - B. The rate is \$100 for each period of time
 - C. A period of time is not less than 8 or more than 24 hours
 - D. None of the above
27. Community service credit is always \$6.25 per hour.
- A. True
 - B. False
28. Which of the following are reported to the state quarterly?
- A. Consolidated court cost
 - B. Time payment fee
 - C. State traffic fine
 - D. Child safety seat system fines
 - E. B, C, and D, but not A
 - F. A, B, and C, but not D

Using the chart, what are total court costs and fees for conviction of the following offenses? Assume the city has adopted the \$3 fee for municipal court building security, a \$4 fee for municipal court technology, and that the only fee for services of peace officers is the \$5 arrest fee under Code of Criminal Procedure, Article 102.011.

	Offense in <u>Oct. 2005</u>	Offense in <u>Feb. 2006</u>
29. Possession of Alcohol by a Minor Alcoholic Beverage Code, Section 106.05	_____	_____
30. Failure to Appear Penal Code, Section 38.10	_____	_____

- | | | |
|--|-------|-------|
| 31. Disorderly Conduct
Penal Code, Section 42.01 | _____ | _____ |
| 32. No Motorcycle Protective Headgear
Transportation Code, Section 661.003 | _____ | _____ |
| 33. No Valid Driver's License
Transportation Code, Sections 521.021, 521.025 | _____ | _____ |
| 34. Not Wearing Safety Belt
Transportation Code, Section 545.413 | _____ | _____ |
| 35. Expired Motor Vehicle Inspection Certificate
Transportation Code, Section 548.602 | _____ | _____ |
| 36. Violation of Promise to Appear
Transportation Code, Section 543.009 | _____ | _____ |
| 37. Speeding
Transportation Code, Section 545.352 | _____ | _____ |
| 38. Failure to Maintain Financial Responsibility
Transportation Code, Section 601.191 | _____ | _____ |
| 39. Fail to Stop for School Bus
Transportation Code, Section 545.066 | _____ | _____ |
| 40. Drive on Sidewalk
Transportation Code, Section 545.422 | _____ | _____ |
| 41. Driving Under Influence of Alcohol by a Minor | _____ | _____ |

Alcoholic Beverage Code, Section 106.041

- | | | |
|---|-------|-------|
| 42. Disruption of Classes
Education Code, Section 37.124 | _____ | _____ |
| 43. Possession of Cigarettes or Tobacco
Health and Safety Code, Section 161.252 | _____ | _____ |
| 44. Theft
Penal Code, Section 31.03 | _____ | _____ |
| 45. Issuance of a Bad Check
Penal Code, Section 32.41 | _____ | _____ |
| 46. Possession of Alcoholic Beverage in Motor Vehicle
Penal Code, Section 49.031 | _____ | _____ |
| 47. Municipal Ordinance -- Fine Not to Exceed \$500
Local Government Code, Section 54.001 | _____ | _____ |
| 48. Municipal Ordinance -- Fine Not to Exceed \$2,000
Local Government Code, Section 54.001 | _____ | _____ |
| 49. Which of the following are basic principles of internal control?
A. Appropriate division of duties
B. Qualified personnel
C. Sound procedures for authorizing, observing, and reporting transactions
D. A and B, but not C
E. A and C, but not B | | |

50. Which of the following is not one of the three basic functions that should be segregated for a proper division of duties?
- A. Authorization/approval of transactions
 - B. Supervising the office
 - C. Recording of transactions
 - D. Custody of assets
51. Good internal control guarantees that operations are 100 percent correct.
- A. True
 - B. False
52. Which of the following can help a court have good internal control?
- A. Rotation of duties
 - B. Enforced vacations
 - C. Internal audits
 - D. All of the above
53. There should be a separate cash box/drawer/register for each person taking in money.
- A. True
 - B. False
54. If possible, the person opening the mail should also handle over-the-counter receipts.
- A. True
 - B. False
55. A receipt or other written acknowledgement of amount should be obtained for all remittances.
- A. True
 - B. False

56. Sound internal control is generally more difficult in a two person office than in a four person office.
- A. True
 - B. False
57. Sorting cases by receipt number would help indicate which of the following?
- A. Duplicate receipt numbers
 - B. Missing receipt numbers
 - C. Receipt numbers issued out of sequence
 - D. All of the above
 - E. A and B, but not C
58. When rotating duties for deterrent purposes, rotations should take place at regular intervals.
- A. True
 - B. False
59. Cash counts should be performed on a "surprise" basis.
- A. True
 - B. False
60. Ideally, if a person does the bookkeeping in an office, they should not also:
- A. Issue receipts
 - B. Prepare bank deposits or remittances
 - C. Sign checks
 - D. Do any of the above
61. It is much easier to catch errors if one person performs two or three of the basic functions (i.e. authorization/approval, recording, and/or custody).
- A. True

B. False

62. Mail should be worked independently of over-the-counter receipts.

A. True

B. False

63. A sound system of internal control should:

A. Minimize the possibilities for errors and misuse of funds

B. Provide a clear audit trail

C. Provide for earlier detection of errors and irregularities than would otherwise be the case

D. All of the above

E. A and B, but not C

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COLLECTION ROLES

Presented by

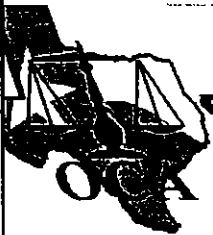
**Jim Lehman
Collection Specialist
Office of Court Administration
Austin**

Collection Roles



Jim Lehman
Office of Court Administration

Texas Office of Court Administration



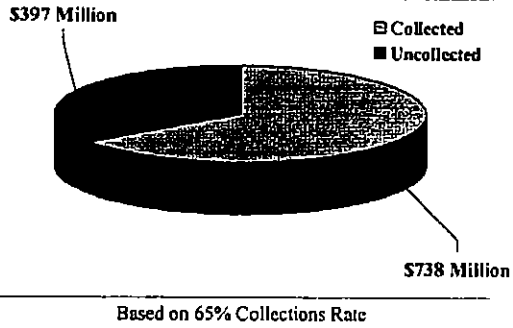
- State Agency
- Created in 1977
- Chief Justice - Texas Supreme Court
- Provides Administrative & Technical Support
- Serves Approximately 2,600 Courts in the State
- (512) 463-1625

2

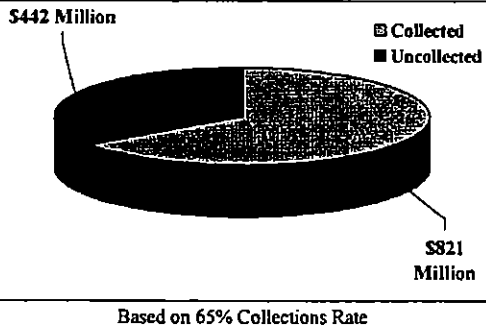
How Important Is Fine Enforcement?



**Criminal Court Costs, Fees, & Fines
FY 2003**



**Criminal Court Costs, Fees, & Fines
FY 2004**



Senate Bill 1863

Collections Improvement Programs (78)

- Counties 50,000 54
- Cities 100,000 24
- Half by 04/06
- Half by 04/07

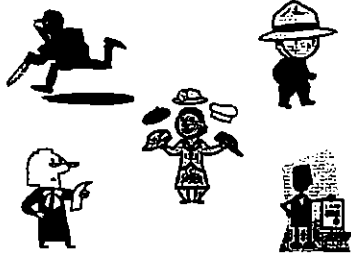


The Impact of Unpaid Fines

- Loss of Public Revenues
- Decrease In Services
- Increase In Taxes
- Weaker Government



Players In The Process



Key Questions

- Who's In Control?
- Which Role Is Most Important?
- Are Roles Interchangeable?
- Is There a Difference Between a Role and a Job?
- What's Your Role In The Collections Process?

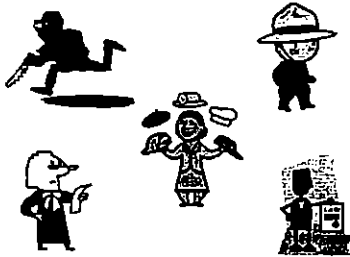


Factors Dictating Roles

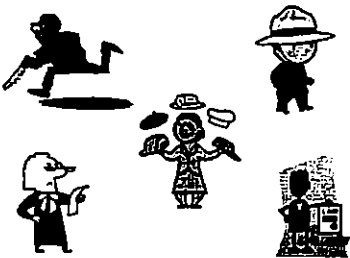
- Situation
- Location



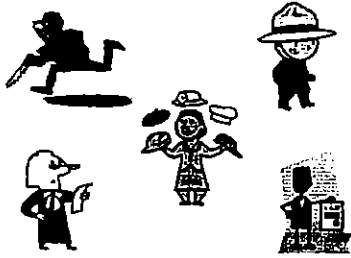
Which Is Most Important?



Are Roles Interchangeable?



Role vs. Career



Definition: **Role**

- a function or part performed especially in a particular operation or process

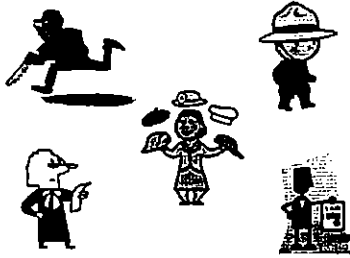


Definition: **Career**

- a profession for which one trains and which is undertaken as a permanent calling



What Is Your Role?



PLAYERS IN THE PROCESS

<u>Court</u>	<u>Enforcement</u>	<u>Offenders</u>
Judge(s)	Court Administrators	Law Violators
	Court Clerks	
	Probation	
	Pre-trial	
	Law Enforcement	



The Court's Collectors

Court Administrators
Court Clerks
Compliance Officer
Law Enforcement
Private Vendors



The Art of Collections
The most effective collector is...

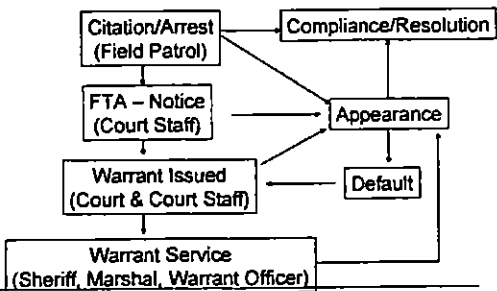
...one who successfully encourages debtors that it is in their best interest to pay what they owe.
(Not to be confused with a cashier)

Key Elements

1. Ability
2. Motivation



The Enforcement Process



Citation/Arrest
Pre-Appearance

Citation/Arrest
 (Law Enforcement)

Notice Cards
 (Clerk/Collector/Compliance Officer)

Notice Calls
 (Clerk/Collector/Compliance Officer)

Appearance

Judgment/Sentencing
(Judge)

Payment/Pay Plan
Clerk/Collector/Compliance Officer

Application/Interviews
Clerk/Collector/Compliance Officer

Default

Compliance Management
(Clerk/Collector/Compliance Officer)

Notice Cards/Calls
(Clerk/Collector/Compliance Officer)

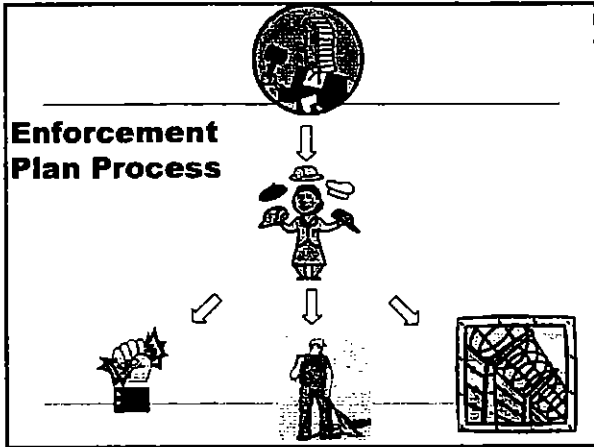
Warrant/Other
(Clerk/Collector/Compliance Officer/Judge)

Warrant

Warrant Notice/Calls
(Clerk/Collector/Compliance Officer/Law Enforcement)

Warrant Other
(Clerk/Collector/Compliance Officer/Law Enforcement)

Warrant Service
(Law Enforcement)



A Fine Is Punishment

Only If It Is Collected!

Jim Lehman
Office of Court Administration
205 West 14th Street, Suite 600
Austin, Texas 78701
Direct (512) 936-0991 Main (512) 463-1648

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COURT SECURITY

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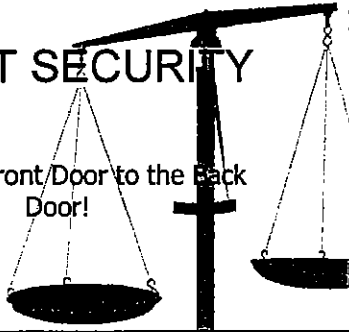
**Allen Gilbert
Municipal Judge
San Angelo**

Participants will be able to:

1. Explain why court security is necessary.
2. Define court security.
3. Explain when to provide court security.
4. How to fund court security.

COURT SECURITY

From the Front Door to the Back Door!



Court Security Starts When:

The defendant pulls into the parking lot.

Providing proper parking and making sure persons are safe in the parking lot is essential.

Cameras watching both the parking lot and the entrance to the building are great tools to ensure safety.

The front door is where we begin our quest for a safe court.

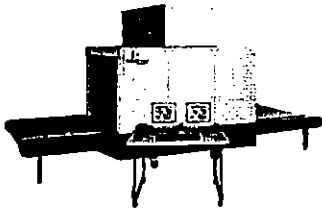
It is here that we must be sure every person entering has been secured.



A walk-through metal detector or a wand can help you secure your court.



X-ray machines are extremely helpful, as it allows you to see in every purse or briefcase. Many weapons can be concealed very easily.



After being checked at the front door, every person should then be safe not only for you to deal with as clerks, but they should also feel safe to be amongst other individuals in the court house.



Courtroom Safety Begins Before People Enter

A bailiff should check the court room to see that no objects have been left from prior sessions.

This includes checking under all benches or seating areas, jury boxes, witness stands and the Judge's bench.

This inspection must be done after every court session is finished and the courtroom is locked.

When persons are speaking with the Judge about charges, the bailiff should be in a position that allows them to see both the defendant speaking to the Judge and also to see the audience of the courtroom.

During a bench trial, the bailiff should begin the trial by announcing the Judge and then take their place in the courtroom. The bailiff should once again position themselves so they can see the defendant, witnesses, prosecution, and persons in the audience.

During a jury trial, the bailiffs have many duties:

1. Announce the Judge and rise the defendants at the beginning of trial.
2. Help seat the jury and assist the Judge in maintaining order in the courtroom. This includes ensuring no contact is made between jurors and defendants/witnesses.
3. Again, they must position themselves so that they can see all activities during the trial.

All court personnel should feel safe in their work environment

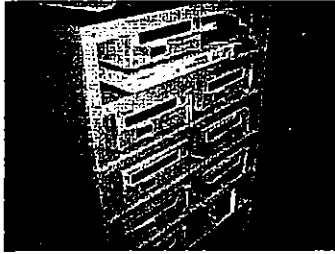


Cameras not only provide security for customers, but also a control for court personnel.

Audio and video recordings are used to protect employees and keep accurate accounts of money collections and customers actions.

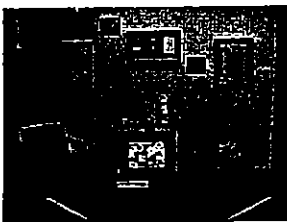


All security, both audio and video, must be recorded at all times.



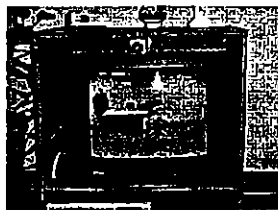
An audio recording of the front counter where collections are made can be used for protection for both the clerks and the citizens.

- A. True
- B. False



Video arraignments conducted from the Judge's office not only provides security, but limits liability for the city.

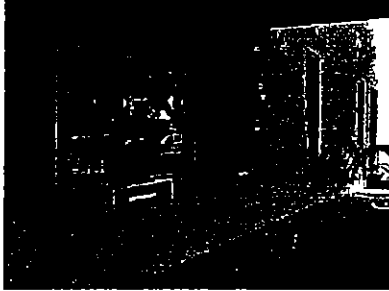
Monitors allow all areas of the court to be viewed at all times



Panic buttons allow for clerks and the Judge to summons for immediate help if needed.



Proper security is extremely important in drive-thru and drop box areas. Drop boxes can be dangerous due to harmful items being placed in them. This area is protected by bulletproof glass and security cameras.





All entrances and exits should be protected with cameras and security door swipes.

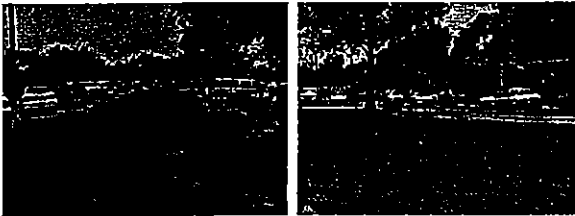


Security door swipes allow only authorized personnel to enter the building

In order to make your court more secure, which of the following do you need?

- A. Cameras
- B. Door Locks
- C. Panic Buttons
- D. All of the Above

Separate parking lots between employees and citizens provide security for employees.



Adequate lighting provides additional security for employees who may come and go at odd hours.



Physical Security Checklist

Exterior (Buildings, Grounds, Parking)

Lighting

Is the entire perimeter lighted?

Are control switches secured?

Is the building exterior sufficiently lighted to discourage and observe unlawful entry?



Perimeter



Do landscaping features provide places for intruders to conceal themselves?

Are there items that could be used by intruders to gain courthouse access?

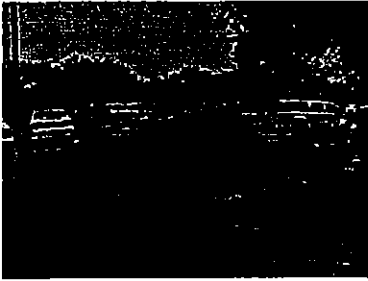
Parking Areas

Is there separate parking for employees at the courthouse?

Are parking spaces reserved by number?

Is there direct access for judges and court employees from the parking area?

Are parking areas observed by video cameras?



Interior (Entrances, Exits, and Public Areas)

Doors, Windows, and Other Openings

Are all exterior doors properly equipped with cylinder locks, deadbolts, or electric locks?

Are all entrances video observed?

Alarm Systems

Does the courthouse have an intrusion alarm system?

Is there an emergency power source for all alarms?

Fire Protection

Does the courthouse comply with local fire codes?

Does the building have: Fire alarms, smoke detectors, fire sprinkler systems, and fire extinguishers?

Public Areas

- Are public waiting areas routinely searched?
- Are public restrooms routinely searched?

Areas Handling Money

- Does the cashier's window have security features?
- Is there an adequate safe, vault, or strongbox?
- Are cameras and audio recordings used at collection counters?
- Do you have panic alarms?

Doors, Windows, and Openings

- Are courtrooms secured and locked when not in use?
- Are metal detectors and x-ray machines available for use?

Interior Lighting

- Is there emergency lighting?

Furnishings

- Is the judge's area separated from the spectators by a barrier?

Security Devices/Operations

- Are routine checks conducted for: duress/panic alarms, emergency lighting, metal detectors, controlled access systems, and communication systems?
- Are there policies and procedures for firearms carried into the courtroom by: bailiffs, law enforcement witnesses, and law enforcement spectators?

Are there emergency evacuation procedures?

Are duress alarm buttons installed at:
Judges bench, clerk's station, bailiff's
station, and chambers?

Is the courtroom searched before and after
court is in session?

Courthouse Policies and Procedures

Is there a security procedure manual for the
courthouse?

Are all plans updated and current?

Are there procedures for responding to
medical emergencies?

Are there procedures for daily inspections
or security sweeps of the courthouse?

Personal Safety for Clerks

Here are some things you can do to help ensure
your safety.

Be aware of parking. Park in areas that are visible,
not hidden, and lighted if you come or go during
dark hours.

Remember where you parked so you aren't walking
around in search of your car.

Always try to walk to your car with other clerks, as
there is safety in numbers.

Be sure not to walk through any hidden areas.

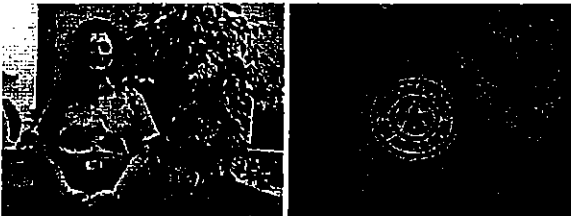
Do not give out your full name to defendants. Only use first names, initials, or clerk numbers for identification. This applies when speaking to defendants, or signing any documents.

Be aware of persons around you. Strangers should be carefully watched and reported if necessary.

Make sure there is distance between you and the defendants in the area in which you serve the public.



Uniforms are a good idea--you will appear different in normal street clothes, and will not be as easily recognized. If you wear uniforms, you should not wear them to locations outside the office.



If you do not wear uniforms, be careful in the clothing that you do wear.

Dress and act professionally – do not send the wrong signal to the people that come in the court.

Most importantly, use common sense. It can be one of your biggest protectors.

Consider carrying devices on your person to help you in the event of an attack or emergency.

Monies from the security fund can be used to pay for all security needs at your courthouse.

- A. True
- B. False

HOW?

* A defendant convicted of a misdemeanor offense in a municipal court shall pay a \$3.00 security fee as a cost of court. The governing body of municipality by ordinance may create a municipal court building security fund and may require a defendant convicted of a misdemeanor offense in a municipal court to pay a \$3.00 security fee as a cost of court.

>In this article, a person is considered convicted if:

***Art. 102.017. Court costs; courthouse security fund; municipal court building security fund.**

- A sentence is imposed on the person
- The court defers final disposition of the person's case
- The clerks of the respective courts shall collect the costs and pay them to the municipal treasurer for deposit in a fund to be known as the courthouse security fund or a fund to be known as the municipal court building security fund. A fund designated by this subsection may be used only to finance items when used for the purpose of providing security services for buildings housing a district, county, justice, or municipal court, as appropriate, including:

- The purchase or repair of X-ray machines and conveying systems
- Handheld metal detectors
- Walkthrough metal detectors
- Identification cards and systems
- Bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services
- Signage
- Confiscated weapon in inventory and tracking systems
- Locks, chains, alarms, or similar security devices
- The purchase or repair of bullet-proof glass
- Continuing education on security issues for court personnel and security personnel

- The city must adopt a city ordinance that allows the municipal court to collect the \$3.00 security fee.
- The ordinance simply must state that it authorizes the municipal court to collect the fee and provide for expenditure of the fee under regulation of state law.

Our obligation is to provide a safe and secure working area for employees, and a secure area for all persons entering our courts.

How safe is your court?

What can you do to provide adequate security for your court?

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FTA/Warrants

Presented by


Margaret Robbins
Program Director
TMCEC

OBJECTIVES

By the end of the session, participants will be able to:


1. List the requirements for issuing warrants.
2. Determine when the offense of Violation of Promise to Appear and Failure to Appear may be filed.
3. Explain which forms are required before warrants can be issued.
4. List the additional court costs required to be collected on warrants.
5. Define summons, warrant, *capias*, and *capias pro fine*.

Warrants and FTAs



Topics of Discussion

- FTAs
- Probable Cause
- Service of Process
- Warrant of Arrest
- Capias
- Summons
- Capias Pro Fine
- Warrant Fees



What-a-ya mean I'm under arrest?

Violation of Promise to Appear

Section 543.009, T.C.

- Person willfully violates written promise to appear on citation

⋮

Failure to Appear

Section 38.10, P.C.


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

⋮

Citations

Peace Officer's Authority to issue:

- Section 543.003, T.C.
 - For offenses under Subtitle C, T.C.
- Article 14.06(b), C.C.P.
 - For Class C misdemeanors except Public Intoxication



⋮

How VPTA and FTA Charged

- VPTA
 - Sworn Complaint
- FTA
 - Sworn Complaint

⋮

When may file VPTA/ FTA

- **FTA filed**
 - Defendant has been in custody
 - Defendant fails to appear
- **VPTA filed**
 - Subtitle C, T.C. offenses
 - Defendant signed promise to appear
 - Defendant failed to appear as promised

⋮

Violation of Promise to Appear

Does not apply to following traffic offenses:

- **Registration**
- **Failure to Maintain Financial Responsibility**
- **Driver's License**
- **Commercial Driver's License**

⋮

FTA vs. VPTA

- **FTA**
 - Prosecutor makes decision to file
 - Sworn complaint initiates charge
 - Culpable mental state
 - Intentionally
 - Knowingly
 - Maximum possible fine
 - \$500
 - Court costs
 - \$44 (base costs)
- **VPTA**
 - Prosecutor makes decision to file
 - Sworn complaint initiates charge
 - Culpable mental state
 - Willfully
 - Maximum possible fine
 - \$200
 - Court costs
 - \$77 (base costs)

⋮

Probable Cause

Required by

- U.S. Constitution, Amendment IV
- Texas Constitution, Article I, Section 9
- Article 1.06, C.C.P.

⋮

Probable Cause

The amount of evidence necessary to cause a person to believe someone has committed a crime.

⋮

Probable Cause Affidavits

- Affidavit = sworn written statement
- Complaints not sufficient to act as
[State v. Martin 833 S.W.2d 129 (Tex. Crim. App. 1992)]

⋮

Probable Cause

- Who determines:
 - Judge
 - Magistrate

[*Sharp v. State* (Tex.Crim.App., 1984)]
(clerks cannot determine probable cause)

⋮

Probable Cause

- Documents requiring:
 - Arrest Warrant
 - Capias
 - Summons
 - Warrant for Seizure of Animals
 - Search Warrants

⋮

Probable Cause Affidavit

- Search Warrant (Art. 18.01(b), C.C.P.)
 - After search warrant executed,
 - Clerk required to make copy of affidavit available for public inspection

⋮

Service of Process

- Process - written orders of court
- Authority to service municipal court process
 - City police and marshals (Art. 45.202, C.C.P.)
- Under the same rules as sheriffs and constables

⋮

Service of Process

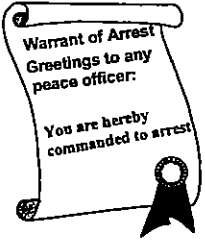
- Jurisdiction of city officers
 - Anywhere in county or counties where city situated

(Art. 45.202 C.C.P.)

⋮

Warrants of Arrest

- Written order issued by a judge
- Written order issued by a magistrate



⋮

Magistrates

Article 2.09, C.C.P.

**Municipal Judges and Mayors
are
Magistrates**

⋮

Judge

- **Authority over cases jurisdiction to try (Article 45.014, C.C.P.)**
- **Jurisdiction (Article 4.14, C.C.P.)**
 - **Accept Complaints for Fine-only offenses that may also include other sanctions other than confinement**

⋮

Magistrate

- **Authority - County Wide**
- **Accept Complaints & Issue Warrants**
 - **Class A and B misdemeanors**
 - **Felonies**
- **Issue Search Warrants**

⋮

Warrant of Arrest

- Sworn Complaint based on probable cause, or

- Probable cause affidavit

⋮

Warrants of Arrest

- Requirements of warrant issued by judge: Article 45.014, C.C.P.

- Requirements of warrant issued by magistrate: Article 15.02, C.C.P.

⋮

Warrant Issued by Mayor

- May be executed in county where city situated
- If executed out of county, needs:
 - Endorsement by judge of court of record, or
 - Endorsement of magistrate in county where executed

⋮

Endorsement

- **By court of record judge**
 - “Let this warrant be executed in any county of the State of Texas.”
- **By magistrate**
 - “Let this warrant be executed in the County of _____”
- **Dated and signed**

⋮

Execution of Warrant

- **Extends to every part of state**
- **Any peace office may execute**
- **May be telegraphed**
- **Executed by delivering to proper officer for execution**

⋮

Officer Executing Warrant

- **Take before a magistrate**
 - Without unnecessary delay
 - But no later than 48 hours after the arrest (Arts. 15.16 and 15.17, C.C.P.)
- **Out-of-County Arrest**
 - Officer must take defendant before magistrate in county of arrest (Arts. 15.16 and 15.17, C.C.P.)

⋮

Out-Of-County Warrant

- **Fine-only offense**
 - The magistrate has the authority to take a plea, set and collect a fine, and grant jail credit
 - Paperwork and money must be sent within 11 business days to court with jurisdiction

⋮

Clerk's Role

- **Review form of warrant**
 - Compare with statutory requirements
 - Bring discrepancy to judge's attention
- **Check information entered on form**
 - Typing errors
 - spelling errors
 - Information accurate

⋮

Clerk's Role

- **Coordinate with police department**
 - Original, copy, electronically connected
 - Ensure warrant not lost
 - Ensure prompt recall when served
- **Coordinate documentation of peace officer's service or process**
 - Needed to determine warrant fee assessment

⋮


Clerk's Role

- After service of the warrant
 - Affidavit and warrant public
 - Public may view
 - Public may purchase copy

⋮

Capias

Chapter 23, C.C.P.



- Only judge has authority to issue
- Required to be issued when a bond forfeiture declared (Article 23.05, C.C.P.)

⋮

Capias

- Art. 23.01 says judge or clerk may issue *capias*

•MUNI CIPAL COURT CLERK MAY NOT ISSUE A CAPIAS
[*Sharp v. State* (Tex.Crim.App., 1984)]

⋮

Capias

- Orders peace officer to bring defendant before the court

- Does not lose its force if not executed by time fixed in *capias* (Article 23.07, C.C.P.)

⋮

Capias

- May be executed by any officer
- Return must state disposition made by officer
- If not executed, return must state:
 - Document reason for non-service
 - Any information on defendant's whereabouts must be provided

⋮

Clerk's Role

- Coordinate handling with police department
- Notifies judge and prosecutor, if not served
- When served or processed by peace officer:
 - Coordinate documentation so judge may assess warrant fee

⋮

Summons For Defendant

- Requires defendant to appear
- Issued by Magistrate: Article 15.03(b), C.C.P.
- Issued by judge: Article 23. 04, C.C.P.
 - Request from a prosecutor required

⋮

Summons For Defendant

Required to have the following wording in English and 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.”

⋮

Service of Summons For Defendant

- Peace officer serves
- **MUNICIPAL COURT CLERK DOES NOT HAVE AUTHORITY TO SERVE**
- A fee must be assessed when served or processed

⋮
Summons For Defendant

Served by a peace officer

- Delivering copy to defendant
- Leaving it at his or her home with someone of suitable age and discretion
- Mailing it to last known address

⋮
Summons For Defendant

Articles 15.03(b) and
23.03(b), C.C.P.

If defendant fails to appear,
a warrant of arrest or
capias shall be issued

⋮
Summons for Corporation or Association

- Service on Corp. or Assoc.
 - Must require
 - Corporation or association to appear at or before 10 am of the Monday next after expiration of 20 days after service
- Service on Sec. Of State (S.O.S.)
 - Must require
 - Corporation or association to appear at or before 10 am of the Monday next after expiration of 30 days after service

⋮

Summons for Corporation or Association

- **Service on Corp. or Assoc.**
 - Personally deliver to registered agent
 - President or vice president
- **Service on Sec. of State (S.O.S.)**
 - Personally deliver to S.O.S. or Assist. S.O.S. or clerk in charge of Corporation Dept. at S.O.S.

⋮

Summons for Corporation or Association

- **Enforcement**
 - Defendant fails to appear
 - issue *capias*
 - Corporation or Association – Counsel for fails to appear
 - Court enters plea of not guilty, proceeds to trial, enters judgment, pronounces sentence

⋮

Capias Pro Fine

Article 45.045, C.C.P.

- Issued when defendant fails to satisfy judgment
- Shall state the amount of the judgment and sentence

⋮

Capias Pro Fine

- A judgment must have been entered and signed by judge
- Judge needs documentation that defendant failed to satisfy judgment

⋮

Capias Pro Fine

- Before commitment to jail for default in payment of a fine, judge determines
 - If defendant intentionally failed to make a good faith effort to discharge the judgment
 - Defendant is not indigent

Article 45.046, C.C.P.

⋮

Arrest Fee


- \$5.00
- Collected upon conviction for
 - Peace officer issuing a citation
 - Peace officer making warrantless arrest
- City keeps if local officer issued citation or made warrantless arrest
- If peace officer with statewide authority issues citation or makes arrest, \$1.00 goes to state

⋮

Warrant or Capias Fee

Article 102.011(a)(2), C.C.P.

- Amount - \$50
- For services of a peace officer
- Conviction required



⋮

Warrant or Capias Fee

Article 102.011(a)(2), C.C.P.

- Collected for processing or executing by a peace officer:
 - warrant of arrest
 - capias
 - capias pro fine

⋮

Warrant Fee

Article 102.011(a)(2), C.C.P.

- Arresting law enforcement agency other than one where warrant issued
 - May request \$50
 - Must make request within 15 days of arrest
 - Paid upon conviction

⋮

Warrant Fee

Article 102.011(a)(2), C.C.P.

If a peace officer with statewide authority makes the arrest, court remits \$10 of the \$50 to the State Comptroller.

⋮

Fee for Summons

- Summons for defendant or parents or guardian of juvenile
- Fee of \$35
 - Service of Summons (served by peace officer)
- Defendant must be convicted

(Art. 102.011(4), C.C.P.)

⋮

Special Expense Fee

Article 45.203, C.C.P.

- Ordinance required
- Amount - not to exceed \$25
- Warrant must be executed

⋮

Special Expense Fee

Article 45.203, C.C.P.

- Collected on:
 - Failure to Appear
 - Violate Promise to Appear

⋮

THE END

FTAs AND WARRANTS

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FAILURE TO APPEAR

A. Failure to Appear

When a defendant lawfully released from custody with or without bail intentionally and knowingly fails to appear in accordance with the term of the release, the defendant may be charged with the offense of failure to appear. This offense is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only. (Section 38.10, P.C.) Section 12.23, P.C., provides that an individual adjudged guilty of a Class C misdemeanor offense in the Penal Code shall be punished by a fine not to exceed \$500.

If a defendant has not been in custody, even though the defendant fails to appear, the defendant cannot be charged with the offense of failure to appear. In this instance, the court would issue a warrant of arrest or *capias* on the pending charge.

B. Violation of Promise to Appear

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. (Section 543.009, T.C.) The offense of violation of promise to appear may be charged only when the underlying offense is an offense in Subtitle C, Rules of the Road, Transportation Code.

Since no specific penalty is provided for the offense of violation of promise to appear, the court must look to the general penalty found in Section 542.401, T.C. That section provides that a person convicted of an offense that is a misdemeanor for which another penalty is not provided shall be punished by a fine of not less than one dollar or more than \$200.

C. When Failure to Appear or Violation of Promise to Appear May Be Filed

Fine-Only Offenses	Failure to Appear-Section 38.10, P.C.	Violation of Promise to Appear Section: 543.009, T.C.
Registration Law, Subtitle A, Chapter 502, T.C.	Yes	No
Driver's License Law, Subtitle B, Chapter 521, T.C.	Yes	No
Subtitle B, Chapter 522, T.C.	Yes	No
Rules of the Road, Subtitle C, T.C.	Yes	Yes (more specific charge)
Financial Responsibility Law, Subtitle D, Chapter 601, T.C.	Yes	No

When Violation of Promise to Appear and Failure to Appear Can be filed (continued)

Fine Only Offenses	Failure to Appear Section 38.10 P.C.	Violation of Promise to Appear Section 543.009 T.C.
Vehicle Size and Weight Subtitle E, T.C.	Yes	No
Commercial Motor Vehicles Subtitle F, T.C.	Yes	No
Motorcycles and all-Terram Vehicles Subtitle G, T.C.	Yes	No
Parking, Towing, and Storage of Vehicle Subtitle H, T.C.	Yes	No
Enforcement of Traffic Laws Subtitle I, T.C.	Yes	No
Miscellaneous Provisions Subtitle J, T.C.	Yes	No
Alcoholic Beverage Code	Yes	No
Education Code	Yes	No
Health and Safety Code	Yes	No
Penal Code	Yes	No
City Ordinances	Yes	No

¹ Before failure to appear, may be filed, the defendant must have been in custody, released with or without bail and failed to appear in accordance with the terms of his or her release.

² Defendant must have signed citation for the Subtitle C, T.C. offense and failed to appear before this charge may be filed. If for some reason the defendant did not sign the promise to appear on the citation, violation of promise to appear may not be filed.

E. Failure to Appear vs. Violation of Promise to Appear

Differences	Failure to Appear	Violation of Promise to Appear
Decision to file charge	City prosecutor	City prosecutor
Charge initiated by sworn complaint	Yes	Yes
Culpable Mental State	Intentionally and knowingly	Willfully
Custody of defendant required	Yes	No
Defendant released on bail required	No	No

Failure to Appear vs. Violation of Promise to Appear (continued)

Differences	Failure to Appear	Violation of Promise to Appear
Maximum possible fine if convicted	\$500.00	\$200.00

Base court costs	\$44.00	\$77.00
Process issued to bring defendant before court	Warrant of arrest or <i>capias</i>	Warrant of arrest or <i>capias</i>

¹ Does not include Building Security Fee or Technology Fee

WARRANTS, CAPIASES, AND SUMMONSES

Discussed here is an overview of probable cause and the types of warrants issued by the municipal courts. Although municipal court clerks have no authority to determine probable cause, typically, they prepare affidavits of probable cause for peace officers and others. After the affidavits are sworn, they are presented to a judge or a magistrate who determines if the information in the affidavit is sufficient probable cause 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 so that the peace officers have access to a list of defendants with outstanding warrants.

A. Probable Cause

No warrant shall issue, but upon probable cause. (Amendment IV, U.S. Constitution; Article I, Section 9, Texas Constitution; and Article 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 *capias*, and a summons 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 be contained in a complaint. A complaint is not sufficient to issue a warrant unless it contains probable cause. 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, 519 (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 processes under the same rules and laws governing the service of these processes by sheriffs and constables, so far as applicable. (Article 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 situated in more than one county, the police officer or marshal may serve the process throughout those counties. (Article 45.202, C.C.P.)

The officer or person 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 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. (Articles 15.16, and 15.17, C.C.P.)

C. Warrant of Arrest

Warrants of arrest may be issued by a judge with jurisdiction over a case to try the case or by any magistrate in the county. Discussed here is only the warrant issued by the judge. For information on warrants issued by a magistrate, see TMCEC Level I study guide *Pre-Trial Procedures*. For information on a magistrate's authority, see TMCEC Level I study guide *Authority and Duties*.

1. Defined

A warrant is a written order from a judge ordering a peace officer to arrest an accused person. (Article 45.014, C.C.P.)

2. Authority to Issue

A judge may issue warrants of arrest when either a sworn complaint or an affidavit based on probable cause is filed with the judge. (Article 45.014, C.C.P.) These warrants are for fine-only misdemeanors filed in municipal court.

3. Requisites

The requirements of a warrant issued pursuant to Article 45.014, C.C.P., are:

- 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
- 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.

D. Capias

1. Defined

A *capias* is a writ (written order) issued by the court (judge) and directed to any peace officer of the State of Texas, commanding that a person accused of an offense be arrested

and brought before the court immediately or on a certain day stated in the *capias*. (Article 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. (Article 23.04, C.C.P.). Where a forfeiture of bail is declared, a *capias* shall be immediately issued for the arrest of the defendant. (Article 23.05, C.C.P.)

Although Article 23.01, C.C.P., says that a “*capias*” is a writ issued by the court or clerk, a municipal court clerk does not have the authority to issue a *capias*. In *Sharp v. State*, 677 S.W.2d 573, a City of Houston municipal court clerk issued a *capias* writ for violating the “helmet safety law.” The defendant was later arrested on that warrant 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* writ. 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 and 766 F.2d 193 (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 *capias*.

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. [Article 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. (Article 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. Summons

1. Defined

A summons gives notice to a person, an association, or a corporation that a charge has been filed in court. It provides the address of the court and a date and time requiring the defendant to appear.

2. Authority to Issue

In a misdemeanor case, the summons is issued by a court (judge) having jurisdiction in the case. (Article 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 to appear for jury service. See the Level I study guide *Trial Procedures* for information on a juror summons.

The summons may be issued *only* upon request of the attorney representing the State. (Article 23.04, C.C.P.) There is, however, no requirement in Chapter 17A, C.C.P., that a prosecutor make a request for issuance of a summons to a corporation or association.

3. 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. (Article 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. (Article 23.03(b), C.C.P.) Article 23.03(d), C.C.P., requires that a summons issued for a felony must 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." Clerks should review the form of the summons. If it is not proper or the information that should be in English and Spanish is not on it, the clerk should discuss with the judge or city attorney the proper wording.

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. (Article 17A.03, C.C.P.)

4. Service

a. On the Defendant

Articles 23.03(c) and 15.03(b), C.C.P., provide procedures for how a peace officer serves a summons on a defendant. They 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

A peace officer shall serve a summons on a corporation 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, the officer shall personally serve the president or a vice president of the corporation. If the attempt to effect service is unsuccessful, then the officer shall serve 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. (Article 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, or 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. (Article 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*. (Article 23.03(b), C.C.P.)

If counsel fails to appear for a corporation or association, the corporation or association is deemed to be present in person for all purposes, and the court shall enter a plea of not guilty and proceed with trial, judgment, and sentencing. (Article 17A.07, C.C.P.) No individual may be arrested upon a complaint, judgment, or sentence against a corporation or association. (Article 17A.03(b), C.C.P.)

	Warrant of Arrest	<i>Capias</i>	Summons	<i>Capias Pro fine</i>
Documents on file with court before court may issue	A sworn complaint based on probable cause or a probable cause affidavit. (A complaint by itself is not sufficient unless it contains probable cause).	A sworn complaint based on probable cause or a probable cause affidavit. (A complaint by itself is not sufficient unless it contains probable cause).	A sworn complaint based on probable cause or a probable cause affidavit. (A complaint by itself is not sufficient unless it contains probable cause).	Either a citation or a sworn complaint was filed to initiate charges and a signed judgment by the judge.
Authority to Issue for fine only offenses filed in municipal court	Judge or Magistrate	Judge	Judge or a magistrate	Judge
Authority to issue for Class A or B misdemeanors or felonies	Magistrate or judge with authority to hear the case.	Only issued by court with authority to hear the case.	Magistrate or judge with authority to hear the case.	Not applicable.
Notice to corporation or association	No	No	Notified by issuing a summons.	Not applicable.
Request from prosecutor required before issuance	No	No	If judge issuing, request required. If magistrate issuing, no request required.	No
Request from prosecutor required before issuance	No	No	If judge issuing, request required. If magistrate issuing, no request required.	No
Warrant issued by a mayor magistrate	Required to be countersigned by a court of record judge or a magistrate in the county of service.	Magistrates do not have authority to issue a <i>capias</i> . Only issued by court with authority to hear the case.	No requirement to have summons countersigned.	Magistrates do not have authority to issue <i>capias pro fine</i> .
Authority to serve	Peace officer	Peace officer	Peace officer	Peace officer
Service	Warrant executed by arresting person named in warrant.	<i>Capias</i> executed by arresting person named in <i>capias</i> .	<ul style="list-style-type: none"> •Service on person named in summons. •Service on corporation is on president, vice president or on Secretary of State, Assistant Secretary, or on clerk in corporation department. 	<i>Capias pro fine</i> executed by arresting person named in <i>capias pro fine</i> .
Enforcement	In-house collection procedures; Contract with DPS for FTA program; warrant collection agency; etc.	In-house collection procedures; Contract with DPS for FTA program; warrant collection agency; etc.	<ul style="list-style-type: none"> •Issuance of a <i>capias</i> for person's arrest; •If counsel for corporation or association does not appear, court shall enter a not guilty plea and proceed to trial, judgment, and sentencing. 	In-house collection procedures; Contract with DPS for FTA program; warrant collection agency; etc.

	Warrant of Arrest	Capias	Summons	Capias Pro fine
Method of Service	Arrest of the accused	Arrest of the accused	<p>Service of a summons on person</p> <ul style="list-style-type: none"> •Deliver copy to defendant personally; •Leave it at the defendant's place of abode with someone of suitable age and discretion, or •Mail it to the defendant last known address. <p>Service of a summons on a corporation</p> <ul style="list-style-type: none"> •Personally deliver copy to corporation's registered agent for service. •If no registered agent or if officer cannot locate registered agent, the officer shall personally serve the president or a vice president of the corporation. •If personal service on the corporation is not effected, then the officer shall serve it on the Texas Secretary of State by delivering a copy personally to the Secretary or the Assistant Secretary of State or to any clerk in charge of the corporation department of the Secretary of State's office. <p>Service of a summons on association</p> <ul style="list-style-type: none"> •Deliver copy to a high managerial agent at the place of business. •If unable to serve a high managerial agent, service can be on any member of the association. 	Arrest of the defendant

Fees

A. Arrest Fee

Courts must collect a five dollar arrest fee when a peace officer issues a written notice to appear in court (citation) for a violation of a traffic law, municipal ordinance, or penal law of this state or makes a warrantless arrest and the person is convicted. A peace officer's authority to issue a citation is found in two statutes:

- Section 543.003, T.C. provides authority for peace officers to issue a written notice to appear for offenses charged under Subtitle C, T.C.
- Article 14.06(b), C.C.P. says that a peace officer may issue a citation for any Class C misdemeanor, except for the offense of public intoxication.

If a city officer issues the citation or makes the warrantless arrest, the city keeps the five dollars. If a peace officer with statewide authority, such as a Department of Public Safety trooper, the city must sent one dollar of the five dollars to the state.

B. Warrant Fee

Warrant fees are costs collected as a result of services performed by a peace officer. A \$50 warrant fee must be collected upon conviction if a warrant or capias is processed or executed by a peace officer. The law does not define processing. Some processing by a peace officer that the judge might consider includes the following:

- telephone calls to the defendant;
- courtesy letters to the defendant;
- physically going to look for the defendant; or
- entering the warrant into the local police department computer.

Who retains the fee depends on who executes the warrant or capias.

- If a local peace officer serves or processes the warrant, the city retains the \$50 fee.
- If another agency other than the one whose court issued the warrant or capias executes it, that law enforcement agency may request the \$50 fee. If the request is made within 15 days of the arrest and the defendant is convicted, the warrant fee must be paid to that agency. If that agency fails to request the fee, the fee is still required to be collected, but it goes into the city treasury of the city whose court issued the warrant or capias.
- If a peace officer with statewide authority, such as a Department of Public Safety trooper, the city must pay \$10 of the \$50 to the state.

C. Special Expense Fee

Cities may by ordinance adopt a special expense fee not to exceed \$25 for issuance and service of a warrant of arrest for the offenses of failure to appear and violation of promise to appear after due notice.

D. Fee for Service of a Summons

If a defendant is served with a summons and then later convicted, the defendant must pay a fee of \$35. This fee is deposited into the city treasury.

E. Chart of Fees

	Arrest Fee	Warrant Fee	Special Expense Fee	Summons Fee
When charged	Peace officer issued a citation or made a warrantless arrest and there is a conviction.	Peace officer processed warrant or executed warrant and there is a conviction.	Peace officer executes warrant for failure to appear or violation of promise to appear. Collected upon conviction.	When a peace officer serves a summons and the defendant is convicted.
How much	\$5.00	\$50.00	Not to exceed \$25.00	\$35.00
If peace officer with law enforcement agency other than agency whose court issued warrant executes or serves warrant	Fee stays with city where case is filed.	If other law enforcement agency requests within 15 days of arrest and the defendant is convicted, the warrant fee goes to the other law enforcement agency. If other agency fails to request, fee stays with city whose court issued warrant.	Fee stays with city where case is filed.	Fee stays with city where case is filed.
How much is sent to state	If local peace officer issued citation or made warrantless arrest, fee stays with city. If an officer with statewide authority issued citation or made warrantless arrest, \$1.00 goes to state.	If local peace officer processes the warrant or executes the warrant, \$50 kept by city. If a peace officer with statewide authority executes warrant, \$10 sent to state.	City retains.	City retains.

Summary

- Failure to appear can be charged when a defendant has been custody and failed to appear.
- Violation of promise to appear can only be charged if the original underlying offense is a Subtitle C, T.C. offense.
- The prosecutor makes the decision about whether or not to file either the failure to appear or violation of promise to appear.
- Before any warrant may be issued, the judge or magistrate must have probable cause.
- A complaint by itself does not contain probable cause.
- A warrant of arrest, capias, summons, and a capias pro fine are all written orders issued by a judge.
- A warrant of arrest orders a peace officer to arrest an accused to be dealt with according to law.
- A capias orders a peace officer to arrest an accused and bring him or her before the court.
- A summons gives notice to a defendant of charges against him or her and gives a time and place to appear to answer the charges.
- A capias pro fine enforces the judgment by ordering the defendant be arrested and brought before the court.
- A defendant cannot be committed to jail for default of fine unless the judge determines that the defendant is not indigent and did not make a good faith effort to discharge the judgment.
- Processes are written order issued by a judge or a magistrate.
- City peace officers and marshals have authority to serve municipal court processes.
- An arrest fee of five dollars is required to be collected upon conviction if a peace officer issued a citation or made a warrantless arrest.
- A warrant fee of \$50 is required to be collected upon conviction for services of a peace officer.
- If a city adopts an ordinance for the collection of a fee of up to \$25 for execution of a warrant for failure to appear or violation of promise to appear, the court must collect the fee.
- The fee for the service of a summons by a peace officer is \$35 and must be collected upon conviction.

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1-800-252-3718
FAX (512) 435-6118

Dismissals

Presented by

Stewart Milner
Municipal Judge
Arlington

&

Hilda Phariss
Court Administrator
Bryan

OBJECTIVES

By the end of the session, participants will be able to:

1. Explain when a judge has authority to dismiss without a prosecutor motion.
2. Explain when a judge must have a motion from the prosecutor to dismiss.

	Judicial Authority to Dismiss
--	--------------------------------------

	Judicial Power
	<ul style="list-style-type: none"> ■ Judges' power limited ■ Some statutory authority ■ Defenses to prosecution ■ Prosecutor's involvement ■ Case law

	Mandatory (Duty to Dismiss)
	<ul style="list-style-type: none"> ■ Article 45.0511(i), C.C.P. <ul style="list-style-type: none"> - Evidence of completion of DSC ■ Article 45.051(c), C.C.P. <ul style="list-style-type: none"> - Satisfactory evidence of compliance of terms of deferred disposition ■ Article 45.052(c), C.C.P. <ul style="list-style-type: none"> - Satisfactory completion of teen court

	Mandatory (Duty to Dismiss)
	<ul style="list-style-type: none"> ■ Article 45.053(b), C.C.P. <ul style="list-style-type: none"> - Defendant was committed for and completed court-ordered treatment for chemical dependence ■ Section 548.605(b), T.C. <ul style="list-style-type: none"> - Inspection Certificate expired less than 60 days and remedied within 10 working days - Required to charge \$10 fee

	Discretionary (Authority to Dismiss)
	<ul style="list-style-type: none"> ■ Section 548.605(c), T.C. <ul style="list-style-type: none"> - Inspection Certificate expired more than 60 days and remedied within 10 working days - No authority to charge \$10 fee

	Discretionary (Authority to Dismiss)
	<ul style="list-style-type: none"> ■ Section 521.026, T.C. <ul style="list-style-type: none"> - Expired DL if renewed within 10 working days - Judge may assess \$10 fee upon dismissal

	Discretionary (Authority to Dismiss)
	<ul style="list-style-type: none"> ■ Section 502.407(b), T.C. <ul style="list-style-type: none"> - Expired registration if renewed within 10 working days - Defendant must have paid delinquent fee to tax office - Judge may assess \$10 fee upon dismissal

	Defense to Prosecution
	<ul style="list-style-type: none"> ■ Section 601.193, T.C. <ul style="list-style-type: none"> - Failure to maintain financial responsibility - Defense if defendant produces in court a document listed in Section 601.053(a) that was valid at time alleged offense occurred.

	Defense to Prosecution
	<p>Section 601.053(a), T.C.</p> <ul style="list-style-type: none"> ■ Policy or photocopy ■ Standard proof (insurance card) ■ Binder ■ Surety bond certificate ■ Certificate of deposit ■ Certificate of self-insurance

Defense to Prosecution

- Section 601.193, T.C. (continued)
 - Court must verify validity of document
 - Court shall dismiss
 - Not permitted to collect any fee

Defenses to Prosecution

- Section 521.025(d), T.C.
 - Failure to Display Driver's License
 - Defense to present DL that was valid at time citation issued
- Section 548.602(c), T.C.
 - Failure to display inspection certificate
 - Defense if inspection certificate in effect at time citation issued

Prosecutor's Motion

- Article 32.02, C.C.P.
 - State's Attorney may move to dismiss case with permission of court
 - Must file written statement setting out reason(s) for dismissal
 - Statement must be incorporated as part of judgment

	Defense Motions
	<ul style="list-style-type: none"> ■ Speedy trial ■ Motion to quash ■ Motion in limine ■ Motion to suppress ■ Motion for Discovery

	Case Law
	<ul style="list-style-type: none"> ■ State v. Johnson 821 S.W2d 609 (Tex.Crim.App.1991) <ul style="list-style-type: none"> – Court lacked authority to dismiss prosecution when State’s attorney failed to appear when case was called for trial

	Case Law
	<ul style="list-style-type: none"> ■ State v. Frye, 897 S.W.2d 324 (Tex.Crim.App. 1995) <ul style="list-style-type: none"> – Violation of defendant’s Sixth Amendment right to counsel warranted dismissal of defendant’s indictment

	Case Law
	<ul style="list-style-type: none"> ■ State v. Terrazas, 962 S.W.2d 38 (Tex.Crim.App. 1998) <ul style="list-style-type: none"> - Dismissal of charging instrument with prejudice without prosecutor's consent may be proper when defendant suffers demonstrable prejudice or substantial threat and where trial court is unable to identify and neutralize taint by other means

	What's New
	<ul style="list-style-type: none"> ■ HB 1575 <ul style="list-style-type: none"> - Section 25.0951, E.C. is amended by 79th Legislature - Court shall dismiss a complaint for Failure to Attend School made by a school that is not made within seven school days of the student's last absence.

	What's Confusing
	<ul style="list-style-type: none"> ■ Waiving jurisdiction over juveniles <ul style="list-style-type: none"> - Not a dismissal - This is a transfer to the juvenile court ■ Referring child to juvenile court for contempt <ul style="list-style-type: none"> - Not a dismissal of charges in your court - Child still liable for charges filed in your court

Miscellaneous

- Officer's request not to prosecute
 - Give to prosecutor
 - Prosecutor must make motion to dismiss
- Review of old cases
 - Prosecutor decides whether to continue to try to prosecute or make motion to dismiss

Before dismissal, make sure there is statutory authority or a prosecutor's motion

DISMISSALS

The common law rule is that prosecutors have the power to dismiss, absent specific statutory authority to the contrary. Texas law has generally followed that rule, but Texas law includes judges in the dismissal process. (Article 32.02, C.C.P.) Accordingly, unless there is constitutional or statutory authority vesting a trial court with dismissal power, criminal prosecutions may be dismissed only on the motion of the prosecuting attorney. [*State v. Morales*, 804 S.W.2d 331 (Tex. App.—Austin 1991)] While it is clear that the usual rule is that courts may not dismiss without the prosecutor's consent, it is equally clear that prosecutors cannot dismiss without the court's consent. [*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 court files the statement with the other papers in the case and incorporates the reason into the judgment of dismissal. Article 32.02, C.C.P., requires judicial consent or approval for a case to be dismissed. The requirement of judicial consent or approval has been called a judicial veto. The general rule is that a judge cannot dismiss a case, except by consenting to and approving a prosecutor's motion and the grounds presented. [*Flores v. State*, 487 S.W.2d (Tex. Crim. App. 1972)] There are, however, a few exceptions to this rule. See the next section for examples of the exceptions.

a. Mandatory Judicial Duty to Dismiss

Some statutes create a mandatory judicial duty to dismiss a criminal charge. In these instances, judges are allowed to dismiss, with or without a prosecutor's motion. Examples of laws imposing a duty to dismiss on the judge or court include the following.

Duty to Dismiss	Cite
When a person presents evidence of completing a driving safety course, a copy of his or her driving record as maintained by the Texas Department of Public Safety, and an affidavit stating that he or she was not taking a driving safety course or a motorcycle operator training course at the date of request for the course nor had he or she taken a course that is not yet reflected on his or her driving record, the court shall dismiss the charge and report to the Department of Public Safety the date the course was completed.	Art. 45.051, C.C.P.
When a person presents satisfactory evidence of compliance with the terms of deferred disposition, the judge is required to dismiss the complaint, note the dismissal in the docket, and record no final conviction.	Art. 45.051, C.C.P.
When a person presents satisfactory evidence of completion of a teen court program, the court is required to dismiss the charge.	Art. 45.052, C.C.P.
When evidence is presented that a person was committed for and completed court-ordered treatment for chemical dependency, the court is required to dismiss the charge, note the dismissal in the docket, and record no final conviction.	Art. 45.053, C.C.P.

Duty to Dismiss

Cite

When an inspection certificate is expired less than 60 days and the driver gets an inspection and a new certificate within 10 working days, a judge must dismiss the charge of driving with expired inspection.	Section 548.605, T.C.
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B. Discretion to Dismiss

The following are examples of laws that grant the judge discretion to dismiss a charge, but they do not create a legal duty to dismiss.

Discretion to Dismiss

Cite

A judge has discretion to dismiss the charge of driving with an expired driver's license if the driver renews the license within 10 working days.	Section 521.026, T.C.
A judge has discretion to dismiss the charge of driving with expired registration if the driver renews the registration within 10 working days and proves that any delinquent fees due have been paid.	Section 502.407(b), T.C.
A judge has discretion to dismiss the charge of driving with expired inspection sticker if the inspection certificate is expired more than 60 days.	Section 548.605, T.C.

C. Defenses to Prosecution

In some instances, statutes create a defense to the prosecution for certain actions. In these instances, the judge needs a motion from the prosecutor to dismiss or, at trial, to have a finding of not guilty. Generally, the prosecutor examines the proof and upon determining that it is sufficient, makes a motion to the court to dismiss the charge. Examples of defenses to the prosecution are noted in the following list.

Defenses to Prosecution

Cite

When a defendant is charged with failure to display an inspection certificate, it is a defense to the prosecution if the inspection certificate for the vehicle is in effect at the time of the arrest.	Sec. 548.602(c), T.C.
When a defendant is charged with not possessing a driver's license while operating a motor vehicle, it is a defense to the prosecution to present a driver's license that was valid at the time the citation was issued.	Sec. 521.025(d), T.C.
In a case in which a defendant is charged with the offense of failure to maintain financial responsibility, the defendant is presumed to have operated the vehicle without any type of financial responsibility unless the person produces evidence of financial responsibility that was valid at the time the citation was issued. If the defendant can produce such proof and the court verifies the document, the court must dismiss the case. Although the statute does not address who should do the verification, in no instance should the judge do it.	Sec. 601.193, T.C.

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Appeals

Presented by

Stewart Milner
Municipal Judge
Arlington

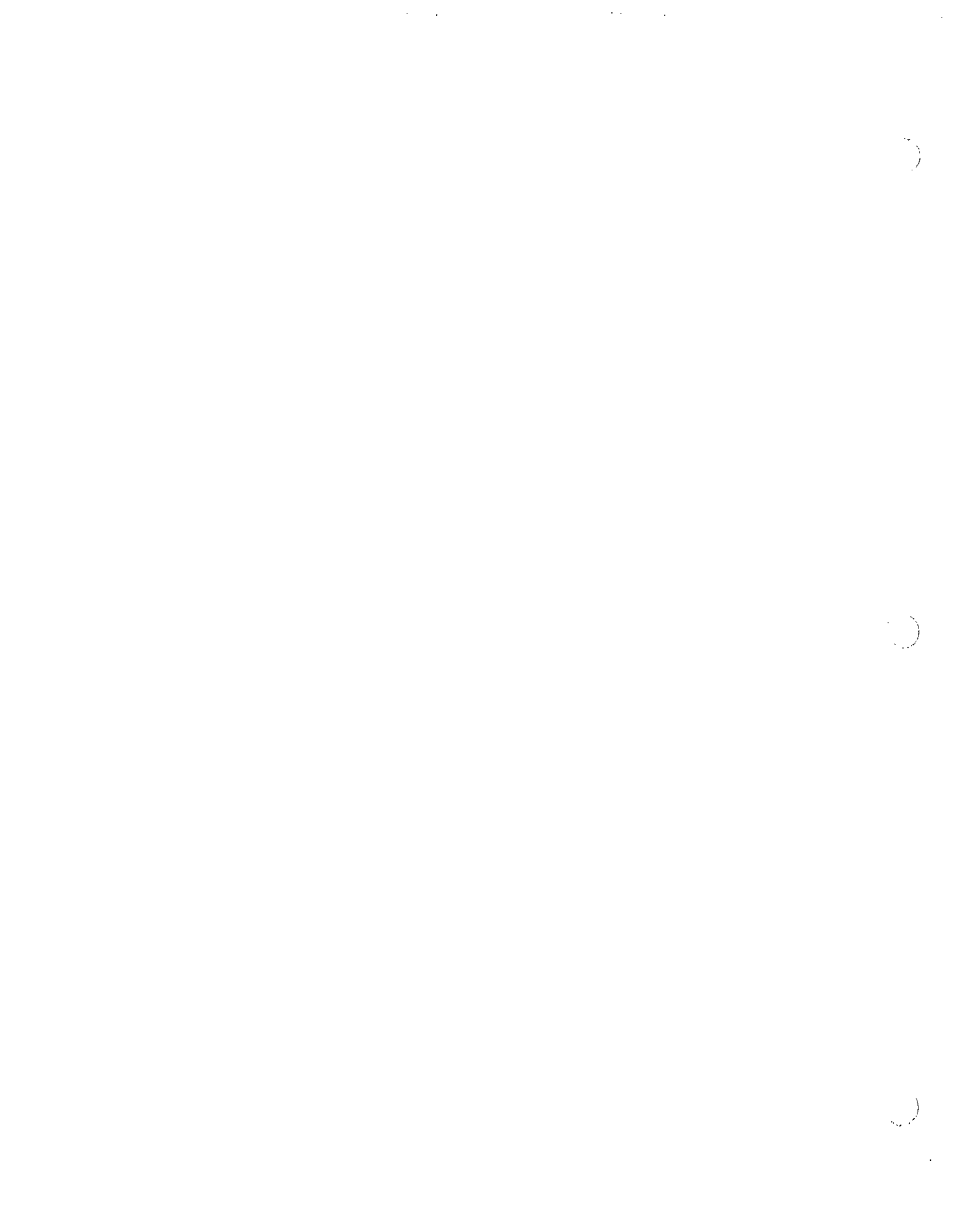
&

Hilda Phariss
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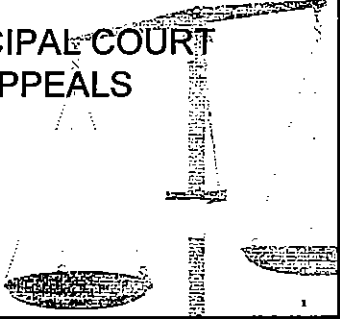
OBJECTIVES

By the end of the session, participants will be able to:

1. Explain the difference between how appeals are handled in municipal courts of record and non-record.
2. List the requirement of appeal bonds.
3. Explain the steps to process appeals.

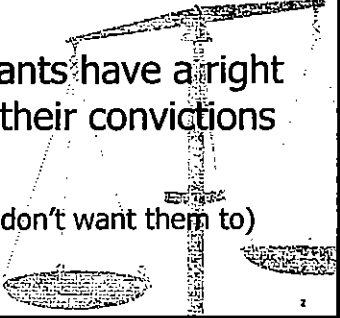


MUNICIPAL COURT
APPEALS



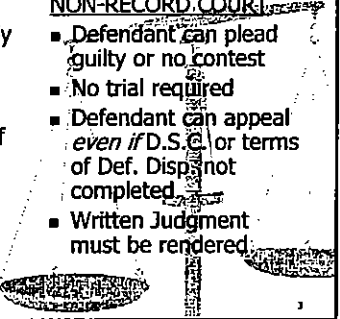
All Defendants have a right
to appeal their convictions

(even if we don't want them to)



Appeal Process - Trial

COURT OF RECORD	NON-RECORD COURT
<ul style="list-style-type: none">■ Appeal based solely on errors made by trial court.■ Defendant cannot prevail on appeal if no trial.■ Written Judgment must be rendered	<ul style="list-style-type: none">■ Defendant can plead guilty or no contest■ No trial required■ Defendant can appeal even if D.S.C. or terms of Def. Disp. not completed■ Written Judgment must be rendered



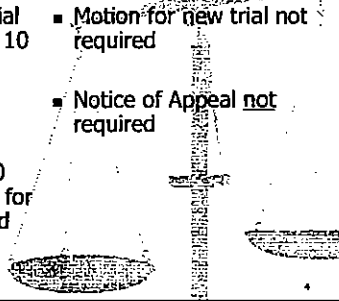
Appeal Process - Motions

COURT OF RECORD

- Motion for new trial is required within 10 days of date of judgment
- Notice of Appeal required within 10 days after motion for new trial overruled

NON-RECORD COURT

- Motion for new trial not required
- Notice of Appeal not required



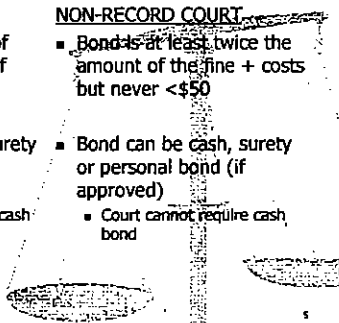
Appeal Process - Bond

COURT OF RECORD

- Bond is the greater of double the amount of fine + costs or \$100
- Bond can be cash, surety or personal bond (if approved)
 - Court cannot require cash bond

NON-RECORD COURT

- Bond is at least twice the amount of the fine + costs but never <\$50
- Bond can be cash, surety or personal bond (if approved)
 - Court cannot require cash bond



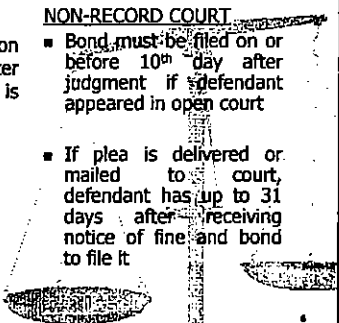
Appeal Process - Bond

COURT OF RECORD

- Bond must be filed on or before 10th day after motion for new trial is overruled

NON-RECORD COURT

- Bond must be filed on or before 10th day after judgment if defendant appeared in open court
- If plea is delivered or mailed to court, defendant has up to 31 days after receiving notice of fine and bond to file it



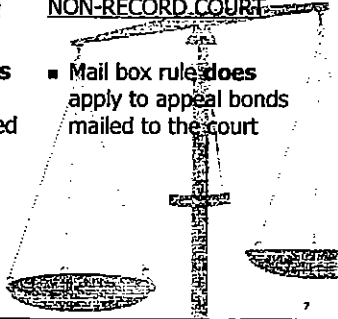
Appeal Process - Bond

COURT OF RECORD

- Mail box rule **does not** apply to an appeal bond mailed to the court

NON-RECORD COURT

- Mail box rule **does** apply to appeal bonds mailed to the court



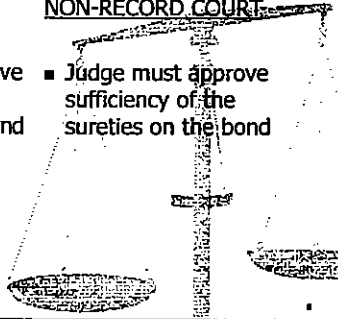
Appeal Process – Bond Sufficiency

COURT OF RECORD

- Judge must approve sufficiency of the sureties on the bond and the record

NON-RECORD COURT

- Judge must approve sufficiency of the sureties on the bond



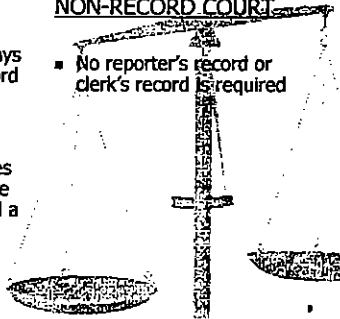
Appeal Process - Record

COURT OF RECORD

- Defendant has 60 days to complete the record and file it with the Appellate Clerk
- "The Record" includes the clerk's record, the reporter's record and a variety of other required material

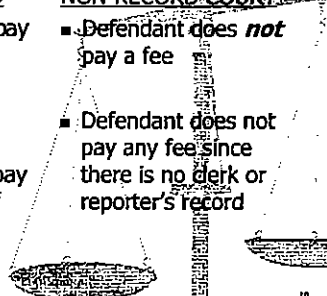
NON-RECORD COURT

- No reporter's record or clerk's record is required



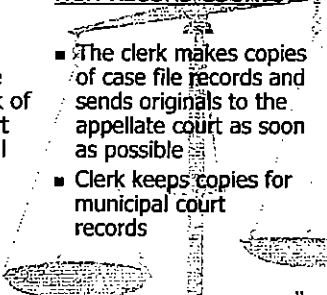
Appeal Process – Record

<p><u>COURT OF RECORD</u></p> <ul style="list-style-type: none"> ■ Defendant must pay a \$25 fee for preparation of clerk's record ■ Defendant must pay the actual cost of reporter's record 	<p><u>NON-RECORD COURT</u></p> <ul style="list-style-type: none"> ■ Defendant does not pay a fee ■ Defendant does not pay any fee since there is no clerk or reporter's record
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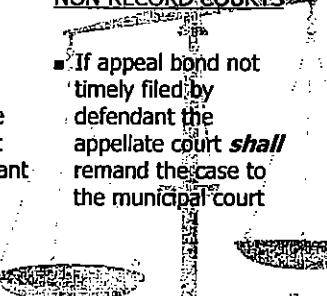
Appeal Process – Record

<p><u>COURT OF RECORD</u></p> <ul style="list-style-type: none"> ■ The clerk shall promptly send the record to the clerk of the appellate court after the municipal judge approves it 	<p><u>NON-RECORD COURTS</u></p> <ul style="list-style-type: none"> ■ The clerk makes copies of case file records and sends originals to the appellate court as soon as possible ■ Clerk keeps copies for municipal court records
--	--



Appeal Process – Timeliness

<p><u>COURT OF RECORD</u></p> <ul style="list-style-type: none"> ■ Prosecution may brief the appellate court that the time deadlines were not met by the defendant 	<p><u>NON-RECORD COURTS</u></p> <ul style="list-style-type: none"> ■ If appeal bond not timely filed by defendant the appellate court shall remand the case to the municipal court
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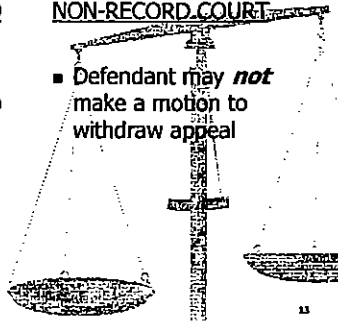
Appeal Process – Withdrawal

COURT OF RECORD

- Defendant may make a motion to withdraw appeal

NON-RECORD COURT

- Defendant may *not* make a motion to withdraw appeal



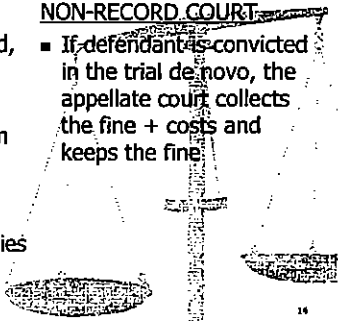
Appeal Process – Disposition

COURT OF RECORD

- If judgment upheld, court is notified
- Municipal court can forfeit bond, issue capias pro fine, or take other appropriate remedies

NON-RECORD COURT

- If defendant is convicted in the trial de novo, the appellate court collects the fine + costs and keeps the fine



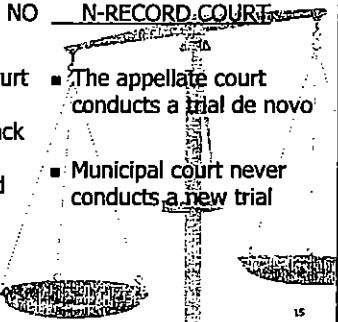
Appeal Process – New Trial

COURT OF RECORD

- If the appellate court grants a new trial, the case is sent back to the municipal court to be re-tried

NON-RECORD COURT

- The appellate court conducts a trial de novo
- Municipal court never conducts a new trial



Appeal Process – Writ of Procedendo

- **Definition** – a writ from an appellate court which has the effect of handing back jurisdiction to the originating court to proceed to judgment. It gives back jurisdiction to the trial court that was transferred for a time when the case was sent up on appeal.

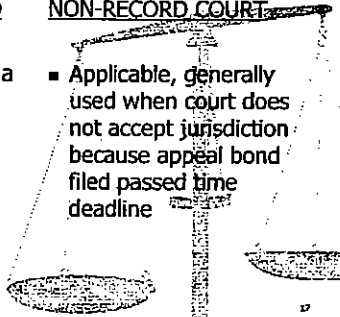


Appeal Process – Writ of Procedendo

COURT OF RECORD

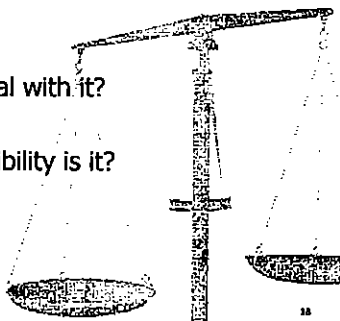
NON-RECORD COURT

- It is applicable to a court of record
- Applicable, generally used when court does not accept jurisdiction because appeal bond filed passed time deadline



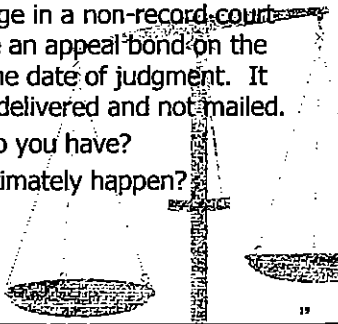
Appeal Process –The Less-than-Perfect(ed) Appeal

- How do you deal with it?
- Whose responsibility is it?



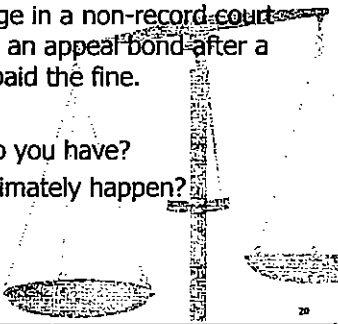
Appeal Process-Discussion Questions

- You are the judge in a non-record court and you receive an appeal bond on the 11th day after the date of judgment. It was personally delivered and not mailed.
- What options do you have?
- What should ultimately happen?



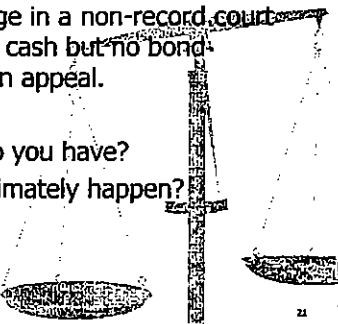
Appeal Process-Discussion Questions

- You are the judge in a non-record court and you receive an appeal bond after a defendant has paid the fine.
- What options do you have?
- What should ultimately happen?



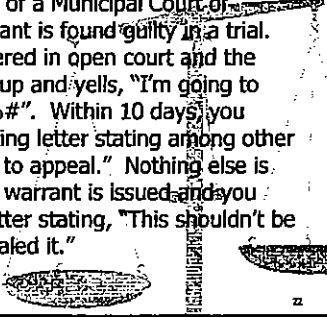
Appeal Process-Discussion Questions

- You are the judge in a non-record court and you receive cash but no bond paperwork for an appeal.
- What options do you have?
- What should ultimately happen?



Appeal Process-Discussion Questions

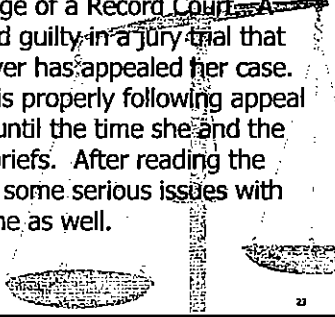
- You are the judge of a Municipal Court of Record. A defendant is found guilty in a trial. Judgment is rendered in open court and the defendant stands up and yells, "I'm going to appeal, you *&\$%#". Within 10 days, you receive a threatening letter stating among other things, "I'm going to appeal." Nothing else is done for a year, a warrant is issued and you receive another letter stating, "This shouldn't be in warrant, I appealed it."



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Appeal Process-Discussion Questions

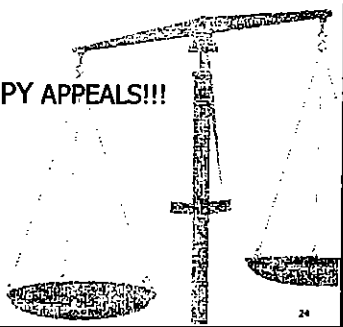
- You are the judge of a Record Court. A defendant found guilty in a jury trial that you presided over has appealed her case. The defendant is properly following appeal procedures up until the time she and the state file their briefs. After reading the briefs you have some serious issues with the final outcome as well.



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Appeal Process

HAPPY APPEALS!!!



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APPEALS

A. Right to Appeal

A defendant in any criminal action has the right of appeal. (Article 44.02, C.C.P.) The right to appeal shall in no way be abridged. (Article 44.07, C.C.P.)

B. Appellate Courts

Appeals from a municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court, except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. (Article 45.042, C.C.P.)

1. When Appellate Court does Not Have Jurisdiction

When an appeal bond is not timely filed, the appeals 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. (Article 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 the county court may decide whether it has jurisdiction.

2. When Appellate Court Refuses Jurisdiction

A writ of *procedendo* is an instrument by which the county court declares its lack of jurisdiction and returns 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*.

C. Appeals from Non-Record Courts

If an appeal is from a non-record court, the trial in the appellate court shall be *de novo* (a new trial), the same as if the prosecution had been originally commenced in that court. (Article 45.042(b), C.C.P.)

D. Appeals from 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. (Article 45.042(b), C.C.P.) See 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. (Article 44.04, C.C.P.)

F. Appeal Bonds

1. Rules Applicable to Bail

The rules in Chapter 17, C.C.P., respecting bail are applicable to all such undertakings when 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 of a witness in a criminal action. (Article 17.38, C.C.P.)

2. Rules Governing Appeal Bonds

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. (Article 44.20, C.C.P.)

3. 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. (Article 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.

4. 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. (Article 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 that the court notify the defendant, at the address stated in the request, of the amount of an appeal bond that the court will approve. If the court receives a plea and waiver before the time 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 by the defendant, 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 the notice. (Article 27.14(b), C.C.P.)

Article 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 the appeal bond 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 amount of fine assessed in the case and, if requested by the defendant, the amount of an 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. (Article 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. (Article 45.0426, C.C.P.)

1. Computing Time

The standard formula for calculating time is the first day is excluded and the last day is included. If the last day falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day which not a Saturday, Sunday, or legal holiday. (Section 311.014, G.C.)

2. Mailbox Rule

A bond would be 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. (Article 45.013(a), C.C.P.) The legible postmark affixed by the United States Postal Service is *prima facie* evidence of the date the document is deposited with the United States Postal Service. (Article 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. (Article 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 (completed). (Article 45.0426(a), C.C.P.)

J. Notice of Appeal

No appeal shall be dismissed because the defendant failed to give notice of appeal 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. (Article 45.043, C.C.P.) When an appeal bond is filed with the court, the municipal court no longer has jurisdiction over the case. The municipal court must send the case to the appellate court so that they may determine if they have jurisdiction.

L. When a Defendant Pays the Fine

Voluntary payment of the fine in a misdemeanor case renders the appeal from a judgment in the case moot. [*Fouke v. State* 529 S.W.2d 772 (Tex. Crim. App. 1975), writ of cert. denied, 425 U.S. 974, 48 L.Ed. 2d 798, 96 S. Ct. 2174, 1976]

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 courts typically characterize the powers and duties of the district clerks as ministerial functions.” [Texas Attorney General Opinion JM-694 (1987)]

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 a matter within the discretion of the clerk or the judge for that matter. [*Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986)]

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 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, together with the appeal bond, if any, and together, with a certified transcript of all the proceedings had in the case 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. (Article 44.18, C.C.P.)

When a clerk certifies a transcript, the clerk authenticates the transcript by attesting that the information contained in the transcript is true.

3. Defects in Transcript

An appeal by the defendant or the state may not be dismissed on account of any defect in the transcript. (Article 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 money 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. (Article 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.

APPEALS

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CASH APPEAL BOND

CAUSE NUMBER: _____

STATE OF TEXAS
VS.

§
§
§

IN THE MUNICIPAL COURT
CITY OF _____
_____ COUNTY, TEXAS

Know All Men by These Presents:

Whereas, on the ____ day of _____ 200__, in the above styled and numbered cause, a judgment was rendered and entered against the said Defendant, _____, convicting (him)(her) of a fineable misdemeanor offense, to wit: _____

upon complaint filed in said Municipal Court, that the State of Texas does have and recover from the said Defendant the sum of \$_____ fine and all costs of said prosecution from which judgment the Defendant has appealed to the County Court at Law No. ____ of _____ County, Texas.

I am hereby depositing with the Municipal Court the sum of \$_____ in cash in lieu of sureties, of which sum I am held and bound to the State of Texas to insure my personal appearance before the County Court of _____, County, Texas at the Courthouse of said county instanter as well as before any Court to which the same may be transferred and for any and all subsequent proceedings that may be had relative to the said charge in the course of criminal actions based on said charge, and there remains from day to day and term to term of said Courts, until discharged by due course of law, then and there to answer said accusation against me, this obligation shall become void, otherwise to remain in full force and effect.

I am held and bound for all necessary and reasonable expenses and fees that may be incurred by any peace officer in re-arresting me in the event the conditions of this bond are violated.

Now, if the conditions stated above are violated, the sum of the bond shall be forfeited unto the State of Texas for the benefit of _____ County, Texas, and, in addition, I will pay all necessary and reasonable expenses and fees that are incurred by any peace officer in re-arresting me. However, if I fulfill all the terms of this bond, this obligation shall become void and the amount deposited herein shall be refunded to me, otherwise to remain in full force and effect.

Date

Defendant's Signature

Telephone

Address

Defense Attorney (if any)

The sum of _____ dollars (\$_____) was deposited with the Court by (cash)(money order)(cashier's check) and bond filed on the ____ day of _____, 200__.

- Not approved, bond presented on _____, 200__
 - is past time allowed by statute.
 - bond is incorrect amount.

Approved on this ____ day of _____, 200__ _____

Judge, Municipal Court
City of _____

Filed this the ____ day of _____, 200__ _____ County, Texas

CAUSE NUMBER: _____

STATE OF TEXAS VS. _____	§ § §	IN THE MUNICIPAL COURT CITY OF _____ _____ COUNTY, TEXAS
--------------------------------	-------------	--

Whereas, on the ____ day of _____, 200__, in the above entitled and numbered cause, in said Municipal Court, a judgment was rendered and entered against the Defendant, _____, convicting (him)(her) of the misdemeanor offense of _____ upon complaint filed in said Municipal Court, that the State of Texas does have and recovered of the said Defendant the sum of _____ Dollars (\$_____) fine and all costs of said prosecution, from which said judgment said Defendant has appealed to the County Court at Law No. ____ of _____ County, Texas.

Now, therefore, we, the said _____ as Principal, and _____ and _____ as Sureties, are held and firmly bound unto the State of Texas in the penal sum of _____ Dollars (\$_____).

And in addition thereto, we are bound for the payment of all fees and expenses that may be incurred by peace officers in re-arresting Principal in the event the conditions of this bond are violated. For the payment of which sum, or sums, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Conditioned that the above _____ shall well and truly make (his)(her) appearance before the County Court at Law, _____ County, Texas instanter as well as before any Court to which the same may be transferred and for any and all subsequent proceedings that may be had relative to said charge in the course of criminal actions based on said charge, and there remain from day to day and term to term of said Courts, until discharged by due course of law, then and there to answer said accusation against (him)(her), this obligation shall become void, otherwise to remain in full force and effect.

Witness our hands this the ____ day of _____, 200__.

Principal

Mailing Address

Telephone Number

Surety

Mailing Address

Telephone Number

Surety

Mailing Address

Telephone Number

SURETY APPEAL BOND (Page 2 of 2)

THE STATE OF TEXAS
COUNTY OF _____

We, the undersigned, do swear that we are worth, in our own right, at least the sum set opposite our respective names after deducting from our property all that which is exempt by the Constitution and laws of the state from forced sale and after the payment of all our debts of every description, whether individual or security debts, and after satisfying all encumbrances upon our property, which are known to us; that we reside in the County of _____, and have property in this state, liable to execution, worth the said sum or more:

The said _____ the sum of _____ dollars or more

The said _____ the sum of _____ dollars or more

The said _____ the sum of _____ dollars or more

The said _____ the sum of _____ dollars or more

The said _____ the sum of _____ dollars or more

The said _____ the sum of _____ dollars or more

Signatures of Sureties:

Sworn to and subscribed before me this ____ day of _____, 200__.

(Judge) (Clerk) (Sheriff)

Not Approved, bond presented on _____, 200__

Past time allowed by statute.

Bond is incorrect amount.

Approved this the ____ day of _____, 200__.

Filed this the ____ day of _____, 200__.

Judge, Municipal Court

PERSONAL APPEAL BOND

CAUSE NUMBER: _____

STATE OF TEXAS § IN THE MUNICIPAL COURT
VS. § CITY OF _____
§ _____ COUNTY, TEXAS

Whereas, on the ___ day of _____, 200__, in the above entitled and numbered cause, in said Municipal Court, a judgment was rendered and entered against me, the Defendant, convicting me of the offense of _____ upon complaint filed in said Municipal Court: That the State of Texas does have and recover from me the sum of _____ Dollars (\$ _____) fine and all costs of said prosecution, from which said judgment I have appealed to the County Court at Law No. ___ of _____ County, Texas.

Now, therefore, I am held and firmly bound unto the State of Texas by and through the City of _____ in the penal sum of _____ Dollars (\$ _____) for the payment of which sum, well and truly to be made, and in addition all necessary and reasonable fees and expenses that may be incurred by peace officers in re-arresting me in the event the conditions of this bond are violated, I do bind myself, my heirs, executors, and administrators, jointly and severally.

I swear that I will appear before the County Court at Law No. ___ in _____ County, Texas, instanter or upon notice by the Court, or pay to the Court the principal sum of \$ _____, plus all necessary and reasonable expenses incurred in any arrest for failure to appear.

Now, if I shall well and truly make said appearance before the said Court as well as before any Court to which the same may be transferred, and there remain from day to day and term to term of said Court, until discharged by due course of law, then and there to answer said accusation against me, and further shall well and truly make my personal appearance in any and all subsequent proceedings that may be had relative to said charge in the course of the criminal action based on said charge, this obligation shall become void, otherwise to remain in full force and effect.

Address: _____
Home Telephone: _____ Defendant's Signature
Place of Employment: _____
Work Telephone: _____
Name, address, & telephone of nearest relative: _____

Driver's License Number: _____
Date of Birth: _____
Height: _____ Weight: _____
Color Hair: _____ Eyes: _____

Sworn to and subscribed before me, this ___ day of _____, 200__.

(Judge) (Clerk)

Approved and filed this ___ day of _____, 200__.

Judge, Municipal Court

City of _____

County, Texas

CERTIFIED TRANSCRIPT OF PROCEEDINGS (COURT OF NON-RECORD)

CAUSE NUMBER: _____

STATE OF TEXAS § **IN THE MUNICIPAL COURT**
VS. § **CITY OF** _____
_____ § _____ **COUNTY, TEXAS**

On the ____ day of _____, 200__ in the above styled and numbered criminal case was tried in the said Court, before a Judge, _____, and the Defendant, _____, was convicted of the offense of _____, and adjudged to pay a fine of _____ Dollars (\$_____) and all costs of prosecution, from which judgment said Defendant has appealed to the County Court (or County Court at Law) of _____ County, Texas.

The following are the proceedings had in said criminal case, to wit:

- _____ 1. Citation filed on: _____
- _____ 2. Complaint filed on: _____
- _____ 3. Magistrate's Warning Certificate
- _____ 4. Appearance Bond filed on: _____
- _____ 5. Copy of letter notifying Defendant of trial setting
- _____ 6. State's Application for Subpoena
- _____ 7. Defendant's Application for Subpoena
- _____ 8. Writ Summoning Venire
- _____ 9. Jury Waiver
- _____ 10. Venire
- _____ 11. Jury
- _____ 12. Verdict
- _____ 13. Certified copy of Judgment of Conviction
- _____ 14. Notice of Appeal and Order on Bond
- _____ 15. Appeal Bond filed on: _____

CERTIFICATE

THE STATE OF TEXAS
COUNTY OF _____

§
§
§

I, _____ (Municipal Court Judge)(Court Clerk), City of _____, in said county, hereby certify that the above and foregoing proceedings and documents are a complete and correct transcript of all the proceedings had before said Court in the cause of the State of Texas vs. _____, Cause Number _____.

Witness my signature this the ____ day of _____, 200__.

(Judge)(Court Clerk), Municipal Court
City of _____
_____ County, Texas

CHECKLIST FOR RECORD ON APPEAL (COURT OF RECORD)

Record of Appeal

1. **Upon written request of either party, the clerk shall prepare a transcript that includes copies of:**

- the complaint,
- material docket entries made by the Court,
- the jury charge and the verdict in a jury trial,
- the judgment,
- the motion for a new trial,
- the notice of appeal,
- written motions and pleas,
- written orders of the Court, and
- any bills of exception filed with the Court.

2. **Any portions of the proceedings may be included if either party requests them.**

3. **Either party may include bills of exception.**

4. **A statement of facts may be in the form of:**

- a partial transcription and the agreed statement of facts of the case,
- a brief statement of the facts of the case proven at trial as agreed to by the parties, or
- a transcript of all or part of the proceedings shown by the notes to have occurred before, during or after the trial, if requested by the Defendant.

APPEALS CHECKLIST FOR NON-RECORD MUNICIPAL COURTS

- All defendants have a right to appeal their convictions. (Article 44.02)
- Defendant not required to go to trial.
- Judgment entered (conviction). (Article 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, defendant may appeal.
- Defendant gives notice of appeal (but is not required to do so). (Article 45.0426(c), C.C.P.)
- Appearance in open court – 10 days from date of judgment to file appeal bond. (Articles 44.16 and 45.0426(a), C.C.P.)
 - Mail Box Rule – If defendant mails the bond on or before the due date and the court receives it within ten working days from the due date, the bond is properly filed. (Keep envelope) (Article 45.013, C.C.P.)
 - If appeal bond is not timely, the municipal court must still send it to the appellate court.
- Appearance by mail – 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. (Article 27.14(b), C.C.P.)
 - Mail Box Rule – If defendant mails the bond on or before the due date and the court receives it within ten working days from the due date, the bond is properly filed. (Keep envelope) (Article 45.013, C.C.P.)
 - If appeal bond is not timely, 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. (Article 45.0425(a), C.C.P.)
- Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond. (Articles 17.38, 44.20, C.C.P.)
 - Conditions of the appeal bond – Must recite that the defendant has been convicted and has appealed and that the defendant 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. (Article 45.0425(b), C.C.P.)

- When court receives bond, clerk should date stamp day received.
 - Bond perfects (completes) appeal. (Article 45.0426(a), C.C.P.)
- Give bond to judge to make a determination if the surety(ies) is sufficient. (Article 44.04(e), C.C.P.)
- Clerk makes copies of all original papers in case file.
- Clerk transcribes (sends) case with all original papers and bond with a certified transcript to the appellate court (usually county court). (Article 44.18, C.C.P.)
- Case is tried de novo (a new trial) in county court. (Articles 44.17 and 45.042(b), C.C.P.)
- If defendant convicted in appellate court, appellate court collects fine and deposits it in the county treasury.
- Withdrawal of appeal
 - Defendant may not withdraw appeal.
- If bond filed after time deadline, the appellate court shall remand (send back) the case to the municipal court to collect judgment.
- If bond is defective in form or substance, the appellate court shall allow the defendant to file a new bond. (Article 44.15, C.C.P.)

CHECKLIST FOR APPEALS FROM MUNICIPAL COURT OF RECORD

- All defendants have a right to appeal their convictions. (Article 44.02)
- Defendant required to go to trial.
- Judgment is entered (conviction). (Article 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.
- 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. (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. (Section 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. (Section 30.00015(c), G.C.)
 - Judge determines whether the surety(ies) is sufficient.
- Defendant must pay a \$25 fee for the preparation of the clerk's record (must substantially conform to the provisions relating to the preparation of a clerk's record in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure). City required to establish 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. (Section 30.00014(f), G.C.)

- Defendant must pay a fee for an actual transcription of the proceedings. (Section 30.00014(g), G.C.)
- Defendant must pay for a reporter's record. (Section 30.00019(g), G.C.)
- Record on appeal – must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Section 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. (Section 30.00017, G.C.)
 - The bills of exception must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Section 30.00018, G.C.) (A bill of exception is 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. The defendant must pay for the statement of facts. (Section 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 transcript, and any material to be included in the clerk's record that is not in the custody of the clerk. (Section 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. (Section 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. (Section 30.00020(c), G.C.)
 - The appellate court determines appeal from the municipal court of record conviction on the basis of the errors that are set forth in the appellant's motion for new trial and that are presented in the transcript and statement of facts. (Section 30.00014(b), 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 shall allow the defendant to file a new bond. (Article 44.15, C.C.P.)

- 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.

- 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. (Section 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. (Article 44.281, C.C.P.)

**Similarities and Differences between Appeals from Convictions in
Record and Non-Record Municipal Courts**

Municipal Court of Record	Municipal Court of Non-Record
Defendant required to go to trial	Defendant can plead guilty or nolo contendere and appeal (no trial required)
Defendant cannot appeal if defendant does not complete a driving safety course or the terms of deferred disposition	Defendant can appeal if defendant does not complete a driving safety course or the terms of deferred disposition
Judgment must be rendered	Judgment must be rendered
Motion for new trial required	Motion for new trial not required
Notice of appeal required to be given not later than the 10 th day after the date on which the motion for new trial was overruled (Court may extend time not to exceed 90 days.)	Notice of appeal not required
Bond is double the amount of the fine and costs or \$100 whichever is greater	Bond is at least twice the amount of the fine and costs but in no case is it less than \$50
Bond may be cash, surety, or personal bond (if approved by judge); court may not require cash.	Bond may be cash, surety, or personal bond (if approved by judge); court may not require cash.
Appeal bond must be filed not later than the 10 th day after the motion for new trial overruled.	Appeal bond must be filed within 10 days after the judgment was entered if the defendant appeared in open court. If the defendant delivered the plea to the court or mailed the plea, the defendant has up to 31 days after receiving notice from the court of the amount of the fine and appeal bond.
Mail Box Rule (Article 45.013, C.C.P.) does not apply to an appeal bond mailed to the court; however, Chapter 30 of the Government Code provides the judge with discretion to allow extensions of time in certain instances.	Mail Box Rule (Article 45.013, C.C.P.) does apply to an appeal bond mailed to the court.
Defendant has 60 days to file statement of facts, a written description of material to be included in the transcript in addition to the required material; and any material to be included in the transcript that is not in the custody of the clerk.	No statement of facts or other material required in an appeal from a municipal court of non-record.
Judge must approve the sufficiency of the sureties on the bond and the record	Judge must approve the sufficiency of the sureties on the bond.
Defendant must pay a \$25 transcription fee	Defendant does not pay a transcription fee
Defendant must pay for transcript preparation fee for actual transcript	Defendant does not pay any fee since there is no transcript
After judge approves record, the clerk shall promptly send the record to the clerk of the appellate court	Clerk makes copies of case file and sends originals to appellate court as soon as possible
The prosecution may brief the appellate court that the defendant did not properly meet all the time deadlines for the appeal. (The appellate court then remands the case to the municipal court for enforcement of its judgment.)	If defendant filed the appeal bond after the required time deadlines, the appellate court shall remand the case to the municipal court to collect its judgment.
Defendant may make a motion to withdraw the appeal.	Defendant may not make a motion to withdraw appeal.
If judgment affirmed, the fine is collected by the appellate court and deposited into the city treasury.	If defendant convicted in the trial de novo, appellate court collects the fine and costs and keeps the fine.
If appellate court grants new trial, the case is sent to the municipal court to be re-tried.	The appellate court conducts a trial de novo. Municipal court does not ever conduct a new trial.

Appellate Time-Tables

The appeal process has several deadlines that defendants and courts must adhere to in order to properly process appeals. The Code Construction Act, codified in Chapter 311 of the Government Code establishes rules by which courts count days. Section 311.014, G.C. provides that when counting days, the court excludes the first day, but includes the last day. If the last day falls on a weekend or legal holiday, the court must extend the time to the first working day of the court. In a municipal court of non-record, the time deadlines are enlarged by the Mail Box Rule. This Rule adds an additional 10 working days after the time deadline if defendant mails bond within the time deadline and the court receives the bond within 10 working days. The Mail Box Rule does not apply to appeal time deadlines in municipal courts of record.

Appellate Time Table for a Non-Record Municipal Court

Appearance in Open Court

Days	Required Actions
	Defendant appears in open court. Judgment is entered.
Day1 (day after judgment entered)	Start of counting 10 day time period for defendant to file appeal bond.
Day 1 through day 10 (time could be enlarged by Mail Box Rule)	Defendant files appeal bond with clerk. Clerk gives bond to judge to determine sufficiency of surety(ies).
As soon as possible after judge determines sufficiency of sureties	Clerk sends appeal bond and certified transcript with all originals in case file to appellate court.

Appearance by Mail

Days	Required Actions
	Defendant mails plea of guilty or nolo contendere to court and requests the amount of the fine and the appeal bond.
	Clerk receives plea. Judge accepts plea and enters judgment setting amount of fine and the amount of the appeal bond.
	Clerk sends a certified letter return receipt requested notifying defendant of the amount of fine and appeal bond
	Clerk receives green card with date that defendant received notice.
Day 1 (day after defendant received notice)	Clerk starts counting appeal bond deadline. Defendant must file bond before 31 st day after receiving notice
Day 1 through day 30 (time could be enlarged by Mail Box Rule)	Defendant files bond with court. Clerk receives bond by mail and gives bond to judge to determine sufficiency of surety(ies).
As soon as possible after judge determines sufficiency of surety(ies).	Clerk sends appeal bond and certified transcript with all originals in case file to appellate court.

Appearance by Delivering Plea to Court

Days	Required Actions
	Defendant delivers plea of guilty or nolo contendere to court and requests the amount of the fine and appeal bond.
	Clerk receives plea. Judge accepts plea and enters judgment setting amount of fine and the amount of the appeal bond.
	Clerk provides defendant notice of the amount of the fine and appeal bond while defendant is at the court.
Day 1 (day after defendant received notice from the clerk)	Clerk starts counting appeal bond deadline. Defendant must file bond before 31 st day after receiving notice
Day 1 through day 30 (Time could be enlarged by the mail box rule)	Defendant files bond with court. Clerk receives bond by mail and gives bond to judge to determine sufficiency of surety(ies).
As soon as possible after judge determines sufficiency of surety(ies).	Clerk sends appeal bond and certified transcript with all originals in case file to appellate court.

Appellate Time Table for a Record Municipal Court

Days	Required Actions
	Trial conducted; Judgment of guilty entered.
Day 1 (day after judgment entered)	Defendant required to file a motion for a new trial. Defendant must have motion filed by 10 th day after judgment.
Day 1 through day 10	Defendant's motion for new trial filed with court.
Twenty days from date motion for new trial filed with court. (Court may extend time for filing or amending motion for a period not to exceed 90 days from the original deadline, which would be on the 21 st day after the 10 th day for filing the motion for new trial.)	Defendant may amend motion for new trial within 20 days from date original motion for new trial is filed.
Within 30 days from date of motion or amended motion for new trial was filed.	Court acts on motion for new trial. If court does not act on motion by 30 th day, motion overruled by operation of law.
Ten days from date motion for new trial overruled. (Court may extend time for filing or amending for a period not to exceed 90 days from the original deadline, which would be counted from the 31 st day after the motion for new trial was overruled by the judge or by operation of law.)	Defendant files written notice of appeal. If defendant had a hearing on the motion for new trial, defendant may present an oral notice of appeal.
Ten days from date motion for new trial overruled.	Defendant must file appeal bond with the court. (Court approves bond.)
Within 60 days from date notice of appeal filed with the court. Notice of appeal required to be filed by the 10 th day from the date the motion for new trial was overruled.	Defendant must submit to court the reporter's record, written description of material to be included in 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.
Promptly send to appellate court and notice to appellant (defendant) and prosecuting attorney.	After judge approves the record, the clerk must promptly send record to appellate court. Court notifies defendant and prosecuting attorney that record sent.
By 15 th day after clerk's record and reporter's record filed with the appellant court clerk	Appellant's (defendant) brief must be on file with the appellate court.
By the 15 th day after appellant files brief with the appellate court clerk	Prosecutor files brief with the appellate court.

APPEAL FROM NON-RECORD MUNICIPAL COURT: Rights and Procedures for Defendants

Right to Appeal

You have the right to appeal a conviction in municipal court. This right applies if:

- You are convicted at trial;
- Plead guilty or *nolo contendere* (no contest);
- Fail to complete a driving safety course; or
- Fail to comply with the terms of deferred disposition (probation).

Appeal Procedure

- Before you can appeal, the municipal court must enter a final judgment of guilty against you and impose a penalty (fine and costs).
- If you pay the fine and court costs, you may not appeal because the judgment of the court has been satisfied and there is nothing to appeal.
- You may give notice of appeal but you are not required to do so. You must, however, notify the court of your intention to appeal and request the amount of the appeal bond.
- The court must set the appeal bond at least two times the fine and costs assessed against you and may set the bond higher. In any case the bond may not be less than \$50.
- Type of appeal bond:
 - The court may not require a cash bond, but you may choose to file that type of bond.
 - You may file a surety bond. The court has a duty to determine the sufficiency of your surety or sureties.
 - If you have an attorney, the attorney may act as surety on your bond. The attorney must meet the requirements of a surety. The court has a duty to determine the sufficiency of the bond filed by your attorney.
 - If you are indigent, you may request the court to conduct an indigent hearing to determine your ability to make bond. The court has the authority to grant a personal appeal bond if you are indigent.
- All bonds require certain paperwork to be filed with the court. If the court has bond forms available, they may provide them to you, but they may not help you complete the forms. Only an attorney hired by you may advise you.
- If you appeared in open court at trial or plead guilty or *nolo contendere*, you must file the appeal bond with the court by the 10th day after judgment.
- If you entered your appearance and plea of guilty or *nolo contendere* by mail and requested the amount of fine and appeal bond, the court must notify you of the fine and appeal bond amount by certified mail with return receipt requested. You must file your bond with the court before the 31st day after receiving the notice.
- Timely and properly filing your appeal bond completes the appeal process in municipal court.
- Municipal court will send your case and appeal bond to the appellate court (usually the county court). You must stay in contact with the county court so that you can timely appear in that court. If you fail to appear in the county

court, the county court may declare a bond forfeiture and issue a *capias* (warrant) for your arrest.

- After your appeal has been completed in the municipal court, you may not withdraw your appeal. You must proceed in the county court.
- You will receive a new trial in the county court as if nothing happened in municipal court.
- If you are convicted in the county court and your fine is at least \$20 or more, you may appeal to a Texas court of appeal, which is the next level of appellate court in Texas.
- If you are found not guilty in the county court, you are released from liability without any costs.

APPEAL FROM A MUNICIPAL COURT OF RECORD: Rights and Procedures for Defendants

Right to Appeal

- You have the right to appeal a conviction in municipal court. This right applies if you are convicted at trial. You must request that the court record the trial.
- The State (represented by the city attorney or deputy city attorney) has the right to appeal

Appeal Procedures

- Before you can appeal, the municipal court must enter a final judgment of guilty against you and impose a penalty (fine and costs).
- Before you can appeal, you must file a written motion for new trial with the municipal clerk not later than the 10th day after the date on which judgment is rendered.
 - The motion must set forth the points of error of which you complain.
 - If the municipal court consents, you may amend the motion or amend an amended motion at any time before the court takes action on the motion, but not later than the 20th day after the date on which the 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.
 - You may, but are not required to, request a hearing on the motion for new trial.
- If the court grants the motion for new trial, you will again proceed to trial in the municipal court. Only one motion for new trial will be granted.
- If the court denies the motion for new trial, you may appeal.
- If the court does not act on the motion for new trial before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law. This means that your motion for a new trial is automatically is overruled.
- You must give the court notice of appeal.
 - If you requested a hearing on the motion for new trial, you may give notice of appeal orally in open court if the court overrules your motion for new trial.
 - If there was no hearing, you must given written notice of appeal that must be filed with the court no later than 10th day after the motion for new trial was overruled.
 - The court may extend the time for good cause for a period of time not to exceed 90 days from the original filing deadline.
- You must file an appeal bond with the court.
- The court must set the appeal bond at double the fine and costs assessed against you or at \$100 whichever amount is greater. The court must approve the appeal bond.

- **Type of appeal bond:**
 - The court may not require a cash bond, but you may choose to file that type of bond.
 - You may file a surety bond. The court has a duty to determine the sufficiency of your surety or sureties.
 - If you have an attorney, the attorney may act as surety on your bond. The attorney must meet the requirements of a surety. The court has a duty to determine the sufficiency of the bond filed by your attorney.
 - If you are indigent, you may request the court to conduct an indigent hearing to determine your ability to make bond. The court has the authority to grant a personal appeal bond if you are indigent.
- You must file the appeal bond with the court no later than the 10th day after the date on which the motion for new trial was overruled.
- You are required to pay to the court a \$25 fee for the preparation of the clerk's record in the proceedings. This fee will be refunded if your case is reversed on appeal.
- You are also required to pay a fee for an actual transcription of the proceedings. This fee varies depending on the length of your trial in municipal court.
- You must pay for a reporter's (the facts of the case presented at trial).
- Not later than the 60th day after the date on which the notice of appeal was given or filed, you must file with the municipal clerk:
 - 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.
- You will receive notice from the appellate court (usually the county court, or a municipal court of appeals) that the record has been filed with the court.
- You must file a brief with the appellate court that presents points of error in the manner required by law for a brief on appeal to the court of appeals.
 - You must file the brief with the appellate court clerk not later than the 15th day after the date on which the transcript and statement of facts are filed with the appellate clerk.
 - You or your attorney must certify that the brief has been properly mailed to the city attorney of the city in which your case was tried. (The city attorney must file a brief with the appellate court clerk not later than the 15th date after date on which you filed your brief.)
- You are required to deliver a copy of your brief to the city attorney and to the municipal court judge. Likewise, the city attorney must deliver a copy of his or her brief to you and the municipal judge.
- After the municipal court judge receives both briefs, he or she must decide whether you may be permitted to withdraw your notice of appeal and be granted a new trial by the municipal court. If the court does not grant the new trial, you must proceed in the appellate court.
- The appellate court may require you to submit oral argument in behalf of your case.

- The appellate court may:
 - Affirm the judgment of the municipal court of record
 - Reverse an remand for a new trial;
 - Reverse and dismiss the case; or
 - Reform and correct the judgment.
- You will receive by mail a copy of the decision as soon as the decision is rendered.
- If the appellate court dismisses the case, you will be released without any liability. The \$25 transcript preparation fee will be refunded. Contact the court about the fee.
- If the municipal court judgment is affirmed, the municipal court of record may:
 - Forfeit your appeal bond;
 - Issue a writ of *capias* (warrant) for you;
 - Issue an execution against your property;
 - Order a refund for your appeal costs; or
 - Conduct an indigent hearing to determine your ability to pay the fine and costs.
- If the appellate court awards you a new trial, the case stands as if the municipal court granted you a new trial and the municipal court will conduct another trial.
- If the fine assessed against you is more than \$100 and the judgment is affirmed by the appellate court, you have the right to appeal your case to a Texas court of appeals which handles the district where the municipal court is located.