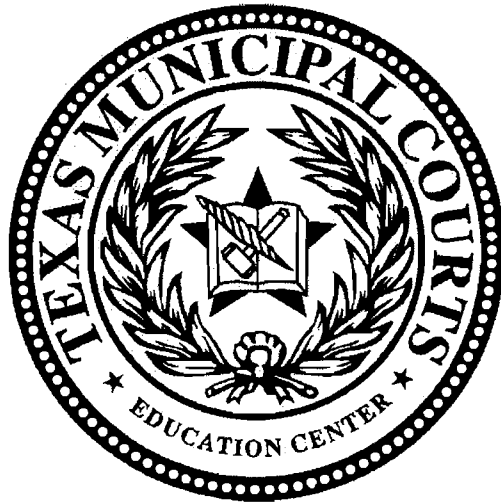


# TEXAS MUNICIPAL COURTS EDUCATION CENTER



## COURSE MATERIAL Odessa Clerks Program June 27-28, 2007

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1609 Shoal Creek Boulevard, Suite 302 Austin, TX 78701  
Telephone (512) 320-8274  
1 (800) 252-3718  
Fax (512) 435-6118  
Email: [tmcec@tmcec.com](mailto:tmcec@tmcec.com)  
Web Page: [www.tmcec.com](http://www.tmcec.com)

Funded by a grant from the Texas Court of Criminal Appeals



## A MESSAGE FROM TMCA

On behalf of the Texas Municipal Courts Association, I would like to welcome you to the *TMCEC Judges & Clerks 12-hour Regional Programs*. Your participation and input is an indication of your commitment to better education and personal performance.

The Texas Municipal Courts Association is an organization created for the purpose of providing support for municipal court personnel and to improve the fair and impartial administration of justice in the municipal courts of Texas. The Association has been supporting municipal court personnel since 1974. In 1983, TMCA was selected by the Texas Supreme Court to receive and administer a grant to provide continuing legal education to municipal court personnel. In that year, TMCA created the Texas Municipal Court Training Center as an independent educational entity. In 1994, TMCTC changed its name to the Texas Municipal Courts Education Center. TMCA sponsors and directs TMCEC programs through policies set by the Board of Directors and the Education Committee, which provides oversight and direction to ensure the educational seminars and clerk certification programs meet state requirements. It is important to understand the distinctive entities because TMCEC, a state grant recipient, cannot maintain legislative activities while TMCA can maintain legislative activities. Although grant funds are used to provide for the education programs and the operating expenses of TMCEC, no grant funds are available for TMCA operating expenses. TMCA is wholly dependant upon its membership dues and fund raising activities for financial support.

If you have not already, we invite you to join TMCA. Your dues and participation are vital to the purpose of supporting municipal court personnel and improving the administration of justice in the municipal courts. What you get in return is immensely beneficial: education, fellowship, advice and, hopefully, some new friends along the way. I encourage you to visit TMCA's website at [www.txmca.com](http://www.txmca.com) where you can receive information on how to contact your regional representative, download membership lists, and find other resources.



Thank you for coming!

*Robin A. Ramsay*  
President, TMCA



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- J. Financial Management & Court Costs
- K. New Legislation



# ODESSA

MCM Elegante Hotel  
5200 E. University, Odessa., TX 79762  
432.368.5885

## 12-Hour Regional Clerks Program June 27-28, 2007

### TUESDAY, JUNE 26, 2007

- 1:00 – 5:00 p.m.      **Preparation Course Level I - Clerk's Certification Program,**  
Tammy Odom, Court Clerk, Sweeny
- 1:00 – 5:00 p.m.      **Preparation Course Level II - Clerk's Certification Program,**  
Pat Riffel, Court Administrator, Pearland
- 2:00 – 5:00 p.m.      **OPTIONAL PRE-CONFERENCE SESSION**  
2:00 – 3:00    **Court Security**  
3:00 – 4:00    **Court Technology and the Court Technology Fund**  
4:00 – 5:00    **Rule 12 and the Texas Public Information Act**
- 3:00 – 6:30 p.m.      **Registration**
- 5:00 – 6:30 p.m.      **Welcome Reception**  
*Sponsored by the Texas Municipal Courts Association*

### WEDNESDAY, JUNE 27, 2007

- 6:45 – 8:00 a.m.      **Registration and Breakfast**
- 8:00 – 8:15 a.m.      **Welcome & Announcements**  
Margaret Robbins, Program Director, TMCEC
- 8:15 – 9:30 a.m.      **Ethics**  
Lois Wright, Program Attorney, TMCEC
- 9:30 – 9:45 a.m.      **Break**
- 9:45 – 12:00 p.m.      **Citations and Complaints**  
Margaret Robbins, Program Director, TMCEC
- 12:00 – 1:00 p.m.      **Lunch**

TRACK A	TRACK B
1:00 – 2:15 p.m. <b>Traffic Law and TxDOT Programs</b> C. Victor Lander, Municipal Judge, Dallas and Israel Campose, Law Enforcement Coordinator TMPA	1:00 – 2:15 p.m. <b>Enforcement on Defaults</b> Linda Frank, Municipal Judge, Plano
2:15 – 2:30 p.m. <b>Break</b>	
2:30 – 3:30 p.m. <b>Current Issues (Handling Hot Checks, Electronic Records, and Dismissals)</b> Jo Ann Sacharko, Court Administrator, Lancaster	2:30 – 5:00 p.m. <b>Bond Forfeitures</b> Margaret Robbins Program Director, TMCEC
3:30 – 3:45 p.m. <b>Break</b>	
3:45 – 5:00 p.m. <b>Juveniles (JNA)</b> Pat Riffel, CMCC, Court Administrator, Pearland	

**THURSDAY, JUNE 28, 2007**

6:45 – 8:00 a.m. **Breakfast**

TRACK B	TRACK C
8:00 – 10:45 a.m. <b>Case Processing</b> Margaret Robbins, Program Director, TMCEC	8:00 – 9:15 a.m. <b>DPS Reporting</b> Rhonda Kuehn, CMCC, Court Administrator, Brenham
	9:15 – 9:30 a.m. <b>Break</b>
	9:30 – 10:45 a.m. <b>Financial Management &amp; Court Costs</b> Rene Henry, Consultant
10:45 – 11:00 am <b>Break</b>	
11:00 – 12:00 p.m. <b>New Legislation</b> Margaret Robbins, Program Director, TMCEC	

12:00 noon **Adjourn Seminar**

1:00 – 5:00 p.m. Clerks' Certification Test (Levels I, II and III)  
Facilitator: Pat Russo, Program Assistant II, TMCEC



**Odessa Clerks 12- Hour Regional June 27-28, 2007**

**Odessa - MCM Elegante**

**June 27 - 28, 2007**

<u>Full Name</u>	<u>Company</u>	<u>ADDRESS</u>	<u>City</u>	<u>Zip</u>	<u>Phone Number</u>
Chriselda Abundiz-Wright	Lewisville	PO Box 299002	Lewisville	75029-9002	(972) 219-3426
Terri A. Autrey	Kermit	110 S Tornillo St	Kermit	79745-2612	(432) 586-2577
Graciela Avila	Midland	406 E Illinois Ave	Midland	79701-4856	(432) 685-7313
Marcia G. Boyte	Westworth Village	311 Burton Hill Rd	Westworth Village	76114-4298	(817) 738-3673
Melissa Cahill	San Angelo	110 S Emerick St	San Angelo	76903-5510	(325) 657-4366
David J. De Los Rios	Midland	406 E Illinois Ave	Midland	79701-4856	(432) 685-7312
Heather L. Dent	Frisco	8750 McKinney Rd Ste 100	Frisco	75034-3000	(972) 335-5565
Gloria Jean Eaton	Brownsboro	PO Box 303	Brownsboro	75756-0303	(903) 852-6761
Mary Y. Escovedo	Andrews	111 Logsdon St	Andrews	79714-6515	(432) 523-4820
Rose A. Flores	Hondo	1600 Avenue M	Hondo	78861-1756	(830) 426-3378
Brianne D. Garcia	Midland	406 E Illinois Ave	Midland	79701-4856	(432) 685-7308
Soledad Gardea	San Angelo	110 S Emerick St	San Angelo	76903-5510	(325) 657-4366
Kristi A. Gilbert	Bartonville	1941 E Jeter Rd	Bartonville	76226-9401	(817) 430-4052
Shellie D. Haas	Azle	613 Southeast Pkwy	Azle	76020-3654	(817) 444-2541
Jennie Hill	Blue Ridge	200 W Fm 545	Blue Ridge	75424-4401	(972) 752-5791
Tonya Hulse	Pasadena	1001 E Shaw Ave # A	Pasadena	77506-1500	(713) 475-5562
Sylvia F. Jaramillo	San Angelo	110 S Emerick St	San Angelo	76903-5510	325-657-4366
Stephanie L. Klimas	Burleson	247 Elk Dr # 114	Burleson	76028-5645	(817) 447-5360
Lois J. Lomenick	Haltom City	5024 Broadway Ave	Haltom City	76117-3640	(817) 222-7773
Jeanne M. Maddox	College Station	300 Krenek Tap Rd	College Station	77840-5023	(979) 764-3683
Carol Mcleod	Trophy Club	100 Municipal Dr	Trophy Club	76262-5420	(682) 831-4600
Janie L. Oliver	Garland	1791 W Avenue B	Garland	75042-8728	(972) 487-7326
Elsa O. Paniagua	Fort Worth	1000 Throckmorton St	Fort Worth	76102-6312	(817) 392-6736
Laura J. Reese	Haltom City	5024 Broadway Ave	Haltom City	76117-3640	(817)-222-7781
Cristy Reynolds	Bedford	2000 Forest Ridge Dr	Bedford	76021-5713	(817) 952-2151
Julie Rodriguez	Belton	711 E 2nd Ave	Belton	76513-3147	(254) 933-5838
Monica Rodriguez	New Fairview	999 Illinois St	Rhome	76078-3940	(817) 638-5366
Monty Schiffbauer	Seabrook	1700 1st St	Seabrook	77586-3540	(281) 291-5665
Jed P. Tamayo	Frisco	8750 McKinney Re. Ste. 100	Frisco	75034	972-335-5565
Nancy Tate	Midland	PO Box 1152	Midland	79702-1152	(432) 685-7303
Gwen Taylor	San Angelo	110 S Emerick St	San Angelo	76903-5510	(325) 657-4366
Linda L. Thompson	Lakeway	104 Cross Crk	Lakeway	78734-4465	(512)314-7562
Tonya Todd	Wink	PO Box 397	Wink	79789-0397	(432) 527-3441
David J. Van Raalte	Georgetown	101 E 7th St	Georgetown	78626-5733	(512) 930-8166
Gretta Warren	Pasadena	PO Box 1575	Pasadena	77501-1575	(713) 475-5562

**Total Count: 35**



## 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 Texas Municipal Courts Association 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

## Judges/Clerks MCM Elegante Odessa

Mr. W. Clay Abbott  
DWI Resource Prosecutor  
Texas District & County  
Attorney Association  
1210 Nueces  
Austin, TX 78701  
(512)474-2436  
(512)478-4112

Honorable John Bull  
Presiding Judge  
City of San Antonio  
401 S. Frio Street  
San Antonio, TX 78207  
(210) 207-7130

Honorable Deanna Burnett  
Municipal Judge  
City of Carrollton  
1835 Pearl Street  
Carrollton, TX 75006  
(972) 466-3014 (o)  
(972) 466-3260 (c)  
(972) 466-1708 (f)

Mr. Israel Campos  
Law Enforcement Coordinator  
Texas Municipal Police  
Association  
6200 La Calma  
Austin, TX 78752  
(800) 848-2088  
(512) 454-8900

Mr. Ross Fischer  
City Attorney  
City of Seguin  
P.O. Box 591  
Seguin, TX 78156  
(830) 401-2357

Honorable Linda Frank  
Municipal Judge, Plano &  
Chief Municipal Court  
Prosecutor, Arlington  
City Attorneys Office  
P.O. Box 231  
Arlington, TX 76004-0231  
(817) 459-6878 (office in  
Arlington)  
(817) 459-6897 (f)

Honorable Adrianna Martinez  
Goodland  
Attorney at Law  
2709 Berrywood Court  
Richardson, TX 75082

Mr. Rene Henry  
Financial Management  
Specialist  
8 Victoria Lane  
Hot Springs Village, AR 71909  
(501) 915-8949

Honorable Antonio Kosta  
Presiding Judge  
City of Harker Heights  
305 Millers Crossing  
Harker Heights, TX 76548  
(254) 953-5608 (c)

Ms. Rhonda Kuehn  
Deputy Court Clerk  
City of Brenham  
P.O. Box 1059  
Brenham, TX 77834  
(979) 337-7500  
(979) 337-7504 (f)

Honorable Scott Kurth  
Municipal Judge  
Red Oak & De Soto  
1666 N. Hampton Road,  
Suite 202  
De Soto, TX 75115-8622  
(972) 224-5534

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)

Ms. Tammy Odom  
Deputy Clerk  
City of Sweeny  
224 Pecan Street  
Sweeny, TX 77480  
(979) 548-5189  
(979) 548-3472

Professor Ana Otero  
Thurgood Marshall School of  
Law  
School: 3100 Cleburne  
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(713) 313-1025 (o)

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Mr. Lawrence G. Provins  
Assistant City Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, TX 77581  
(281) 652-1666  
(281) 652-1679 (f)

Ms. Pat Riffel, CMCC  
Court Administrator  
City of Pearland  
3519 Liberty Drive  
Pearland, TX 77581  
(281) 652-1612  
(281) 652-1717 (f)

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Ms. Jo Ann Sacharko  
Court Administrator  
City of Lancaster  
3250 W. Pleasant Run,  
Suite 175  
Lancaster, TX 75146  
(972) 223-3955  
(972) 223-4076

Mr. Ryan Kellus Turner  
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(512) 435-6118 (f)



# ABOUT THE SPEAKERS

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## W. CLAY ABBOTT

Clay Abbott is DWI Resource Prosecutor for the TDCAA. He grew up in Boulder, Colorado and then attended Lubbock Christian University where he received a BA in History. He went on to receive his Doctor of Jurisprudence from the Texas Tech School of Law, *cum laude*. He was inducted into Order of the Coif in December 1986.

Mr. Abbott served as an Assistant District Attorney in Lubbock County before going into private practice for five years. In 1995 he returned to prosecution as the Chief Deputy for the Lubbock County District Attorney's office. He served TMCEC as General Counsel from 2000 to 2004. With Ryan Kellus Turner, he is the author of TMCEC's *Judges Book*.

Mr. Abbott served as an Adjunct Professor at the Texas Tech School of Law for nine years and is a frequent presenter for TMCEC, TDCAA, and others.

## JOHN BULL

John Bull is the presiding judge for the City of San Antonio. He earned his Bachelor of Arts degree from Southern Methodist University and his J.D. from St. Mary's University School of Law in San Antonio. Judge Bull practiced law in Pearsall and San Antonio from 1990 until September 1999 in a general practice with a concentration in felony criminal trials and appeals. He was appointed to the San Antonio Municipal Court in September 1999 and reappointed in September 2001.

Judge Bull is also an Adjunct Professor of Trial Advocacy at St. Mary's University since 2000.

## DEANNA BURNETT

Deanna Burnett has been a Municipal Judge in Carrollton, Texas since 1988. Recently, she began serving as a Municipal Judge in The Colony, as well. She has served as Municipal Judge in Farmers Branch, Plano, and Coppell, Texas. She received her Bachelor of Arts from the University of Texas at Dallas and Juris Doctorate from Texas Tech School of Law, Lubbock. Judge Burnett has been a member of the State Bar of Texas since 1982.

## ROSS FISCHER

Ross Fischer, a native Texan, is currently the City Attorney for Seguin. Prior to that, Mr. Fischer served as the Assistant Chief Disciplinary Counsel for the State Bar of Texas, where he was responsible for enforcing ethical standards for attorneys in 45 Texas Counties. In July 2005, Mr. Fischer was appointed by Governor Rick Perry to serve on the Texas Ethics Commission, which is responsible for administering and enforcing laws concerning political contributions and expenditures, political advertising, lobbyist activity and the conduct of state officers and employees. He was reappointed to a full term in February 2006.

Prior to coming to the State Bar, Mr. Fischer spent four years as Kendall County Attorney, where he served as both the county's prosecutor and civil counsel. As County Attorney, he developed one of the state's most recognized crime victim assistance programs.

Mr. Fischer is a frequent lecturer at seminars dealing with criminal law, ethics, and the legislative process. He continues to teach judges and prosecutors throughout the state. Fischer is a graduate of St. Edward's University and the University of Texas School of Law, both in Austin. He resides in Kendalia with his wife Michelle and daughter Claire.

## **LINDA FRANK**

Linda Frank is currently an Associate Municipal Judge for the City of Plano. She is also the Chief Municipal Prosecutor for the City of Arlington. She is the former Chief Municipal Prosecutor for the City of Plano.

Judge Frank is a graduate of the University of Oklahoma. She received her juris doctor from the Georgetown University Law Center in Washington, D.C. She received her license to practice law in Texas in 1981.

Judge Frank has served as faculty for the TMCEC since 1998. She has two daughters, both graduates of the University of Texas.

## **ADRIANNA MARTINEZ GOODLAND**

Adrianna Martinez Goodland began as a municipal judge in 2000 and served as a municipal judge for the City of Frisco until 2006. She attended Harvard University and the University of Texas at San Antonio, and received her J.D. in 1991 from Harvard Law School. Judge Goodland has also served as a municipal judge for the Cities of McKinney and Princeton.

After graduating law school, Judge Goodland briefly practiced commercial litigation prior to joining the Dallas County Public Defender's Office and subsequently opening her own law office. She remains active in local bar associations and enjoys speaking to elementary, middle and high school students about various legal topics of interest to students and teachers.

## **RENE HENRY**

Rene Henry is retired from the State of Texas and is currently self-employed. His work is focused on both court financial management and personal financial management.

Mr. Henry worked for the Comptroller's Office 20 years and for the Office of Court Administration over eight years. He has authored several financial management articles and handbooks and has provided on-site

technical assistance to numerous local governments.

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

## **ANTONIO L. KOSTA, JR.**

Tony Kosta has been the Presiding Judge for Harker Heights since 1997. Prior to that, Judge Kosta worked for Tandy Corp. from 1983 to 1988 and was in the U.S. Army from 1963 to 1983.

Judge Kosta received his BA degree from Texas Tech University and his MS degree from the University of Central Texas. He has also gone through the FBI National Academy. Judge Kosta served as a Councilman for the City of Harker Heights from 1991 to 1997, and served as Mayor Pro Tem for the City from 1992 to 1996.

## **SCOTT KURTH**

Scott Kurth is a Municipal Judge for the City of Red Oak and the City of De Soto. He earned his Juris Doctor from Baylor University in 1982. Judge Kurth also maintains an active federal and state private practice.

## **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.



## **ANA M. OTERO**

Prior to moving to Houston, Ms. Otero was Senior Attorney at Blackwell & Walker, where she headed the Commercial Litigation division of a large law firm in Miami, Florida. Ms. Otero received her J.D. from Rutgers University in New Jersey where she received the Phillip J. Levin Scholarship and Latin American Society Community Service Award for outstanding contribution to the minority student program.

Judge Otero is a law professor at Thurgood Marshall School of Law where she teaches civil and criminal procedure and is the Director of the Judicial Externship Program. In addition, she teaches at a paralegal school in Houston and has her own seminar company where she teaches education courses for legal assistants throughout Texas on employment, legal writing, and certification courses. Prior to that, Ms. Otero served as an Associate Judge of the Houston Municipal Court.

Ms. Otero received her B.A., cum laude, from Columbia University in New York where she graduated Phi Beta Kappa and obtained the Anthony Mier Prize for literature. She also holds a Masters Degree from the School of International and Public Affairs at Columbia University, and a Masters in Business Administration from Fairleigh Dickinson University in New Jersey.

## **MEICHIHKO PROCTOR**

Meichihko Proctor joined the TMCEC staff on August 1, 2006 as the Program Attorney and Deputy Counsel for the Judges' Program. Mrs. Proctor is originally from San Angelo, Texas, where she received a bachelor's degree in government and psychology from Angelo State University. Upon graduation, Ms. Proctor enjoyed a career in speechwriting for the City of Lubbock while pursuing a master's degree in sociology with a minor in public administration at Texas Tech University. She went on to graduate from the St. Mary's Law School in San Antonio in 2002. Prior to joining TMCEC, Ms. Proctor worked as an associate at Bickerstaff,

Heath, Pollan & Caroom practicing municipal law. From 2003-2004, Meichihko was an assistant city attorney for the City of Plano, prosecuting cases in municipal court. She was also the Chief Prosecutor for Domestic Violence in Tom Green County. Her expertise and energy assure a fantastic Judges' Program for FY07.

## **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.

## **RYAN KELLUS TURNER**

Ryan Kellus Turner is General Counsel and Director of Education 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 with highest honors 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*.

## **LOIS WRIGHT**

Lois Wright joined TMCEC in April 2006 as a Program Attorney. Ms. Wright's hometown is Sabinal, Texas, a small town due west of San Antonio. Ms. Wright attended the University of Texas at Austin, where she obtained, first, a bachelor's degree in anthropology, and then her *Juris Doctorate*. In law school, Ms. Wright was active in the Texas Journal of Women and the Law, the Capital Punishment Clinic, and the Mediation Clinic. She clerked at the District Attorney's Office in Travis County throughout law school.

**WELCOME!**

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_____	20.00	Bench Book for Municipal Court Judges	_____
_____	20.00	TMCEC Municipal Court Forms Book	_____
_____	5.00	CD-ROM Forms Book/Bench Book for Municipal Court Judges ( <i>combined</i> )	_____
_____	5.00	Role of Municipal Court in City Government (DVD)	_____
_____	5.00	The Judge/Mock Trial videotape	_____
_____	25.00	Level I Clerks Certification Study Guide (looseleaf)	_____
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# **ETHICS**

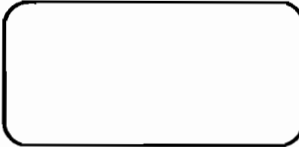
**Presented by**

**Lois Wright  
Program Attorney  
TMCEC**





## Ethics: TV Justice and Reality in the Courtroom



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## Food For Thought

Facts and Figures about our TV Habits:

1. The average American child watches 28 hours of TV per week
2. The average American watches over 4 hours of TV per day
3. In the U.S. the average family has its TV on 7 hours and 40 minutes a day
4. 49% of Americans polled believe that they "watch too much TV"

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## Does it matter what we watch?

1. Media impacts some people's knowledge of the law (ABA 1999)
2. Social Learning Theory (Bandura 1977)
3. Cultivation Theory (Shanahan & Morgan 1999)

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Ask yourself the following question:

What lessons would a television audience learn if they were only to watch the beginning credits of some of today's syndicated television courtroom programs ("syndi-courts")?

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Well, let's see.

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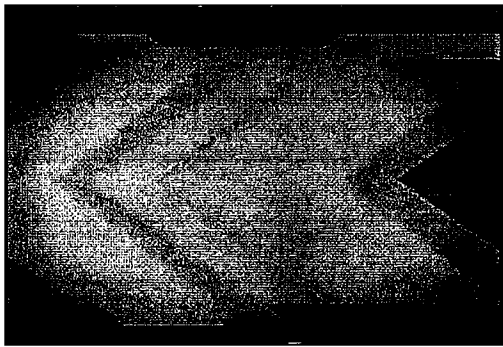
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What do Scholars Say about "Syndi-Court" Programs?

Podlas (2001):

1. They improperly socialize citizens to experience the justice system
2. They increase disrespect for courts as critical institutions,
3. Their teachings are sometimes flawed or interpreted by viewers in troubling ways.

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What do Scholars Say about "Syndi-Court" Programs? (cont'd)

Podlas (2004)

4. They potentially have profound and problematic ramifications on trials, verdicts, and the justice system as a whole.
5. Possibly encourages litigiousness
6. Encourage pro se representation

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"Reality" vs.  
"Reality Television"

Does Everyone Know  
the Difference?



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So do such programs have absolutely no redeeming value?

Neil Postman, Media Critic (1931-2003):

1. "The best things on television are its junk."
2. "No medium is excessively dangerous if its users understand what its dangers are."  
*Amusing Ourselves to Death* (1985)

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### Our Goals for the Hour:

1. To increase awareness of how such images, for better or worse, influence expectations of individuals in court
2. To become better-informed consumers of the popular culture that surrounds us

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### Introduction to the Exercise

1. Three Segments
2. Modified Subject Matter
3. Have Canon and Constitutional Excerpts on Hand



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Set Up

## “The Ring”

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Follow Up: “The Ring”

1. Discuss what erroneous messages about courts may be conveyed to viewers by the segment.
2. Describe the judge’s conduct as it relates to the behavior of the parties before him.
3. Identify, if any, potential Canon violations committed by the judge.

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Set Up

## “Monkey Business”

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Follow Up: “Monkey Business”

1. Describe the demeanor of the judge.
2. Describe the conduct of the bailiff and the spectators in the courtroom.
3. Identify, if any, potential Canon violations committed by the judge.
4. Discuss what erroneous messages about courts may be conveyed to viewers by the segment.

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Set Up

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**“MOEP Redux”**

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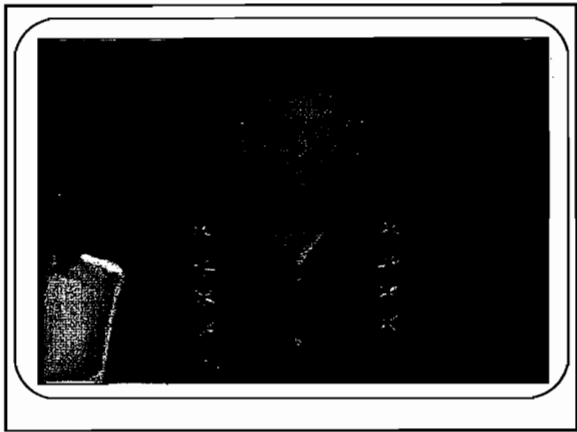
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Follow Up: “MOEP Redux”

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1. Describe the demeanor of the judge.
2. Identify, if any, potential Canon violations committed by the judge.

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Set Up

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“I Yelled, ‘Rocks, Stop!!!”

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Follow Up: “I Yelled, ‘Rocks, Stop!!!”

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1. Describe the demeanor of the judge.
2. Discuss what erroneous messages may be conveyed to viewers by the segment. (Was there any member of the courtroom workgroup notably absent?)
3. Identify, if any, potential Canon violations committed by the judge.

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*In Conclusion...*

The End is Just the  
Beginning of Something  
Else.



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# Ethics: TV Justice and Reality in the Courtroom

## Interactive Notes

### I. Food For Thought

#### A. Facts and Figures about our TV Habits

- The average American child watches \_\_\_\_\_ hours of TV per week
- The average American watches over \_\_\_\_\_ hours of TV per day
- In the U.S. the average family has its TV on \_\_\_\_\_ hours and \_\_\_\_\_ minutes a day
- \_\_\_\_\_% of Americans polled believe that they “watch too much TV”

#### B. Does it Matter What We Watch?

- ABA Report on Perceptions of the U.S. Justice System 1999
- Social Learning Theory (Albert Bandura 1977)
- Cultivation Theory (Shanahan & Morgan 1999)

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### II. Well, let's see...

A. What lessons would a television audience learn if they were only to watch the beginning credits of some of today's syndicated television courtroom programs (“syndi-courts”)?

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## B. What Scholars Say about "Syndi-Court" Programs

- Podlas (2001)
  - - They \_\_\_\_\_ socialize citizens to experience the justice system
    - They \_\_\_\_\_ disrespect for courts as critical institutions,
    - Their teachings are sometimes \_\_\_\_\_ or interpreted by viewers in troubling ways.
    - They potentially have \_\_\_\_\_ and \_\_\_\_\_ ramifications on trials, verdicts, and the justice system as a whole.
- Podlas (2004)
  - Possibly encourages \_\_\_\_\_
  - Encourages \_\_\_\_\_ representation

## III. Reality vs. "Reality Television" in Syndi-Courts: Does the Public Know the Difference

While most judges, court personnel, and attorneys probably cringe when watching syndi-court programs, legal scholars suggest that it is wrong to assume that the public necessarily knows the difference.

The television judges are not "real" judges. They are not actually sitting in courtrooms, and these shows are not real trials, with real winners and losers, in the legal sense. But Judge Judy and the others invariably look like judges. They wear judicial robes, and they sit on a bench in what looks like a courtroom. There is some evidence that many people think these are real courts. The California Commission on Judicial Performance, for example, receives complaints from people who think Judge Judy goes too far. The Commission is bothered by the fact that the "standards for judicial conduct are set by impostors [sic]." What dismays the Commission even more than the people who find these judges offensive are the people who do the opposite, those persons "who write us to complain that when they went to court, the judges didn't act like they do on television."

The courts may be fakes, but the proceedings look like the genuine article. A man in a uniform leads in the litigants, as if they were in a courtroom. The litigants stand in front of the judge, saying "yes your honor" and "no your honor," and they tell their stories, often interrupting each other, when the judge is not interrupting them herself. ... The litigants are either so foolish, or so greedy for their fifteen minutes of fame, that they are willing to let an imitation judge monitor their claim and decide who wins.

Lawrence M. Friedman, "Lexitainment: Legal Process as Theater"  
50 DePaul L. Rev. 539 at 552 (Winter 2000)

#### **IV. So do such programs have absolutely no redeeming value?**

##### **A. Neil Postman, Media Critic (1931-2003)**

- “The best things on television are its junk.”
- “No medium is excessively dangerous if its users understand what its dangers are.” - *Amusing Ourselves to Death* (1985)

##### **B. Not if we are aware of how such programs incorrectly depict the judicial process.**

##### **C. Not if we acknowledge how such program can potentially affect the perception of**

1. Jurors
2. Defendants
3. Court Personnel
  - a. Clerks/Court Administrators
  - b. Bailiffs
  - c. Lawyers (Prosecutors and Defense Lawyers)
  - d. Judges (Yes, even judges!)

##### **D. The goal of this hour is to**

1. To increase awareness of how such images, for better or worse, influence expectations of individuals in court.
2. To become better-informed consumers of the popular culture that surrounds us.

#### **V. Introduction to Exercise:**

For the remainder of the hour we will examine three different segments from popular syndi-court programs. I will introduce each scenario. After each segment we will consider a series of discussion questions contained in your course materials.

Because nearly all syndi-court programs involve civil cases, we have developed scenarios to make them more applicable to the type of criminal matters you encounter in your capacity as a municipal judge or magistrate.

To assist you, in identifying possible ethical violations, excerpts of the Preamble and Canons 1, 2, and 3, and the Texas Constitution are also included in your course materials.

In the interest of time, you are all expected to answer the question in your materials as you watch each segment.

**A. "The Ring"(Time 0:41) - Property Hearing**

**Set up:** Assume in the following segment that the following municipal judge has been asked in his capacity as a magistrate to conduct a property hearing pursuant to Chapter 47 of the Code of Criminal Procedure. *As you watch the segment, take notes and be prepared to:*

**1. Discuss what erroneous messages about courts may be conveyed to viewers by the segment.**

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**2. Describe the judge's conduct as it relates to the behavior of the parties before him.**

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**3. Identify, if any, potential Canon violations committed by the judge.**

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**B. “Monkey Business” (Time 2:07) – Rendering a Verdict**

**Set up:** In the following segment, the judge is about to render a verdict in an animal case in which restitution is being requested. *As you watch the segment, take notes and be prepared to:*

**1. Describe the demeanor of the judge.**

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**2. Describe the conduct of the bailiff and the spectators in the courtroom.**

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**3. Identify, if any, potential Canon violations committed by the judge.**

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**4. Discuss what erroneous messages about courts may be conveyed to viewers by the segment.**

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**C. “MOEP Redux” (Time 1:07) - Modification of a MOEP**

**Set up:** In the following segment assume that Edward Chacon has requested that the judge reconsider a Magistrate’s Order of Emergency Protection, that the judge imposed in her capacity as a magistrate on September 8<sup>th</sup>. The order was imposed upon Irma Sandoval, Edward’s estranged common law wife, whom has a child. *As you watch the segment, take notes and be prepared to:*

- 1. Describe the demeanor of the judge.**

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- 2. Identify, if any, potential Canon violations committed by the judge.**

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**D. “I Yelled ‘Rocks, Stop!!!” (3:21) – Criminal Mischief Trial**

**Set up:** Assume the following, for years Kierstin “Jolly” Rogers and Stephanie “Don’t Call Me Grace Slick” Smick were archenemies. They each had the own clique. Their history for feuding dated back to middle school. Out of the blue, one day Stephanie asked Kierstin if she wanted to call a truce and go out for a night on the town. Within weeks, they were best friends.

Or so Kierstin thought. On the night in question, the two girls were out in Kierstin’s new car. Stephanie asked to drive the new car. Kierstin reluctantly agreed. For some strange reason, Stephanie insisted on taking a different route to Dick’s Hamburgers. En route, Stephanie drove the car over what Kierstin claims were a “line of boulders.” The car sustained damage to the undercarriage. The next day, Stephanie did not want to have anything to do with her “new best



friend,” Kierstin. On top of that, Kierstin learned from three of the girls in Smick’s clique that Stephanie had planned the whole rocky affair. Kierstin filed a complaint accusing Stephanie Smick of criminal mischief. Stephanie pled “100 percent, absolutely, not guilty” and has requested a “bench trial.”

*As you watch the segment, take notes and be prepared to:*

**1. Describe the demeanor of the judge.**

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**2. Discuss what erroneous messages may be conveyed to viewers by the segment. Was there any member of the courtroom workgroup notably absent?**

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**3. Identify, if any, potential Canon violations committed by the judge.**

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# EXCERPTS TEXAS CODE OF JUDICIAL CONDUCT and Texas Constitution

(As amended by the Supreme Court of Texas through 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.

# TEXAS CONSTITUTION

## **Article 5, Section 1-a, Retirement, Censure, Removal, and Compensation of Justices and Judges; State Commission on Judicial Conduct; Procedure (*as amended November 6, 2001*).**

(6) A. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section. Any person holding an office specified in this subsection may be suspended from office with or without pay by the Commission immediately on being indicted by a State or Federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. On the filing of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit on the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.



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# **CITATIONS & COMPLAINTS**

**Presented by**

**Margaret Robbins  
Program Director  
TMCEC**

Participants will be able to:

- Explain peace officers' authority to issue citations;
- Develop processes for handling citations in the court that are not clear or have sufficient information for filing;
- Develop a process for handling cases when the defendant is arrested;
- Explain when a complaint is required to be filed; and
- Find the statutes dealing with citations and complaints.



## Citations and Complaints

Presented by  
Margaret Robbins  
Program Director, TMCEC

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## Citations

- **Authority to issue**
  - Peace officers (Sec. 543.003, T.C. & Art. 14.06(b), C.C.P.)
- **When**
  - Peace officer has someone in custody
- **Exception**
  - Public intoxication

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## Citations

- **When filed in court?**
- **What if clerk cannot read or insufficient information to file?**
- **What if information is changed on citation?**

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**Citations**

- What if offense not in jurisdiction?
- What if offense is not an offense?
- What if offense has no code number?
- What if you already have the defendant in the docket but the DL # is off one number?
- What if?????????

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**Citations**

- Arrest – Defendant taken to jail
  - What should the court get from jail?
  - Should the court get a citation or a complaint?
- Car accident
  - Citation issued or complaint filed?
- Investigation
  - Citation issued or complaint filed?

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**Citations**

- Code enforcement officer
  - Issue citation or swear to complaint?
- Animal control officer
  - Issue citation or swear to complaint?

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## Citations and Complaints

- **Purpose of citation**
  - Serves as the complaint
  - Defendants may offer plea
- **Purpose of complaint**
  - Notice of charge
  - Charges accused with commission of offense
- **Statute of Limitations – Art. 12.02, C.C.P.**

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## Citations and Complaints

- **Citation**
  - Not required to be sworn
  - Cannot be issued in every instance
- **Complaint**
  - Required to be sworn
  - Required to have municipal court seal
  - Requires elements of offense
  - Initiates all charges in municipal court

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## Complaints

- **Complaint filed**
- **Issue summons**
  - Request from prosecutor required
  - Clerk prepares
  - Judges signs and issues
  - Peace officer serves
- **Issue warrant**
- **Both warrant and summons require probable cause**

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## Citations and Complaints

- **Article 27.14(b), C.C.P.**
  - Appearance on or before appearance date
  - Cannot require appearance in open court
  - Adults only

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## Citations

- **Plea – Guilty or No contest**
  - No sworn complaint required
- **Plea – Not guilty**
  - Sworn complaint required, unless
  - Defense & prosecutor agree in writing to go to trial with citation and file agreement with court

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## Citations and Complaints

- **Defendant does not appear**
- **Original charge**
  - File sworn complaint
- **File**
  - **Failure to appear (FTA)?**
    - File sworn complaint
  - **Violation of promise to appear (VPTA)?**
    - File sworn complaint

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## Complaints

- **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

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## Complaints

- **FTA**
  - Prosecutor makes decision to file
  - Sworn complaint initiates charge
  - Culpable mental state
    - Intentionally
    - Knowingly
  - Maximum possible fine
    - \$500
  - Court costs
    - \$48
- **VPTA**
  - Prosecutor makes decision to file
  - Sworn complaint initiates charge
  - Culpable mental state
    - Willfully
  - Maximum possible fine
    - \$200
  - Court costs
    - \$81

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## QUESTIONS?

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# COMPLAINTS AND CITATIONS

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## COMPLAINTS AND CITATIONS

### A. Purpose

#### 1. Notifies Defendant of Charge

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

#### 2. Initiates Proceedings

When a court accepts a complaint, the filing of the complaint initiates proceedings in the court. As a general rule, a sworn complaint must be filed with the municipal court to vest jurisdiction of the court. [*Ex parte Greenwood*, 307 S.W.2d 586 (Tex.Crim.App. 1957)] The exception to this rule is when a citation is filed with the court and the defendant has been given a legible duplicate copy. The citation serves as the complaint for the defendant to plea to. If the defendant pleads not guilty, a sworn complaint must be filed unless the defense and prosecution agree in writing to go to trial on the citation and file the agreement with the court.

### B. Types

In municipal court, defendants can be charged by a written notice to appear, commonly called a ticket issued by a peace officer or a complaint. Ordinarily, the citation or complaint is filed with the court by a peace officer or a city code enforcement officer, but a citizen may also file a complaint with the court.

#### 1. Complaint

The complaint is a sworn allegation charging an accused with the commission of an offense. (Article 45.018, C.C.P.) The complaint must show that the accused committed an offense against the laws of this state and must assert that the affiant has good reason to believe and does believe that the accused committed an offense against the law of this state. (Article 45.019(a)(4), C.C.P.) The affiant does not have to have personal knowledge of the facts.

##### a. Requirements

#### (1) Beginning and Ending

All municipal court complaints, including complaints for city ordinance violations, must begin with the words, "In the name and by the authority of the State of Texas." The complaint must also end with the words, "Against the peace and dignity of the State." If the offense is an ordinance, it may also conclude with the words "Contrary to the said ordinance." (Article 45.019, C.C.P.)

## **(2) Elements of Offense**

All the elements necessary to constitute an offense must be alleged in the complaint. [*Villareal v. State*, 729 S.W.2d 348 (Tex.App.—El Paso 1987, no pet.)] Therefore, it is usually, but not always, sufficient to list in the complaint all the elements required by statute to constitute a crime. In addition, if there is an exception in the statute that the State must negate, the complaint must negate the exception. [*Bird v. State*, 927 S.W.2d 136 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1996 no pet.)]

A charging instrument must plead with sufficient particularity to allow the defendant to plead the judgment as a bar to a second prosecution for the same offense. [*Kirk v. State*, 643 S.W.2d 190 (Tex.App.—Austin 1982, pet. ref.)]

## **(3) Location**

The particular location within the court's jurisdiction at which a violation was committed need not be alleged if the violation is one that could occur at any place within the municipality's jurisdiction. [*Bedwell v. State*, 155 S.W.2d 930 (Tex. 1941)] For example, the offense of assault by threat does not require that it only be charged if it occurs in a certain place such as a public place. Thus, the specific location of the offense does not need to be stated in the complaint. Speeding is an example of an offense in which the specific location needs to be stated in the complaint. The complaint should state that the defendant violated a certain speed limit on a particular street. However, in *State v. Lang*, 916 S.W.2d 63 (Tex.App.—Houston [1<sup>st</sup> Dist.]), the court held that if a defendant had received a ticket that specified the location of the offense, it was not error to deny a motion to set aside the complaint for failure to state the location.

All complaints filed in municipal court must allege that the violation occurred within the territorial limits of the city. (Article 45.019(c), C.C.P.)

## **(4) Culpable Mental States**

The complaint must also allege a culpable mental state. The states of mind that a complaint must allege are intentionally, knowingly, recklessly, or with criminal negligence as the offense requires. Section 6.02, P.C., classifies culpable mental states according to relative degrees, from highest to lowest, as follows:

- intentional;
- knowing;
- reckless; and
- criminal negligence.

A person commits an offense only if he or she voluntarily engages in conduct, including an act, an omission, or possession. (Section 6.01(a), P.C.) A person does not commit an offense unless he or she engages in conduct as the definition of an offense requires with a culpable mental state. If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. (Section 6.02(b), P.C.) If a statute (or ordinance) does not say which culpable mental state is required, Section 6.02(c), P.C., states it must be one of the first three and proof of one establishes criminal responsibility. A culpable

mental state is required for city ordinance offenses punishable by a fine exceeding \$500. (Section 6.02(f), P.C.)

The same rules that apply to complaints filed for state law violations apply when the offense is a city ordinance violation. When charging a city ordinance offense, the prosecution may not come up with new culpable mental states. [*Honeycutt v. State*, 627 S.W.2d 417 (Tex.Crim.App. 1982)]

Notwithstanding the requirement of a culpable mental state, there are some offenses, such as most traffic offenses, that do not require a culpable mental state. Offenses charged under the Transportation Code do not require pleading a culpable mental state in the complaint. [*Zulauf v. State*, 591 S.W.2d 869 (Tex.Crim.App. 1979)]

#### **(5) Abbreviations**

A well-defined and well-understood abbreviation can be used in a charging instrument without rendering it defective. [*Andrade v. State*, 622 S.W.2d 446 (Tex.App.—Corpus Christi 1983, pet.ref'd.) and *Barron v. State*, 760 S.W.2d 763 (Tex.App.—Beaumont 1988, no pet.)]

#### **(6) Grammatical and Spelling Errors**

Generally, mere errors in grammar do not make an otherwise valid complaint invalid. [*Butler v. State*, 551 S.W.2d 412 (Tex.Crim.App. 1977)]

#### **(7) Property**

- Ownership - In crimes such as criminal mischief, trespass, or theft, the complaint must indicate who owns the property. [*Talamantez v. State*, 59 S.W.2d 1084 (Tex.Crim.App. 1933)] If the owner is an entity such as a trust, corporation, or partnership, the better practice is to allege a natural person who is an agent or employee of the entity. [*Eaton v. State*, 533 S.W.2d 33 (Tex.Crim.App. 1976)] Typically, this may be a store manager or security person employed by the entity.
- Identification - Article 21.09, C.C.P., provides that personal property shall be identified, if known, by the name, kind, number, and ownership of the property. If the property is not described at all, the complaint is defective. [*Willis v. State*, 544 S.W.2d 151 (Tex.Crim.App. 1976)] Failure to fully describe property does not give adequate notice to the defendant, making the complaint defective. [*Rhodes v. State*, 560 S.W.2d 665 (Tex.Crim.App. 1978)]
- Value of property - The value of property must be pled in the complaint with enough sufficiency to show that the amount falls within the jurisdiction of the court. [*McKnight v. State*, 387 S.W.2d 662 (Tex.Crim.App. 1965)]

#### **(8) Name of Victim**

The victim of an alleged crime must be named or the complaint is defective. [*Ex Parte Lewis*, 544 S.W.2d 430 (Tex.Crim.App. 1976)] A name need only consist of a surname and one or more initials of names other than a surname. (Article 21.07, C.C.P.) If the name of the victim is incorrect in the complaint, the evidence is insufficient unless the names sound the same. This is the doctrine of *idem sonans*. Two names are *idem sonans*

if they can be sounded the same despite a variance in spelling. [*Grant v. State*, 568 S.W.2d 353 (Tex.Crim.App. 1978) and *McDonald v. State*, 699 S.W. 2d 325 (Tex.App.—San Antonio 1985, no pet.)]

### **(9) Manner and Means**

“Manner” is the way, mode, or method of doing something. “Means” is how the end is achieved. For example, in assault cases, the complaint must allege “striking” the victim with his or her hands. If the complaint does not allege the manner and means, it is defective because the defendant does not have proper notice of how the offense was committed. [*Haecker v. State*, 571 S.W.2d 920 (Tex.Crim.App. 1978) and *State v. Jackson*, 571 S.W.2d 1 (Tex.Crim.App. 1978)]

### **(10) Date of Offense**

The complaint must state the date of that the offense was committed as definitely as possible. (Article 45.019(a)(5), C.C.P.) Article 12.02, C.C.P., provides that a misdemeanor complaint must be presented (filed) within two years from the date of the commission of the offense, and not afterward. Hence, municipal court complaints must state the date of the offense and the date must show that the offense was committed within two years of the date of offense. The date of the offense is an element of the complaint.

### **(11) Sworn and Signed**

- Affiant - The person swearing to the complaint is the affiant. The affiant makes and subscribes an affidavit, which is a sworn statement. Subscribe means to sign a document. When an affiant swears to the complaint, he or she must do so in front of the person administering the oath. Any credible person acquainted with the facts of the alleged offense either by personal knowledge or hearsay may be an affiant. [(*Cisco v. State*, 411 S.W.2d 547 (Tex.Crim.App. 1968)] An example of an affiant with personal knowledge is a peace officer who personally observed a person speeding and swears to the complaint. An example of a hearsay affiant is a person who has not observed the offense but reviews an arrest report and then swears to the complaint. This person has good reason to believe, based upon information provided by the officer who personally observed the offense, that the offense was committed. In determining the validity of a complaint, a court does not need to ask about the nature of knowledge on which an affiant bases his or her statements. [*Naff v. State*, 946 S.W.2d 529 (Tex.App.—Fort Worth 1997)] The complaint must say that the affiant “does believe” the allegations in the complaint, not just merely that the affiant “has reason to believe.” [*Ex Parte Luehr*, 266 S.W.2d 375 (Tex.Crim.App. 1954) and *Barnes v. State*, 363 S.W.2d 471 (Tex.Crim.App. 1963)]
- Oath - Statutes do not provide specific wording for the oath administered to an affiant swearing to a complaint. The following is a sample oath a court may want to consider using: “Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?” A judge, clerk, deputy clerk, city secretary, city attorney, or deputy

city attorney may administer the oath to an affiant swearing to a complaint. (Article 45.019, C.C.P.)

- **Signed** - A complaint must be signed. (Article 45.019, C.C.P.) A complaint not signed by the affiant is defective. [*State v. Bender*, 353 S.W.2d 39 (Tex.Crim.App. 1962)] A signature on the complaint may be rubber-stamped. [*Parsons v. State*, 429 S.W.2d 476 (Tex.Crim.App. 1968); *Murray v. State*, 438 S.W.2d 916 (Tex.Crim.App. 1969)] A complaint may also contain an electronic signature. Article 45.021, C.C.P., provides that a statutory requirement that a document contain a signature is satisfied if the document contains the signature as captured by an electronic device. This rule applies to the signature of any person, judge, clerk of the court, or defendant. The name of the affiant need not appear in the body of the complaint. [*Parsons v. State*, 429 S.W.2d 476 (Tex.Crim.App. 1968)]
- **Jurat** - The certificate of the person before whom the complaint is being sworn is called a “*jurat*.” It is the clause written at the foot of an affidavit, such as a complaint, stating when and before whom the affidavit was sworn. Article 45.019, C.C.P., provides that a complaint in municipal court may be sworn to before: (1) the municipal judge; (2) the clerk of the court or a deputy clerk; (3) the city secretary; or (4) the city attorney or a deputy city attorney. If a complaint does not contain a *jurat*, it is insufficient to constitute a basis for a valid conviction. If the *jurat* shows that the affidavit was sworn before someone who had no authority to administer the oath, the complaint is invalid. If the *jurat* is not signed, the complaint is invalid. [*State v. Pierce*, 816 S.W.2d 824 (Tex.App.—Austin 1991, no pet.)] An undated *jurat* renders a complaint defective. [*Shackelford v. State*, 516 S.W.2d 180 (Tex.Crim.App. 1974) Where a *jurat* stated “Sworn to before or about” instead of a specific date, the complaint is defective. [*Brown v. State*, 294 S.W.2d 722 (Tex.Crim.App. 1956)]

## **(12) Municipal Court Seal**

Municipal court complaints are required to have a court seal. Article 45.012, C.C.P., requires municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. This statute is a general statute that applies only to non-record municipal courts. Municipal courts of record have a specific statute, Section 30.0000125, G.C., regarding their seal. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012 does not provide for the wording of the seal for non-record courts, but Section 30.0000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: “Municipal Court of/in \_\_\_\_\_, Texas.” Non-record municipal courts may want to consider using the same or similar wording on their seal.

Unfortunately, neither of the two statutes provides for the appearance of the seal. Before 1999, Article 45.02, C.C.P., required the municipal court seal for both record and non-record municipal courts to contain a five-point star, but that statute was repealed.

Although the courts now have no guidance on the appearance of the seal, most courts have retained the appearance that was once required by Article 45.02.

#### **b. Defects in the Complaint**

If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date of the trial on the merits of the case, the defendant waives and forfeits the right to object to the defect, error, or irregularity. The court may require an objection to the charging instrument be made at an earlier time. (Article 45.019(f), C.C.P.)

#### **c. Motions to Quash Complaint**

A motion to set aside the complaint, commonly called a motion to quash, is a defendant's challenge to a complaint and a request of the court to enter an order setting aside the complaint because of defects in the complaint or an exception to the complaint. A motion to set aside may be in writing or may be oral. (Article 45.021, C.C.P.)

If the court has set a pre-trial hearing pursuant to Article 28.01, C.C.P., the motion to set aside must be filed seven days before the date of the hearing or it is waived. If the court grants the motion to set aside the complaint, the court should enter an order setting aside the complaint. The State can refile the charge by a new complaint.

A county court conducting a trial *de novo* on an appeal from a non-record municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the municipal court. (Article 44.181(a), C.C.P.) The attorney representing the State, however, may move to amend a defective complain before the trial *de novo* begins. (Article 44.181(b), C.C.P.)

#### **d. Amendment to Complaint**

Complaints cannot be amended because it is a sworn statement and, if amended, the complaint would no longer be the sworn statement of the affiant. [*Givens v. State*, 235 S.W.2d 899 (Tex.Crim.App. 1951)] Even if a defendant agrees to an amendment, the complaint still cannot be amended. [*Franklyn v. State*, 762 S.W.2d 228 (Tex.App.—El Paso 1988, no pet.)] If a complaint, however, is amended and the affiant “re-swears” to the amended complaint, the complaint is valid. [*Cannon v. State*, 925 S.W.2d 126 (Tex.App.—Amarillo 1996, pet. ref’d.)]

Article 44.181, C.C.P., provides that a court conducting a trial *de novo* based on an appeal from a justice or municipal court may not dismiss the case because of a defect in the complaint. Furthermore, Article 44.181 provides that an attorney representing the State may move to amend a defective complaint before the trial *de novo* begins. It appears, however, that Article 44.181, C.C.P., applies only to complaints that are in the county court-at-law on appeal from non-record municipal courts and not to municipal court complaints before appeal.

#### **e. Enhancements**

Enhancements are allegations of prior convictions, which, if supported by evidence, are used to increase the punishment in the event of a conviction. If a complaint does not include the allegations of a prior conviction, the court cannot consider the higher punishment. The case for which the defendant is on trial is known as the “primary



offense.” The enhancements should be pled in the complaint immediately after the paragraph that charges the primary offense. In felony and Class A and B misdemeanor prosecutions, enhancement allegations are not read to the jury during the guilt stage of the trial. If the defendant is convicted, then there is an arraignment of the defendant as to the prior convictions and proof may be admitted. (Article 36.01, C.C.P.) However, under Article 37.07, C.C.P., there are no provisions for a bifurcated (two-stage) trial in municipal court. There is no case law that tells municipal court how to handle enhancements in a single-stage trial in municipal court.

There are several statutes that contain enhancement provisions:

- Section 106.02, A.B.C., Purchase of Alcohol by a Minor;
- Section 106.025, A.B.C., Attempt to Purchase Alcohol by a Minor;
- Section 106.04, A.B.C., Consumption of Alcohol by a Minor;
- Section 106.041, A.B.C., Driving under the Influence of Alcohol by a Minor;
- Section 105.05, A.B.C., Possession of Alcohol by a Minor;
- Section 106.07, A.B.C., Misrepresentation of Age by a Minor;
- Section 601.191, T.C., Failure to Maintain Financial Responsibility;
- Section 42.01, P.C. Disorderly Conduct; and
- Section 49.02, P.C., Public Intoxication.

In some instances, the enhancement changes the offense from a Class C misdemeanor to a higher-class offense, which takes the case out of municipal court’s jurisdiction.

## **2. Citation**

A written notice to appear issued by a peace officer is commonly called a “citation” or “ticket” and can be filed with the court to initiate proceedings.

### **a. Authority of Peace Officer to Issue**

Section 543.003, T.C., authorizes peace officers to issue written notices to appear in lieu of arrest for Subtitle C, Title 7, Transportation Code offenses. Article 14.06(b), C.C.P., provides authority for a peace officer to issue a citation for a Class C misdemeanor offense, except for the offense of public intoxication. Since peace officers may not issue a citation for public intoxication, a sworn complaint must be filed to initiate the proceedings for that offense. Also, any time a person is arrested in lieu of the citation being issued, the charges filed must be initiated by sworn complaint.

### **b. When Serves as the Complaint**

Article 27.14(d), C.C.P., provides that a written notice to appear for fine-only misdemeanor offenses may serve as a complaint for defendants to plead not guilty, guilty, or *nolo contendere*. A legible duplicate copy must have been given to the defendant. (Article 27.14(d), C.C.P.) [Attorney General Opinions JM-869 (1988) and JM-876 (1988)] A peace officer may obtain the signature of a person arrested on an electronic device capable of creating a copy of the signed notice. The officer retains the original paper or electronic copy of the notice and delivers a copy to the person arrested. (Section 543.005, T.C.)

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

When a defendant pleads not guilty after a written notice to appear has been filed with the court, generally the court is required to file a complaint that complies with the requirements of Chapter 45, C.C.P. The sworn complaint serves as an original complaint. If a defendant wants the prosecution to proceed on the written notice to appear, the defendant may waive the filing of a sworn complaint. If the prosecutor agrees with the defendant's waiving the filing of the sworn complaint, the agreement must be in writing with both the prosecutor and the defendant signing the agreement. Then the agreement must be filed with the court. (Article 27.14(d), C.C.P.)

If an agreement is not signed and filed with the court, a sworn complaint must be filed. Any person acquainted with the facts may swear to the complaint. Since this complaint now serves as the original complaint, the clerk enters the date this complaint was filed with the court on the same docket as the written notice to appear that initiated the case. Both the written notice to appear and the sworn complaint have the same docket number. If for some reason the prosecutor wants to file this as a new case, then the clerk would enter the sworn complaint on a new docket.

**d. When Defendant Fails to Appear**

When a defendant fails to appear, the court must have on file a complaint or an affidavit based on probable cause before issuing an arrest warrant for the defendant. (Article 45.014, C.C.P.) See Part 6 of this study guide for additional information on the offenses of violation of promise to appear and failure to appear.

**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 can be charged with the offense of failure to appear. The offense is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only. (Section 38.10, P.C.) Section 12.23 of the Penal Code 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*.

**B. Violate 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 of the 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 says

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. Charts**

**1. When Failure to Appear or Violate Promise to Appear May Be Filed**

Failure to appear and violation of promise to appear are not required to be filed when defendants fail to appear. The prosecuting attorney decides whether to prosecute these offenses.

<b>Class C Misdemeanor Offenses</b>	<b>Failure to Appear Sec. 38.10 Penal Code<sup>1</sup></b>	<b>Violation of Promise to Appear Sec. 543.009, T.C.<sup>2</sup></b>
Registration Law Subtitle A, Chapter 502, T.C.	Yes	No
Driver's License Law Subtitle B, Chapter 521, T.C.	Yes	No
Commercial Driver's License Law Subtitle B, Chapter 522, T.C.	Yes	No
Subtitle C, Rules of the Road, T.C.	Yes	Yes
Financial Responsibility Law Subtitle D, Chapter 601, T.C.	Yes	No
Vehicle Size and Weight Subtitle E, T.C.	Yes	No
Commercial Motor Vehicles Subtitle F, T.C.	Yes	No
Motorcycles and All-Terrain Vehicles Subtitle G, T.C.	Yes	No
Parking, Towing, and Storage of Vehicles Subtitle H, T.C.	Yes	No
Motorcycle Protective Headgear Subtitle G, Section 661.003, 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 <sup>3</sup>	Yes	No

<sup>1</sup> Before failure to appear, Section 38.10, P.C., may be filed, the defendant must have been in custody, released with or without bail and then failed to appear in accordance with the terms of his or her release.

<sup>2</sup> Defendant must have signed citation and then failed to appear before this charge can be filed. If for some reason defendant did not sign the promise to appear on the citation, violate promise to appear may not be filed.

<sup>3</sup> If someone other than a peace officer, such as a code enforcement officer who is not a licensed peace officer, issues a citation, failure to appear may not be filed.

## 2. Failure to Appear vs. Violation of Promise to Appear

Differences	Failure to Appear Sec. 38.10, P.C.	Violation of Promise to Appear Sec. 543.009, T.C.
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
Maximum possible fine if convicted	\$500.00	\$200.00
Court Costs	\$48.00 <sup>1</sup>	\$81.00 <sup>1</sup>

Differences	Failure to Appear Sec. 38.10, P.C.	Violation of Promise to Appear Sec. 543.009, T.C.
Process issued to bring defendant before court	Warrant of arrest or <i>capias</i>	Warrant of arrest or <i>capias</i>
Warrant fee: \$50.00 collected (Art. 102.011 C.C.P.)	Yes, if warrant or <i>capias</i> is executed or processed by a peace officer	Yes, if warrant or <i>capias</i> is executed or processed by a peace officer
Special expense fee: \$25.00 collected (Art. 45.203, C.C.P.) <sup>2</sup>	Yes, if warrant is executed	Yes, if warrant is executed

<sup>1</sup> Does not include Building Security Fee or Technology Fee.

<sup>2</sup> City required to adopt an ordinance in order to collect.

## Warrant of Arrest

### A. Defined

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

### B. Authority to Issue

A judge may issue arrest warrants. (Article 45.014, C.C.P.) These warrants are for fine-only misdemeanors filed in municipal court. Municipal judges and city mayors are also magistrates and have additional authority to issue warrants. (Article 2.09, C.C.P.) A magistrate may issue a warrant of arrest for Class A and B misdemeanors and felonies. (Article 15.03, C.C.P.) See the study guide *Authority and Duties* for more information on magistrates.

#### 1. Issued by Judge

When a sworn complaint or affidavit based on probable cause is filed with a judge, the judge may issue a warrant of arrest. (Article 45.014, C.C.P.) This warrant is for charges over which the judge has jurisdiction to hear the case.

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.

## **2. Issued by Magistrate**

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

Article 15.02, C.C.P., provides requirements of a warrant issued by a magistrate:

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

A warrant issued by a magistrate, except a mayor, extends to every part of the State, and any peace officer to whom the warrant is directed is authorized to execute it in any county in the state. (Article 15.06, C.C.P.) A warrant issued by a magistrate may be telegraphed. (Article 15.08, C.C.P.) The peace officer receiving the warrant must execute it without delay.

The officer or person executing a warrant of arrest shall, without unnecessary delay, take the person or have him or her taken before the magistrate who issued the warrant or before the magistrate named in the warrant if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which the person was arrested. (Article 15.16, C.C.P.) If it is more expeditious to the person arrested to provide the magistrate warnings, the officer may take the person before a magistrate in a county other than the county of arrest. (Article 15.16(b), C.C.P.)

### 3. Issued by Mayor

A warrant issued by a mayor as a magistrate cannot be executed in another county other than the one in which it is issued. The exception to this is when it is endorsed by a judge of a court of record, in which case it may be executed anywhere in the State, or if it is endorsed by a magistrate in the county in which the accused is found, it may be executed in that county. If it is endorsed by a magistrate where the accused is found, the endorsement is as follows: "Let this warrant be executed in the County of \_\_\_\_\_." If the warrant is endorsed by a judge of a court of record, the endorsement is "Let this warrant be executed in any county of the State of Texas." Any other words of the same meaning will be sufficient. The endorsement shall be dated and signed officially by the magistrate making it. (Article 15.07, C.C.P.)

### B. *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. Capias Pro Fine**

A *capias pro fine* is an order of the court directing a peace officer to bring a defendant who fails to satisfy a judgment before the court or to place the defendant in jail until he or she can be brought before the court. (Article 45.045, C.C.P.) For information on *capias pro fine*, see the study guide *Post-Trial Procedures*.

#### **F. 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. 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 to 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.

A summons issued by a magistrate for a defendant is in the same form as a warrant, except it summons a defendant to appear before a magistrate at a stated time and place. (Article 15.03(b), C.C.P.)

**b. For a Corporation or Association**

If the court is issuing a summons for a corporation or association, the form of the summons is different. It shall be in the form of a *capias* and shall provide that the corporation or association appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served. If service is upon the Secretary of State or the Commissioner of Insurance, the summons shall provide that the corporation or association appear at or before 10 a.m. of the Monday next after the expiration of 30 days after service. A certified copy of the complaint must be attached to the summons. (Article 17A.03, C.C.P.)

**3. Authority to Issue**

**a. Judicial Authority**

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 requiring his or her appearance for jury service. See the study guide *Trial Procedures* for information on a juror summons. A municipal court may also issue a summons for a corporation or association under Article 17A.03, C.C.P.

The summons for a defendant may be issued *only* upon request of the attorney representing the state. (Article 23.04, C.C.P.) There is no requirement in Chapter 17A that a prosecutor make a request for issuance of a summons to a corporation or association.

**b. Magistrate Authority**

A magistrate (municipal judge or mayor) may issue a summons for Class A and B misdemeanors and felonies. (Article 15.03(a), C.C.P.) A magistrate may issue a summons in any case where a warrant may be issued. (Article 15.03(b), C.C.P.)

**4. Service**

**a. On the Defendant**

Articles 23.03(c) and 15.03(b), C.C.P., provide for how a peace officer serves a summons. 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**

Peace officers can serve a summons on a corporation by the following ways.



- The 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, 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 the corporation or association, it is deemed to be present in person for all purposes and the court shall enter a plea of not guilty and the court may proceed with trial, judgment, and sentencing. (Art. 17A.07, C.C.P.) No individual may be arrested upon a complaint, judgment, or sentence against a corporation or association. (Article 17A.03(b), C.C.P.)

When a defendant fails to respond to a summons issued by a magistrate, the magistrate enforces the summons by issuing a warrant of arrest. (Article 15.03(b), C.C.P.)



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# **TRAFFIC LAW & TxDOT PROGRAMS**

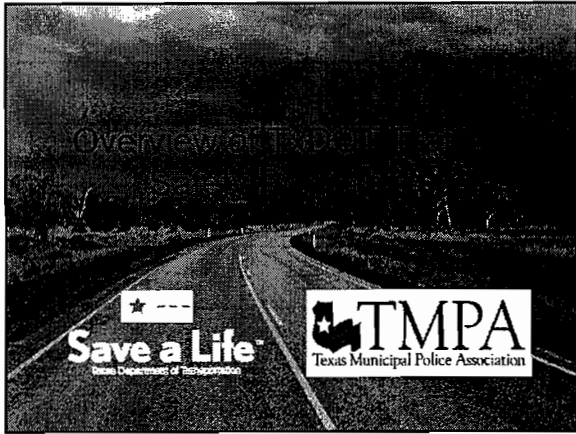
**Presented by**

**C. Victor Lander  
Municipal Judge  
Dallas  
&  
Israel Campose  
Law Enforcement Coordinator  
TMPA**

Participants will be able to:

- List TxDot programs and grants available to the city.
- Explain safety belt law, child passenger seat system, motorcycle helmet law, and passing emergency vehicles; and
- Explain alcohol offenses.






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### TxDOT Traffic Safety Programs

- The Texas Department of Transportation does much more than engineering, traffic management, road signs & signals
- Safety initiatives to improve driver behavior, eliminate roadway hazards, increase law enforcement
- Some of the more notable initiatives:



**Drink.  
Drive.  
Go to Jail.**

These initiatives can effect your workload directly!

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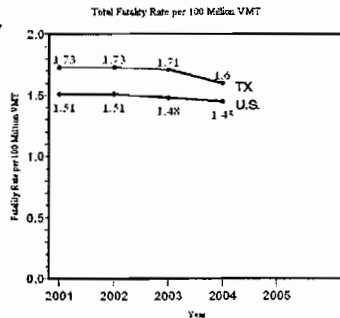
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### Why Traffic Safety?

- Texas consistently ranks in the top two states for traffic fatalities
- We run neck and neck with California even though we have less population




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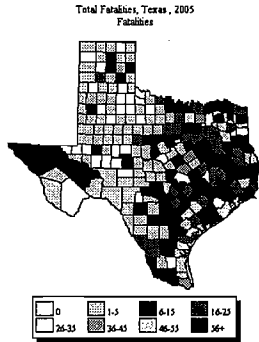
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## 2005 Fatality Crashes

**County      # of Fatalities**

1. Harris County    360
2. Dallas County    234
3. Bexar County    168
4. Tarrant County   144
5. Travis County    94
6. Hidalgo County  91
7. Mont. County    64
8. El Paso County   62
9. Jefferson County  61
10. Smith County   55



\*Economic impact of  
\$19 Billion in year 2000

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## Law Enforcement Initiatives

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## Selective Traffic Enforcement Programs (STEP)

- Grant funds provide increased enforcement of traffic laws
- 165 agencies received 233 grants (2006)
- Various types of grants include:
  - Safety Belt, Speed, DWI, Intersection Traffic Control, Commercial Motor Vehicle
  - Year Long, Waves, and Mobilizations

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## Police Traffic Services Support

- 4 LECs cover the State of Texas
- Recruit law enforcement agencies to participate in traffic enforcement grants
- Assist with all grant related paperwork and policies
- Spread Traffic Safety Message to Public
- Maintain Buckle Up Texas website [www.buckleuptexas.com](http://www.buckleuptexas.com)
- Work in conjunction with and support "partner agencies" (TMCEC, TDCAA, MADD)

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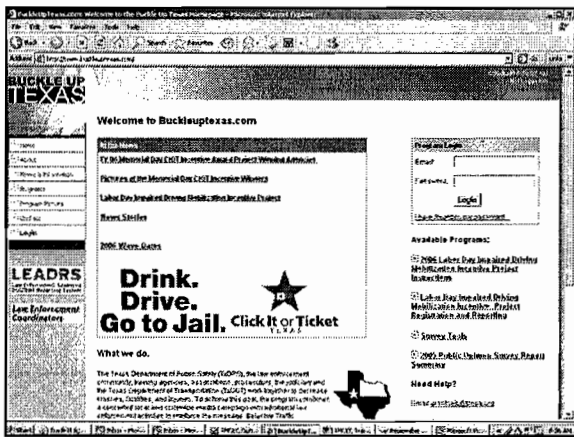
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## **LEADRS** Law Enforcement Advanced DUI/DWI Reporting System

- Web based software system reduces time officers spend on DWI paperwork by 50%
- Developed with input from officers and prosecutors
- Simplifies completing mandatory state forms and allows for easy review by prosecutors
- LEADRS is grant funded through the TxDOT
- NHTSA funding extended project to Georgia and Oklahoma

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## TEXAS MOVE OVER LAW

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### Move Over Law

TC 545.157 Passing Authorized Emergency Vehicle

Slow Down or Change Lanes for Stopped Emergency Vehicles

- The law states a driver must either vacate the lane closest to the stopped emergency vehicle if the road has multiple lanes traveling in the same direction or slow down 20 miles per hour below the speed limit. (If the speed limit is below 25 mph the driver must slow down to 5 mph.)
- Emergency vehicles include:
  - POLICE
  - EMERGENCY MEDICAL SERVICE
  - FIRE VEHICLES
- A violation is punishable by a maximum fine of \$200. If the violation results in property damage, the maximum fine increases to \$500. If the violation results in bodily injury, the offense is enhanced to a Class B misdemeanor.

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### Why the Move Over Law



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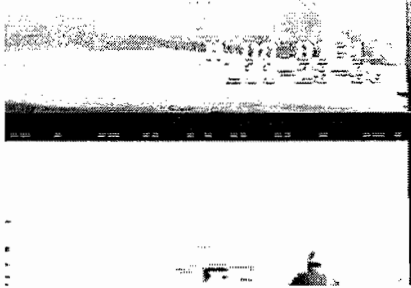
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## Why the Move Over Law



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## Public Information and Education

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## Public Information & Education

- Public Information & Educational Materials
- The role of public information & educational materials is to make the public aware of traffic safety issues, practices and their benefits.
- PI & E activities support and compliment the activities of other programs by:
  - Promoting compliance with laws & enhancing enforcement efforts.
  - Building public support for programs.
  - Informing motorists of safe driving habits.

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**Public Information &  
Education**

EDUCATIONAL & PROMOTIONAL

- Educational:
  - Materials that educates & informs an audience.
  - Includes items as activity books, coloring books, brochures, posters, flyers, bumper stickers, etc.
- Promotional:
  - Materials that promotes, supports, or enhances efforts. These materials include key chains, on-board signs, mugs, pencils, magnets, litter bags, etc.
- Samples of materials are provided at the traffic safety table. All samples are free and you may obtain materials through the TxDOT Traffic Safety Specialist in their respective Districts.

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**Texas Occupant Restraint Laws  
Relevant Statutes:  
Vernon's Texas Statutes and Codes  
Annotated Transportation Code  
Child Safety Seats and Seat Belts  
LAWS and EXCEPTIONS**

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**The Law**

- Chapter 545. Operation and movement of vehicles.
- Sec. 545.412. Child passenger safety seat systems; Offense.
  - (A) A person commits an offense if the person operates a passenger vehicle, transports a child who is **younger than five years of age and less than 36 inches in height**, and does not keep the child secured during the operation of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system.
  - (B) an offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

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### The Exception

- (c) It is a defense to prosecution under this section that the person was operating the vehicle in an emergency or for a law enforcement purpose.
- (d) Use or nonuse of a child passenger safety seat system is not admissible evidence in a civil trial, other than a proceeding under Subtitle A or B, Title 5, Family Code.
- (e) This section does not apply to a person:
  - (1) operating a vehicle transporting passengers for hire including third party transport service providers when transporting clients pursuant to a contract to provide non emergency Medicaid transportation; or
  - (2) transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

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### Exception (cont.)

- Sec. 545.4121. Defense; Possession of child passenger safety seat system.
- (A) this section applies to an offense committed under section 545.412.
- (B) it is a defense to prosecution of an offense to which this section applies that the defendant provides to the court evidence satisfactory to the court that the defendant possesses an appropriate child passenger safety seat system for each child required to be secured in a child passenger safety seat system under section 545.412(a).

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### Types of Child Safety Seats

- There are 2 types of rear-facing seats: *infant-only seats and convertible seats*. Convertible seats can be used rear-facing for infants, and then converted to a forward-facing position once the child is old enough and big enough to do so safely.
- Infants should ride in rear-facing car seats until at least 20 lbs and at least 1 year old. **Do not put a rear-facing car seat in the front seat of a vehicle with an active passenger air bag.**
- Children over 1 year old and between 20 lbs and 40 lbs should ride in forward-facing car seats.

#### **Infant-only seats**

- Small and have carrying handles (sometimes come as part of a stroller system).
- Have a built-in harness that covers the child's upper torso.
- Can only be used for infants from birth up to 20 to 30 pounds, depending on model.
- Many come with a detachable base, which can be left in the car.

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**Convertible seats  
(used rear-facing)**

- Are used rear-facing for infants from birth to at least 1 year of age and at least 20 to 22 pounds. Can also be used forward-facing by older children.
- Have higher rear-facing weight limits than infant-only seats. These are ideal for bigger babies.
- Children ages 4 to 8 between 40 lbs and 80 lbs should ride in booster seats restrained with lap and shoulder belts. A regular seat belt won't fully protect a child this size in a crash.
- Children and adults over 80 lbs should use a seat belt for every ride.

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**Which car safety seat is the best?**

- No one seat is the "best" or "safest." The best seat is the one that fits your child's size, is correctly installed, and is used properly every time you drive. When shopping for a car safety seat, keep the following in mind:
- Don't base your decision on price alone. Higher prices can mean added features that may or may not make the seat safer or easier to use. All car safety seats available for purchase in the United States must meet very strict safety standards established and maintained by the federal government.
- When you find a seat you like, try it out. Put your child in it and adjust the harnesses and buckles. Make sure it fits properly and securely in your car. Keep in mind that pictures or displays of car safety seats in stores may not show them being used the right way.

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**Other points to keep in mind**

- Never tuck the shoulder belt under the child's arm or behind the back.
- If there's only a lap belt, make sure it's snug and low on the child's thighs, not across the stomach. Try to get a lap and shoulder belt installed in your car by a dealer.
- Never allow children or anyone else to "share" seat belts. All passengers must have their own car safety seats or seat belts.
- Never buy child passenger seats at garage sales. You do not know the history behind the seat.
- If the child safety seat is over 6 years old, purchase a new one.
- Check the recall list periodically and see if your child safety seat is on it.
- Further information is provided at the traffic safety table on child passenger seats. Please stop by & pick up the information.

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## **Booster Seats**

- Booster seats are designed to raise your child so that the lap and shoulder seat belts fit properly. This means the lap belt lies low across your child's thighs and the shoulder belt crosses the middle of your child's chest and shoulder.

**Your child is ready to use lap and shoulder seat belts when the belts fit properly.**

**This means**

- The shoulder belt lies across the middle of the chest and shoulder, *not the neck or throat*.
- The lap belt is low and snug across the thighs, not the stomach.
- The child is tall enough to sit against the vehicle seat back with her legs bent without slouching and can stay in this position comfortably throughout the trip.
- If the seat belt does not fit your child correctly, she should stay in a booster seat until the adult seat belts fit her correctly. This is usually when the child reaches about 4' 9" in height and is between 8 and 12 years of age.

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## **Child Safety Seat Help**

- Read the owner's manual that came with your car on how to correctly install car safety seats.
- If you need help installing your car safety seat, contact a certified Child Passenger Safety (CPS) Technician. To locate and set up an appointment, call toll-free at 866/SEATCHECK (866/732-8243) or visit <http://www.seatcheck.org/>.

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## **The Law**

**TC 545.413. Safety Belts; Offense**

(a) A person commits an offense if the person:

- (1) is at least 15 years of age
- (2) is riding in the **front seat** of a passenger vehicle while the vehicle is being operated;
- (3) is occupying a seat that is **equipped with a safety belt** and
- (4) is **not secured** by a safety belt.

(b) A person commits an offense if the person:

- (1) operates a passenger vehicle that is **equipped with safety belts**; and
- (2) allows a child who is younger than 17 years of age and who is not required to be secured in a child passenger safety seat system under Section 545.412(a) to ride in the vehicle without requiring the child to be secured by a safety belt, provided the child is occupying a seat that is equipped with a safety belt.

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**The Law (cont.)**

- (c) A passenger vehicle or a seat in a passenger vehicle is considered to be equipped with a safety belt if the vehicle is required under Section 547.601 to be equipped with safety belts.
- (d) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than \$25 or more than \$50. An offense under Subsection (b) is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

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**The Exception**

- (e) It is a defense to prosecution under this section that:
- (1) the person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- (2) the person presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- (3) the person is employed by the United States Postal Service and performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;

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**Exception (cont.)**

- (4) the person is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;
- (5) the person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle; or
- (6) The person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163 that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more.

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**Youth Alcohol Programs**

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**106.02. PURCHASE OF ALCOHOL BY A MINOR.**

- (a) A minor commits an offense if the minor purchases an alcoholic beverage. A minor does not commit an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

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**106.025. ATTEMPT TO PURCHASE ALCOHOL BY A MINOR.**

- (a) A minor commits an offense if, with specific intent to commit an offense under Section 106.02 of this code, the minor does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

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**106.04. CONSUMPTION OF ALCOHOL BY A MINOR.**

- (a) A minor commits an offense if he consumes an alcoholic beverage.
- (b) It is an affirmative defense to prosecution under this section that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse.

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**106.041. DRIVING UNDER THE INFLUENCE OF ALCOHOL BY MINOR.**

- (a) A minor commits an offense if the minor operates a motor vehicle in a public place while having any detectable amount of alcohol in the minor's system.
- (b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

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**106.05. POSSESSION OF ALCOHOL BY A MINOR.**

- (a) Except as provided in Subsection (b) of this section, a minor commits an offense if he possesses an alcoholic beverage.

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- (b) A minor may possess an alcoholic beverage: (1) while in the course and scope of the minor's employment if the minor is an employee of a licensee or permittee and the employment is not prohibited by this code;
- (2) if the minor is in the visible presence of his adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court; or
- (3) if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

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**106.07. MISREPRESENTATION OF AGE BY A MINOR.**

- (a) A minor commits an offense if he falsely states that he is 21 years of age or older or presents any document that indicates he is 21 years of age or older to a person engaged in selling or serving alcoholic beverages.

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**Youth Alcohol Statistics**

- More than five million high school students binge drink at least once a month
- The gender gap in alcohol consumption that for generations separated girls and boys has disappeared among younger teens: male and female ninth graders are just as likely to drink (40 percent vs. 41 percent) and to binge drink (22 percent vs. 20 percent).
- 83 percent of adults who drink had their first drink of alcohol before age 21.
- Individuals who begin drinking before the age of 15 are four times more likely to become alcohol dependent than those who begin drinking at age 21.

The prevalence of lifetime alcohol abuse is greatest for those who begin drinking at age 14.

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### Stats (cont.)

- One-third of sixth and ninth graders obtain alcohol from their own homes.
- Children cite other people's homes as the most common setting for drinking.
- Four out of every five (80%) students have consumed alcohol (more than a few sips) by the end of high school.
- Two-thirds of twelfth graders report having been drunk.

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### Behind the Wheel

- 6,200 teens die per year in car crashes
- Motor vehicle crashes are the leading cause of death for persons aged 15 to 19 years old.
- Four out of every 10 teenagers that die in this country are killed in a motor vehicle crash.
- For every teen that is killed in a motor vehicle crash, 19 are seriously injured.
- On average, a teenager is injured every 15 minutes in a motor vehicle crash in the United States.
- One in five of all Americans, ages 16-20, drove under the influence of drugs or alcohol last year.
- From 1998-2002, there was an estimated 300,000 crashes due to cell phone use while driving.

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### What's being done?

#### TxDOT fiscal year 2007:

- **25 Programs funded for alcohol and other drug countermeasures \$6,273,960.00**
  - Travis County Underage Drinking Prevention
  - Brazos County Underage Drinking Enforcement
  - City of El Paso Underage Drinking Initiative
  - MADD Community Action to reduce alcohol crashes in Harris County
  - San Antonio "Fiesta Safe, Drive Sober"
  - Sherry Matthews Marketing Adult Drinker PI&E
- **100+ Law Enforcement Agencies funded for Police Traffic Services \$16,000,000.00**

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## Motorcycle Safety



STATE OF  
TEXAS  
MANDATORY  
HELMET LAW

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## Texas Helmet Law

Per mile traveled, the number of deaths on motorcycles is about 20 times the number in cars.

### Motorcycle Helmet Statute:

Title 7, Vehicles and Traffic, Subtitle G, Motorcycles and All-Terrain Vehicles, Chapter 661, Protective Headgear for Motorcycle Operators and passengers, Section 661.003, Offenses Relating to Not Wearing Protective Headgear. :

"(a) A person commits an offense if the person:

"(1) operates or rides as a passenger on a motorcycle on a public street or highway; and

• "(2) is not wearing protective headgear that meets safety standards adopted by the department.

• "(b) A person commits an offense if the person carries on a motorcycle on a public street or highway a passenger who is not wearing protective headgear that meets safety standards adopted by the department.

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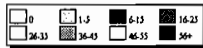
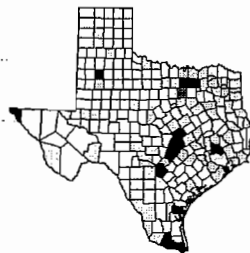
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## Helmet Law (cont.)

### FINE:

- "... (e) An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$50."

Motorcycle Riders, Texas, 2005  
Fatalities



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## MOVE OVER LAW

### TRANSPORTATION CODE

§ 545.157. PASSING AUTHORIZED EMERGENCY VEHICLE. (a) On approaching a stationary authorized emergency vehicle using visual signals that meet the requirements of Sections 547.305 and 547.702, an operator, unless otherwise directed by a police officer, shall:

- (1) vacate the lane closest to the emergency vehicle when driving on a highway with two or more lanes traveling in the direction of the emergency vehicle; or
- (2) slow to a speed not to exceed:
  - (A) 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or more; or
  - (B) five miles per hour when the posted speed limit is less than 25 miles per hour.

(b) A violation of this section is:

- (1) a misdemeanor punishable under Section 542.401;
- (2) a misdemeanor punishable by a fine of \$500 if the violation results in property damage; or
- (3) a Class B misdemeanor if the violation results in bodily injury.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code or the Penal Code, the actor may be prosecuted under either section or under both sections.

Added by Acts 2003, 78th Leg., ch. 327, § 2, eff. Sept. 1, 2003.

## SAFETY BELT LAWS

### TRANSPORTATION CODE

§ 545.412. CHILD PASSENGER SAFETY SEAT SYSTEMS; OFFENSE. (a) A person commits an offense if the person operates a passenger vehicle, transports a child who is younger than five years of age and less than 36 inches in height, and does not keep the child secured during the operation of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

(c) It is a defense to prosecution under this section that the person was operating the vehicle in an emergency or for a law enforcement purpose.

(d) Repealed by Acts 2003, 78th Leg., ch. 204, § 8.01.

(e) This section does not apply to a person:

(1) operating a vehicle transporting passengers for hire, including third-party transport service providers when transporting clients pursuant to a contract to provide nonemergency Medicaid transportation; or

(2) transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

(f) In this section:

(1) "Child passenger safety seat system" means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(2) "Passenger vehicle" means a passenger car, light truck, sport utility vehicle, truck, or truck tractor.

(3) "Safety belt" means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(4) "Secured," in connection with use of a safety belt, means using the lap belt and any shoulder straps according to the instructions of:

(A) the manufacturer of the vehicle, if the safety belt is original equipment; or

(B) the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

(g) A judge, acting under Article 45.0511, Code of Criminal Procedure, who elects to defer further proceedings and to place a defendant accused of a violation of this section on probation under that article, in lieu of requiring the defendant to complete a driving safety course approved by the Texas Education Agency, shall require the defendant to attend and present proof that the defendant has successfully completed a specialized driving safety course approved by the Texas Education Agency under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) that includes four hours of instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts and emphasizes:

(1) the effectiveness of child passenger safety seat systems and seat belts in reducing the harm to children being transported in motor vehicles; and

(2) the requirements of this section and the penalty for noncompliance.

(h) Notwithstanding Section 542.402(a), a municipality or county, at the end of the municipality's or county's fiscal year, shall send to the comptroller an amount equal to 50 percent of the fines collected by the municipality or the county for violations of this section.

The comptroller shall deposit the amount received to the credit of the tertiary care fund for use by trauma centers.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 30.114(a), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 618, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 910, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1042, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 204, § 8.01, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 913, § 1, 2, eff. Sept. 1, 2005.

§ 545.4121. DEFENSE; POSSESSION OF CHILD PASSENGER SAFETY SEAT SYSTEM. (a) This section applies to an offense committed under Section 545.412.

(b) It is a defense to prosecution of an offense to which this section applies that the defendant provides to the court evidence satisfactory to the court that the defendant possesses an appropriate child passenger safety seat system for each child required to be secured in a child passenger safety seat system under Section 545.412(a).

Added by Acts 2005, 79th Leg., ch. 913, § 3, eff. Sept. 1, 2005.

§ 545.413. SAFETY BELTS; OFFENSE. (a) A person commits an offense if the person:

- (1) is at least 15 years of age;
- (2) is riding in the front seat of a passenger vehicle while the vehicle is being operated;
- (3) is occupying a seat that is equipped with a safety belt; and
- (4) is not secured by a safety belt.

(b) A person commits an offense if the person:

- (1) operates a passenger vehicle that is equipped with safety belts; and
- (2) allows a child who is younger than 17 years of age and who is not required to be secured in a child passenger safety seat system under Section 545.412(a) to ride in the vehicle without requiring the child to be secured by a safety belt, provided the child is occupying a seat that is equipped with a safety belt.

(c) A passenger vehicle or a seat in a passenger vehicle is considered to be equipped with a safety belt if the vehicle is required under Section 547.601 to be equipped with safety belts.

(d) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than \$25 or more than \$50. An offense under Subsection (b) is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

(e) It is a defense to prosecution under this section that:

- (1) the person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- (2) the person presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- (3) the person is employed by the United States Postal Service and performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;

(4) the person is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;

(5) the person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle; or

(6) The person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163 that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more.

(f) The department shall develop and implement an educational program to encourage the wearing of safety belts and to emphasize:

(1) the effectiveness of safety belts and other restraint devices in reducing the risk of harm to passengers in motor vehicles; and

(2) the requirements of this section and the penalty for noncompliance.

(g) Repealed by Acts 2003, 78th Leg., ch. 204, § 8.01.

(h) In this section, "passenger vehicle," "safety belt," and "secured" have the meanings assigned by Section 545.412.

(i) A judge, acting under Article 45.0511, Code of Criminal Procedure, who elects to defer further proceedings and to place a defendant accused of a violation of Subsection (b) on probation under that article, in lieu of requiring the defendant to complete a driving safety course approved by the Texas Education Agency, shall require the defendant to attend and present proof that the defendant has successfully completed a specialized driving safety course approved by the Texas Education Agency under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) that includes four hours of instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts and emphasizes:

(1) the effectiveness of child passenger safety seat systems and seat belts in reducing the harm to children being transported in motor vehicles; and

(2) the requirements of this section and the penalty for noncompliance.

(j) Notwithstanding Section 542.402(a), a municipality or county, at the end of the municipality's or county's fiscal year, shall send to the comptroller an amount equal to 50 percent of the fines collected by the municipality or the county for violations of Subsection (b) of this section. The comptroller shall deposit the amount received to the credit of the tertiary care fund for use by trauma centers.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 30.115(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 316, § 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 515, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 618, § 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 910, § 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1042, § 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 204, § 8.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 431, § 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 913, § 4, eff. Sept. 1, 2005.



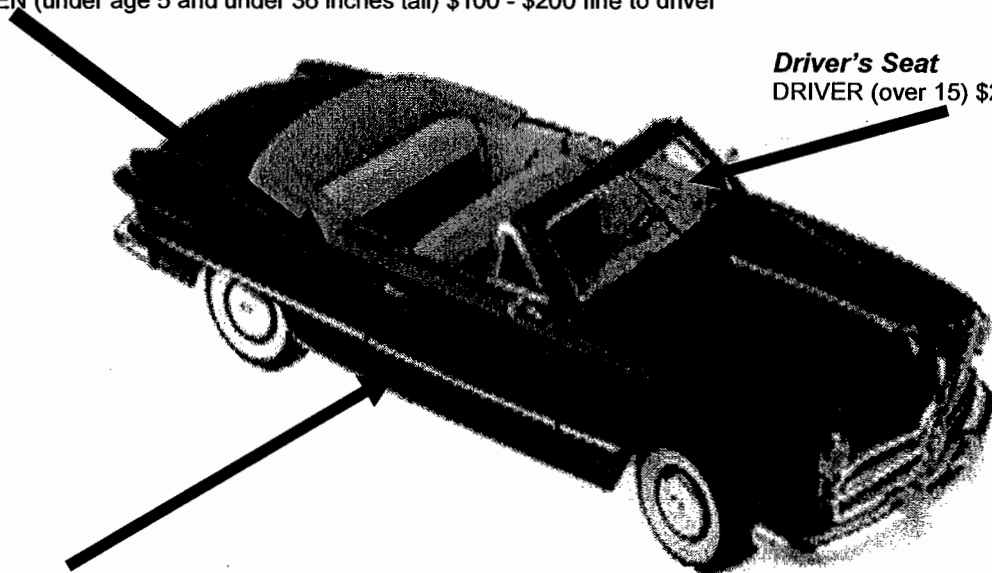
## SAFETY BELT LAWS

### **Back Seat**

ADULTS (17 and over) No violation

CHILDREN (5-16) \$100 - \$200 fine to driver

CHILDREN (under age 5 and under 36 inches tall) \$100 - \$200 fine to driver



### **Driver's Seat**

DRIVER (over 15) \$25 - \$50 fine

### **Front Passenger's Seat**

ADULTS (17 and over) \$25 - \$50 to offender

ADULTS (15 and under 17) \$25 - \$50 to offender or driver

CHILDREN (5-16) \$100 - \$200 to driver

CHILDREN (under age 5 and under 36 inches tall) \$100 - \$200 to driver

<b>Safety Belt Laws</b> <b>Effective September 1, 2005</b>	
<b>Child in safety seats</b>	A child <i>under 5 years old and less than 36 inches tall</i> must be restrained in a child passenger safety seat in accordance with the manufacturer's instructions.
<b>Child in seat belts</b>	A child <i>age 5 and younger than age 17</i> must be restrained in a <b>seat belt</b> regardless of position in the vehicle.
<b>Adults in seat belts</b>	A person must be restrained in a seat belt if seated in the front seat. Adults ( <i>at least age 17</i> ) seated in the back seat are not required to be restrained in a seat belt.
<b>Pick-up trucks and trailers</b>	A child <i>under age 18</i> cannot ride in the open bed of a pick-up truck or trailer on a public road.

**Passenger Safety Seat System and Safety Belt  
Effective on Offenses Committed on or after September 1, 2005**

Age	Person Responsible	Type of Restraint	Location in vehicle	Cited for	Penalty	Eligible for Special DSC (emphasizes seatbelts & child safety seat systems)	Eligible for DSC	Eligible for Deferred Disposition
Child under age 5 and under 36 inches	driver	child passenger safety seat system	front and back seats	Child not in passenger safety seat system	minimum \$100 maximum \$200	yes	no	yes
Child at least age 5 and under age 17	driver	safety belt	front and back seats	Child not in safety belt	minimum \$100 maximum \$200	yes	no	yes
At least age 15	person	safety belt	front seat	Passenger not wearing safety belt	minimum \$25 maximum \$50	no	no	yes
At least age 15	driver	safety belt	front seat	Driver not wearing safety belt	minimum \$25 maximum \$50	no	yes	yes
At least age 17 or older	driver	safety belt	front seat	Driver not wearing safety belt	minimum \$25 maximum \$50	no	yes	yes

**Definitions**

- Child passenger safety seat system means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.
- Passenger vehicle means a passenger car, light truck, sport utility vehicle, truck, or truck tractor. ("Passenger car" means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator. "Light truck" means a truck, including a pickup truck, panel delivery truck, or carryall truck, that has a manufacturer's carrying capacity of 2,000 pounds or less. Since "sport utility vehicle" is not specifically defined, look to the definition of passenger vehicle. "Truck" means a motor vehicle designed, used, or maintained primarily to transport property. "Truck tractor" means a motor vehicle designed and used primarily to draw another vehicle but not constructed to carry a load other than a part of the weight of the other vehicle and its load. "Motor vehicle" means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. Section 541.201, T.C.)
- Safety belt means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.
- Secured in connection with use of a safety belt means using the lap belt and any shoulder straps according to the manufacturer of the vehicle, if the safety belt is original equipment; or the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

**Section 545.412, T.C., does not apply to:**

- A person operating a vehicle transporting passengers for hire; or
- A person transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

**Defenses to the prosecution under Section 545.413, T.C.**

- The person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person presents to the court, not later than the 10<sup>th</sup> day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person is employed by the United States Postal Service and performs a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;
- The person is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;
- The person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle; or
- The person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163, T.C., that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more. (Section 502.163, T.C., provides for a fee for commercial motor vehicle used primarily for farm purposes.)

**Amount Due the State**

- Fifty percent of the fines for convictions for not securing a child in a passenger safety seat system or a safety belt (\$100 to \$200 penalty range) must be remitted to the State Comptroller at the end of the city's fiscal year.
- Court costs must be remitted quarterly.

## ALCOHOL OFFENSES BY A MINOR

### ALCOHOLIC BEVERAGE CODE

§ 106.02. PURCHASE OF ALCOHOL BY A MINOR. (a) A minor commits an offense if the minor purchases an alcoholic beverage. A minor does not commit an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

(b) An offense under this section is punishable as provided by Section 106.071.

Acts 1977, 65th Leg., p. 513, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 163, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 934, § 75, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1013, § 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1139, § 1, eff. June 19, 1997.

§ 106.025. ATTEMPT TO PURCHASE ALCOHOL BY A MINOR. (a) A minor commits an offense if, with specific intent to commit an offense under Section 106.02 of this code, the minor does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) An offense under this section is punishable as provided by Section 106.071.

Added by Acts 1993, 73rd Leg., ch. 934, § 76, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1013, § 2, eff. Sept. 1, 1997.

§ 106.04. CONSUMPTION OF ALCOHOL BY A MINOR. (a) A minor commits an offense if he consumes an alcoholic beverage.

(b) It is an affirmative defense to prosecution under this section that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse.

(c) An offense under this section is punishable as provided by Section 106.071.

(d) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition.

For the purposes of this subsection:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction of an offense under this section; and

(2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.

Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 163, § 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 934, § 77, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1013, § 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1207, § 1, eff. Sept. 1, 1999.

§ 106.041. DRIVING UNDER THE INFLUENCE OF ALCOHOL BY MINOR. (a) A minor commits an offense if the minor operates a motor vehicle in a public place while having any detectable amount of alcohol in the minor's system.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense under this section, the offense is punishable by:

- (1) a fine of not less than \$500 or more than \$2,000;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both the fine and confinement.

(d) In addition to any fine and any order issued under Section 106.115, the court shall order a minor convicted of an offense under this section to perform community service for:

- (1) not less than 20 or more than 40 hours, if the minor has not been previously convicted of an offense under this section; or
- (2) not less than 40 or more than 60 hours, if the minor has been previously convicted of an offense under this section.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol.

(f) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition or deferred adjudication.

(g) An offense under this section is not a lesser included offense under Section 49.04, Penal Code.

(h) For the purpose of determining whether a minor has been previously convicted of an offense under this section:

- (1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction under this section; and
- (2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.

(i) A peace officer who is charging a minor with committing an offense under this section is not required to take the minor into custody but may issue a citation to the minor that contains written notice of the time and place the minor must appear before a magistrate, the name and address of the minor charged, and the offense charged.

(j) In this section:

- (1) "Child" has the meaning assigned by Section 51.02, Family Code.
- (2) "Motor vehicle" has the meaning assigned by Section 32.34(a), Penal Code.
- (3) "Public place" has the meaning assigned by Section 1.07, Penal Code.

Added by Acts 1997, 75th Leg., ch. 1013, § 5, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1207, § 2, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 949, § 29, eff. Sept. 1, 2005.

§ 106.05. POSSESSION OF ALCOHOL BY A MINOR. (a) Except as provided in Subsection (b) of this section, a minor commits an offense if he possesses an alcoholic beverage.

(b) A minor may possess an alcoholic beverage:

- (1) while in the course and scope of the minor's employment if the minor is an employee of a licensee or permittee and the employment is not prohibited by this code;
  - (2) if the minor is in the visible presence of his adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court; or
  - (3) if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.
- (c) An offense under this section is punishable as provided by Section 106.071.

Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1973, ch. 777, § 21, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 163, § 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 934, § 78, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1013, § 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1139, § 2, eff. June 19, 1997.

§ 106.07. MISREPRESENTATION OF AGE BY A MINOR. (a) A minor commits an offense if he falsely states that he is 21 years of age or older or presents any document that indicates he is 21 years of age or older to a person engaged in selling or serving alcoholic beverages.

- (b) An offense under this section is punishable as provided by Section 106.071.

Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 257, ch. 107, § 10, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 285, § 10, eff. Sept. 1, 1986; Acts 1985, 69th Leg., ch. 462, § 11, eff. Sept. 1, 1986; Acts 1997, 75th Leg., ch. 1013, § 8, eff. Sept. 1, 1997.

## TEXAS HELMET LAW

### TRANSPORTATION CODE

§ 661.001. DEFINITIONS. In this chapter:

(1) "Motorcycle" means a motor vehicle designed to propel itself with not more than three wheels in contact with the ground, and having a saddle for the use of the rider. The term does not include a tractor or a three-wheeled vehicle equipped with a cab, seat, and seat belt and designed to contain the operator in the cab.

(2) "Department" means the Department of Public Safety.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 661.002. DEPARTMENT TO PRESCRIBE MINIMUM SAFETY STANDARDS FOR PROTECTIVE HEADGEAR. (a) To provide for the safety and welfare of motorcycle operators and passengers, the department shall prescribe minimum safety standards for protective headgear used by motorcyclists in this state.

(b) The department may adopt any part or all of the American National Standards Institute's standards for protective headgear for vehicular users.

(c) On request of a manufacturer of protective headgear, the department shall make the safety standards prescribed by the department available to the manufacturer.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 661.003. OFFENSES RELATING TO NOT WEARING PROTECTIVE HEADGEAR. (a) A person commits an offense if the person:

(1) operates or rides as a passenger on a motorcycle on a public street or highway; and

(2) is not wearing protective headgear that meets safety standards adopted by the department.

(b) A person commits an offense if the person carries on a motorcycle on a public street or highway a passenger who is not wearing protective headgear that meets safety standards adopted by the department.

(c) It is an exception to the application of Subsection (a) or (b) that at the time the offense was committed, the person required to wear protective headgear was at least 21 years old and had successfully completed a motorcycle operator training and safety course under Chapter 662 or was covered by a health insurance plan providing the person with at least \$10,000 in medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle. A peace officer may not arrest a person or issue a citation to a person for a violation of Subsection (a) or (b) if the person required to wear protective headgear is at least 21 years of age and presents evidence sufficient to show that the person required to wear protective headgear has successfully completed a motorcycle operator training and safety course or is covered by a health insurance plan as described by this subsection.

(d) The department shall issue a sticker to a person who:

(1) is at least 21 years old;

(2) applies to the department on a form provided by the department;

(3) provides the department with evidence satisfactory to the department showing that the person:

(A) is the owner of a motorcycle that is currently registered in this state; and

(B) has successfully completed the training and safety course described by Subsection (c) or has the insurance coverage described by that subsection; and

(4) pays a fee of \$5 for the sticker.

(e) A person may apply to the department for a sticker for each motorcycle owned by the applicant.

(f) A sticker issued by the department under Subsection (d) expires on the third anniversary of the date of issuance.

(g) A person operating or riding as a passenger on a motorcycle that displays on the license plate of the motorcycle or the license plate mounting bracket a sticker issued by the department under Subsection (d) is presumed to have successfully completed the training and safety course described by Subsection (c) or to have the insurance coverage described by that subsection.

(h) An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$50.

(i) In this section, "health insurance plan" means an individual, group, blanket, or franchise insurance policy, insurance agreement, evidence of coverage, group hospital services contract, health maintenance organization membership, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 30.154(a), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1156, § 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 17.36, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 657, § 1, eff. Sept. 1, 2001.

§ 661.004. AUTHORITY OF PEACE OFFICER TO INSPECT PROTECTIVE HEADGEAR. Any peace officer may stop and detain a person who is a motorcycle operator or passenger to inspect the person's protective headgear for compliance with the safety standards prescribed by the department.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.





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# JUVENILES (JNA)

Presented by

**Pat Riffel, CMCC**  
**Court Administrator**  
**Pearland**

Participants will be able to:

- List the steps to file a violation of continuing obligation to appear;
- Explain how to file a DIC-81 with DPS;
- List the steps to file a *capias pro fine*; and
- List the step to issue a nonsecure custody warrant.



# Working Through the JNA Process



Presented by Pat Riffel , CMCC,  
Court Administrator, Pearland

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## What IS "JNA"?

- **Juvenile Now Adult**- the scenario that arises when a child commits a crime and is either unadjudicated because the child failed to appear or adjudicated but the child defaulted in payment of fine or violated a court order and the child is now an adult.

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## Problems Going Into the 78<sup>th</sup> Legislature (2003)

- No uniformity in enforcement of JNA
  - Chapter 45 did not accommodate JNA problems
- Increase in municipal court cases involving children
- Birthday warrants galore- frustration and controversy
- Solution: Draft legislation targeting the problem- HB 2319 is born...

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## Bye-bye Birthday Warrants



**What is a birthday warrant?** It's the practice of waiting until a child turns 17 and then arresting him or committing him to jail on a *capias pro fine*.

There is **NO statutory authority** for this practice! If there are old cases pending in your court that have birthday warrants pending, **RECALL** the warrants immediately and follow the procedure outlined in this presentation.

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## Notice of Continuing Obligation to Provide Court with Address

- Anytime charges are filed against a juvenile---
- Juvenile and their parents **MUST** be afforded Notice of Continuing Obligation to Provide Court with Address
- Must be provided address w/i 7 days of moving
- Obligation doesn't end until final disposition of case

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## What Should Notice Say?

- Track language of CCP 45.057
- 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. (continued)

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## Language Continued

- 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"

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## HOW TO PROVIDE NOTICE

- How Can Notice be Provided?
  - On the citation
  - By court during initial appearance
  - By a peace officer arresting and releasing pursuant to non-secure custody order
  - Parental Summons
  - Reference Sheet

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## Question:

Can both a parent and child be charged with a failure to provide a new address

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## PARENTAL SUMMONS

- Parental Summons is required
- Must be signed by judge, served by peace officer
- Must specifically name parent/guardian
- Must contain warning that failure to attend by parent is Class C
- May charge \$35 service fee on conviction

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## Appearance

- After parental summons..
  - Parent and child appear in open court
    - Notification of continuing obligation to provide address...
    - Rights explained, plea entered
  - Child appears without parent
    - Parental presence may be waived if parent summoned—Must use due diligence

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## Question:

Is a parent required to be present if the child has an attorney?

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## A Note on Parental Appearance

- Remember the definition of "parent"- it's not just mom and dad anymore
  - 45.057 (a)(3) "Parent—includes a person standing in parental relation, managing conservatorship or custodian"
- But...can it be grandma who baby-sits the kids once a week?
  - Why or why not?
  - What factors might be relevant in deciding whether someone is a "parent"?

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## FTA SCENERIO Child/Parent Fail to Appear

- Methods of contact to compel appearance:
  - Courtesy notices
  - Phone calls
  - Summons for parents
    - All methods should contain notice of continuing obligation to provide notice of address change
    - Document everything!!
- Court may order suspension/denial of child's DL- clerk should notify DPS of order

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Child/Parent Fail to Appear (continued)

### Non-Secure Custody Warrant

- Municipal Courts cannot order a child into secure custody
- Municipal Courts can order child into *non-secure custody*
  - Different colored paper can be used for non-secure custody orders (to avoid confusion with warrants)
  - School round-ups may be used to collect numerous children at once

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### QUESTIONS

- Is this a non-secure custody place?
  - Holding cell?
  - Interrogation room?
  - Juvenile processing office?
  - Lobby?
- Is this non-secure custody?
  - Handcuffing a child to a chair?
  - Transporting a child in a cop car to a non-secured custody place?

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### Child Turns 17

#### NOW WHAT?

Court may issue a **notice of continuing obligation to appear**

- First, court must have
  - Used all available procedures under Chapter 45 to compel appearance
- Service by peace officer (mail/personal service)
  - \$35 fee must be assessed for service upon conviction
- Statutorily required language: 45.060(d), C.C.P.

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### 45.060, C.C.P. Required Warning

"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."

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JNA Fails to Appear (continued)

- If JNA appears, take pleas on all charges
- If JNA doesn't appear:
  - Prosecutor files complaint for **violation of continuing obligation to appear (Class C)**
  - Affirmative defense: lack of notice of continuing obligation 45.057(h), C.C.P.
  - Follow all normal arrest warrant procedures to issue warrant on current charge (not levied against a juvenile)

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**Question:**

Why can a JNA be charged with the underlying offense, "Violation of Promise to Appear, and "Violation of Continuing Obligation to Appear?"

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**Failure to Pay Scenerio**

- Child appears with parent
- Child convicted
- Child fails to pay or perform community service, or violates other court order

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**Contempt** 

- Defendant is in contempt of court for failing to comply with order
- For JNAs, Court **must** hold a contempt hearing before issuing a *capias pro fine*

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Contempt (continued)

- Contempt hearing:
  - Clerk prepares notice and mails regular mail to address on file.
  - Court holds contempt hearing
    - Child/JNA need not show for hearing to be held
    - Parents must be summoned for contempt hearing if child is under 17.

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Contempt (continued)

- Court can
  - Transfer the child to juvenile court for a contempt hearing if the offender is under 17; or
  - Retain jurisdiction
- If retain jurisdiction
  - Fine not to exceed \$500 and/or DL suspension or denial may be ordered
  - A hearing must be held before sanctions can be imposed- they are the punishment for being held in contempt!

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## JNA *Capias Pro Fine*

- Child fails to pay a fine then turns age 17, the court may issue a *capias pro fine*
- however,...

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### JNA *Capias Pro Fine* (continued)

- The judge must make following determinations:
  - Person is age 17 or older
  - Issuance of *capias pro fine* is justified based on the considerations of:
    - Sophistication/maturity of JNA (noted when defendant appeared in court)
    - Criminal record/history of defendant
    - Reasonable likelihood of bringing about discharge of judgment by other procedures
  - Court has proceeded under 45.050, C.C.P. (contempt) first

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### –JNA *Capias Pro Fine* (continued)

- If court issues *capias pro fine*, clerk prepares it and gives it to judge to sign & issue
- If court does not issue the *capias pro fine*, court may direct non-secure custody warrant be issued or courtesy notice be mailed.

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## Things to Remember

- Document everything
- Become familiar with JNA Forms
- Make sure to:
  - Give notice of obligation to keep address current– start early
  - Give notice of continuing obligation to appear (after 17)
- Follow procedural steps- they're there for a reason! Follow the checklist.

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## CHECKLIST FOR PROCESSING JNA

### Checklist #1

#### Citation or complaint filed with court. (Arts. 27.14, 45.018, and 45.019, C.C.P.)

- Clerk or judge accepts citation or complaint. Case filed. Citation should contain notice of defendant's continuing obligation to notify the court of any change of address within seven days of moving. (Art. 45.057(h), C.C.P.)
- Citation or complaint entered on docket. (Art. 45.017, C.C.P.)
- Case file prepared.
- Court issues summons for parent to appear with child. (Arts. 45.0215 and 45.057, C.C.P.):
  - Judge must endorse summons. (Art. 45.057(e), C.C.P)
  - Summons must be served by a peace officer. (Art. 45.202, C.C.P.)
  - Summons must name parent/guardian by name, not just refer to "Parents of..."
  - Summons must include a warning that failure of parent to appear may result in arrest and is a Class C misdemeanor. (45.0215(d), C.C.P.)
  - Summons or any courtesy notice should contain notice of child and parent's continuing obligation to provide notice of change of address.
  - Parental presence required even if counsel represents child.
- Parent and child appear. See Checklist #2.
- Parent and child fail to appear. See Checklist #5.
- Child appears without parent. See Checklist #6.

### Checklist #2

#### Parent and child appear in open court.

- Court notifies parent and child in writing of continuing obligation to give written notice of current address. (Art. 45.057, C.C.P.) Court should provide a copy of Subsections (h) and (i) of Article 45.057, C.C.P.
- Court explains rights, charge(s), pleas, and penalties. Court makes sure child understands consequences of each plea.
- Court should make notes on child's sophistication and maturity at time of appearance and file notes with case.
- Child (defendant) enters a plea.
  - Child enters a not guilty plea. Trial held and punishment assessed.
    - If child fails to pay a fine assessed, see Checklist #7

- If child fails to pay a fine assessed and then turns age 17, see Checklist #8
- If child complies with punishment imposed, case is archived
- Child enters a guilty or nolo contendere plea. Punishment assessed.
  - If child fails to pay a fine assessed or violates a court order, see Checklist #7
  - If child fails to pay a fine assessed or violates a court order and then turns age 17, see Checklist #7 and #8
  - If child is adjudicated before turning age 17 and then fails to pay a fine assessed or violates a court order after turning age 17, see Checklists #7 and #8

### **Checklist #3**

#### Guilty or nolo contendere plea.

- Child in presence of parent in open court enters a plea of guilty or nolo contendere.
- Court may listen to any circumstances that might mitigate amount of fine.
- Court assesses punishment (fine and any sanctions allowed or required).
- Court may grant DSC or deferred, if applicable.
  - Under DSC or deferred, child's case is treated as an adult case for dismissal and revocation.
- Court determines child's ability to pay.
  - Court may require child to perform community service to discharge fine and costs.
- Judge enters (signs) judgment.
- Clerk enters judgment in docket.
- Case monitored for any type of compliance.
- If child fails to pay, see Checklist # 7.
- If child fails to pay and then turns age 17, see Checklists # 7 and # 8.
- If child complies, case archived.

### **Checklist #4**

Child in presence of parent in open court pleads not guilty. Trial scheduled and child and parent are given notice of date and time of trial. Defendant has right to a jury trial or may opt for a trial before the judge.

- On date of trial, child and parent appear. (Parent may not represent child unless the parent is an attorney.)
  - Trial is in open court.
  - Trial proceeds as any other trial.
  - If child found not guilty, the child is released without any liability.
  - If child found guilty, judge renders judgment and assesses punishment. (If jury trial, jury might assess punishment if requested by defendant before the jury trial began.)
    - Court may grant DSC or deferred, if applicable.
      - Under DSC or deferred, child's case is treated as an adult case for dismissal and revocation.
- Judge enters (signs) judgment.
- Clerk enters judgment in docket.
- Case monitored for any type of compliance with sanctions required.
- If child fails to pay or violates a court order, see Checklist #7.
- If child fails to pay or violates a court order and then turns age 17, see Checklists # 7 and # 8.
- If child is adjudicated before turning age 17 and then fails to pay or violates a court order after turning age 17, see checklists # 7 and # 8.
- If child complies, case archived.

### **Checklist #5**

After being properly notified (summons) by the court, the parent and child fail to appear.

- Court may order the suspension or denial of child's driver's license.
  - Clerk notifies the Texas Department of Public Safety (DPS) of the court's order. (Secs. 521.201 and 521.294, T.C.)
- Court uses several different methods of contacting parents and child to compel appearance in court. (Court should use the following methods to secure child and parent's appearance: courtesy notices, telephone calls, and summons for parent. All methods should contain a message about the parent and child's continuing obligation to notify the court within seven days of moving of the change of address and a copy of Subsection (h) and (i) of Article 45.057, C.C.P. The court should retain documentation of all contacts, attempted contacts, and copies of notices and orders to the defendant. If the child fails to appear, the court may use a nonsecure custody warrant to secure the child's appearance. Before court may proceed under Article 45.060, C.C.P., the court must have used all available procedures in Chapter 45 to secure the appearance of the child.)

- If child appears, see Checklist # 2.
- If the court is unable to secure the appearance of the child and then the child turns age 17:
  - Court issues a notice of continuing obligation to appear by personal service or by mail to the last known address and residence of the individual. Notice contains an order to appear. (Art. 45.060, C.C.P.)
    - Notice given to peace officer to serve either in person or by mail at the last known address on file with the court.
    - Peace officer serves notice. (If defendant is convicted and peace officer served notice, court must assess, \$35 fee under Article 102.011, C.C.P.)
- Child now an adult appears.
  - Court should require a plea on all charges including offenses committed as a child.
  - If defendant's plea is not guilty and the defendant is found not guilty, defendant is released without any liability.
  - If defendant is convicted, punishment is assessed by the court or by jury.
    - If applicable, court notifies the Texas Department of Public Safety of the conviction.
    - If defendant complies, case archived.
    - If defendant fails to comply, see Checklists # 7 and # 8.
- Child now an adult fails to appear.
  - Prosecutor files complaint for violation of continuing obligation to appear. (Court must have used all available procedures to secure the presence of the defendant.) (Article 45.060, C.C.P.)
  - Probable cause affidavit prepared and sworn.
    - Clerks can more easily create a probable cause affidavit by carefully documenting all aspects of the JNA's case (saving courtesy letters, keeping a call log).
  - Clerk prepares warrant of arrest.
  - Judge reviews case and probable cause.
    - If probable cause sufficient, judge issues warrant of arrest for violation of continuing obligation to appear.
      - Warrant given to marshal, warrant officer, or police department to serve.
  - Defendant arrested.
  - Court should require a plea on all charges including offenses committed as a child. Court should document sophistication and maturity of defendant. (It is an affirmative defense to prosecution if child did not receive notice of obligation to



notify the court in writing of current address under Article 45.057, C.C.P. or did not receive notice of order to appear under Article 45.060, C.C.P.) (Art. 45.060, C.C.P.)

- Courts are advised not to recall the non-secure custody order, to guard against instances where JNA post bond and leaves before he is brought before a judge to plea on all charges.
- If defendant fails to pay the fine or comply with a court order, court may issue a *capias pro fine* for violation of continuing obligation to appear. For offenses that occurred while the defendant was under the age of 17, see Checklists # 7 and # 8.
- If defendant complies, case archived.

### Checklist #6

#### Child appears in open court without a parent.

- Court determines diligence used by court to compel presence of parents. Courts should carefully document their efforts.
- If court determines that diligence was used (summons, courtesy notices, and telephone contact), the court may waive presence of parent and proceed. (45.0215(b), C.C.P.)
  - Proceed under Checklist #2.
- If court determines that there was not sufficient diligence used, the court continues the case so that the court may secure the presence of the parent.
  - Court determines that it has correct address, telephone, and names of parent(s) and orders court staff to continue to attempt to locate the parents and notify them of their obligations and required appearance with their child.
  - Court gives child notice of time and date of next appearance.

### Checklist #7

The following procedures apply in the following cases: child fails to pay or violates a court order after being adjudicated in open court in presence of parents (unless waived); or child was adjudicated before turning age 17, but fails to pay fine or violates court order after turning age 17.

- Court orders that child or JNA be notified of a contempt show cause hearing. (Art. 45.050, C.C.P.)
- Clerk prepares notice and mails (regular mail) it to the address on file. (Art. 45.050, C.C.P.).

- Court may refer child to juvenile court for contempt. Municipal court keeps jurisdiction of the underlying case. Municipal court just refers the contempt case to the juvenile court. (Court may not refer JNA to juvenile court.)
- Court may retain jurisdiction, conduct a hearing and provide child or JNA with an opportunity to be heard. (If a child engaged in conduct that constituted contempt of a court order but proceedings could not be held before the person's 17<sup>th</sup> birthday, the court may still proceed under Article 45.050, C.C.P. The court, however, could not refer the case to juvenile court, as the juvenile court lost jurisdiction over the child when they turned 17.)
  - If child or JNA appears, court hears testimony about why child failed to pay and makes determination of how defendant will dispose of case.
  - If court holds the child or JNA in contempt of a municipal court order after a contempt hearing, the court may order either or both of the following:
    - That contemnor pay a fine not to exceed \$500; and/or
    - That Texas Department of Public Safety (DPS) deny issuance of or suspend the contemnor's driver's license.
      - Clerk notifies DPS of the order of suspension or denial of the defendant's driver's license. (When the defendant fully complies, the court must notify DPS of the compliance.)
  - If child fails to appear, court may still determine whether to refer the child to the juvenile court or retain jurisdiction. It is not required that child attend contempt hearing, only that he or she is given notice of the hearing.
  - If child now adult fails to appear and court retains jurisdiction, the court may find the defendant in contempt and order one or both of the above noted sanctions.

### **Checklist # 8**

#### Child fails to pay and then turns age 17.

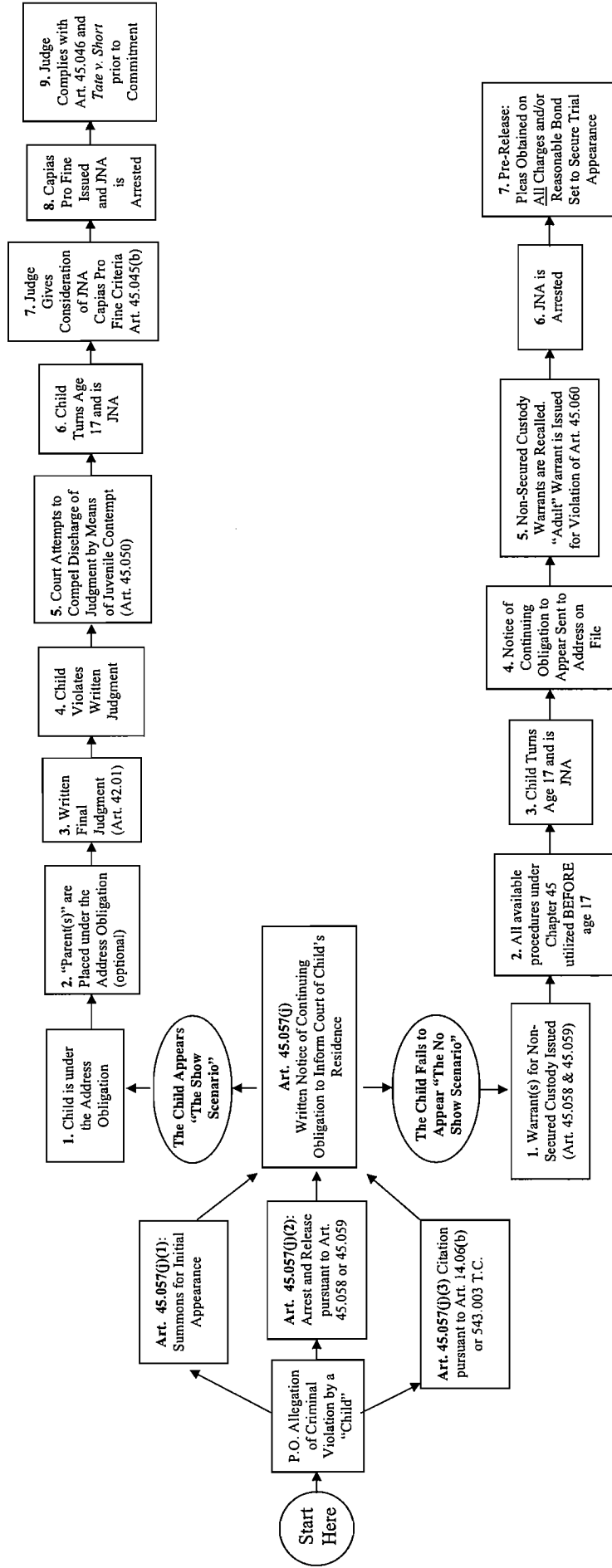
- Court must make following findings:
  - That person is age 17 or older.
  - The issuance of *capias pro fine* is justified based upon the following considerations:
    - The sophistication and maturity of defendant. (Court should refer to notes in case on sophistication and maturity that were made when defendant appeared in court. See Checklist #2.)
    - The criminal record and history of defendant. (Court may consider records of court and history of defendant in court. The court may consider the defendant's driving record and criminal history.)

- The reasonable likelihood of bringing about the discharge of judgment by other procedures.
- That the court has proceeded under Article 45.050, C.C.P. See Checklist # 7.
- After court makes findings, court determines whether to issue the *capias pro fine*.
  - If court decides to issue the *capias pro fine*, the clerk prepares it and gives it to the judge to sign and issue.
    - The clerk coordinates service with the marshal, warrant officer, or police department.
  - If court decides not issue the *capias pro fine*, the court may direct that a nonsecure custody warrant be issued or a courtesy notice be mailed. Clerk should also attempt to telephone the defendant and the police department should investigate to find more information on locating the defendant.

**Note: What about so-called “birthday warrants” (waiting until a child turns 17 and then arresting the JNA or committing them to jail on a *capias pro fine*)? This practice has absolutely no statutory basis. If there are old cases pending in a court that have “birthday warrants” pending, these should be recalled immediately and the procedure outlined above should be followed.**



Juvenile Now Adult (JNA) Flowchart  
 TMCEC 2006-2007



Note: Unless noted otherwise, all references are to the Code of Criminal Procedure



# Juveniles and Minors

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## **INTRODUCTION**

The Legislature provides courts with special procedures for handling defendants under the age of 17, commonly called juveniles, because of their age and lack of maturity. To be certain that a juvenile's rights are not violated, courts must understand these provisions and how they are administered.

This material covers municipal court jurisdiction, appearances, offenses, penalties, expunctions, sentencing alternatives, magistrate warnings, general procedures, and special handling provisions pertaining to juveniles provided for in the Code of Criminal Procedure and the Family Code. It also discusses the Transportation Code, Penal Code, Alcoholic Beverage Code, Health and Safety Code, and Education Code. Some of these codes contain specific procedures for persons under the age of 17, but not all of them do. When a code does not specify how a court handles a juvenile, courts must use the special procedures contained in the Code of Criminal Procedure and the Family Code.

## **PART 1 JURISDICTION**

### **A. Municipal Court Jurisdiction**

Municipal court has jurisdiction over fine-only misdemeanors punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. The fact that a conviction has as a consequence, the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court. (Article 4.14, C.C.P., and Section 29.003, G.C.)

Municipal court jurisdiction over fine-only offenses includes both adults and juveniles charged with these types of offenses. There is, however, an exception to municipal court's fine-only jurisdiction when the defendant is a juvenile—the offense of public intoxication.

### **B. Waiver of Jurisdiction**

In some cases, the court is required to waive jurisdiction; in others, the court has discretion to waive jurisdiction; and in certain other cases, the court may not waive jurisdiction.

**Mandatory Waiver  
Section 51.08(b)(1), F.C.**

**Discretionary Waiver  
Section 51.08(b)(2), F.C.**

<p>1. When there are already two or more convictions for prior fine-only offenses other than traffic or public intoxication;</p>	<p>1. When there is no previous conviction for any fine-only offense except traffic or public intoxication; or</p>
<p>2. When there are two or more convictions for violations of a penal ordinance of a political subdivision other than a traffic offense; or</p>	<p>2. When there is only one previous conviction for any fine-only offense except traffic or public intoxication.</p>
<p>3. When there are one or more convictions of each of the types of misdemeanors described above.</p>	

**1. Exception to Mandatory Waiver**

Section 51.08(d) of the Family Code provides that a court that implements a juvenile case manager program under Article 45.056, C.C.P., may, but is not required to, waive its original jurisdiction. Article 45.056, C.C.P., provides authority, with written consent of the city council, to employ a case manager to provide services in juvenile cases.

**2. No Waiver**

The court may not waive jurisdiction over traffic offenses, regardless of how many times a defendant is convicted of a traffic offense. The court cannot use a traffic conviction to count toward the mandatory waiver provisions either.

The court may not waive jurisdiction over tobacco offenses. Section 161.257 of the Health and Safety Code provides that Title 3 of the Family Code does not apply to a proceeding under Subchapter N, Chapter 161, titled “Tobacco Use by Minors.” The chapter includes the offenses of and penalties for possession, purchase, consumption, and receipt of cigarettes or tobacco products by individuals who are under the age of 18 as well as misrepresentation of age to obtain a cigarette or tobacco product. Title 3 of the Family Code is the Juvenile Justice Code, which includes Chapter 51 through Chapter 60. It embodies numerous procedures involving child defendants in municipal court, including the transfer provisions in Section 51.08(b). Hence, Section 161.257, H.S.C., prevents a third or subsequent case involving tobacco use by an individual under the age of 17 from being transferred to juvenile court.

**3. Procedure for Waiving**

When a judge waives jurisdiction and transfers a case to the juvenile court, the court should:

- forward all pertinent documents in the case to the juvenile court with a transfer order;
- include information about the two prior cases (if the case is being transferred under the mandatory provision because of two prior convictions);
- retain a copy of all documents; and

- use a form that should contain the following:
  - name of the court,
  - name of the defendant,
  - name of the judge,
  - offense charged,
  - cause number assigned to the case, and
  - the prior convictions.

#### **4. Juvenile Court Prohibited from Refusing Transfer**

A juvenile court is prohibited from refusing to accept the transfer of a case brought under Section 25.094, E.C. (Failure to Attend School) This prohibition is subject to the juvenile court prosecutor determining under Section 53.012, F.C. (Review by Prosecutor), that the case is legally sufficient under Section 53.01, F.C. (Preliminary Investigation and Determinations: Notice to Parents), for adjudication. (Section 51.08(e), F.C.)

## **PART 2 TRANSPORTATION CODE**

Section 729.001, T.C., provides that a person who is under the age of 17 commits an offense if the person violates a traffic law of this state. Municipal courts may not waive jurisdiction over traffic offenses committed by a person under age 17 regardless of the number of convictions for traffic offenses. (Section 51.08, F.C.)

Since the Transportation Code does not provide any special rules regarding a person under the age of 17 charged with a traffic offense, courts must look to Chapter 45, C.C.P., for the procedures for handling these defendants.

### **A. Offenses**

Although Chapter 729, Transportation Code, lists traffic offenses that a person under the age of 17 can and cannot be charged with in municipal court, the Family Code in Section 51.02(16) defines “traffic offense” to mean a violation of a penal statute under Chapter 729, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail; or a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state. Hence, municipal court has jurisdiction over all fine-only traffic offenses. Traffic offenses that are Class B misdemeanors must be filed with the juvenile court.

<b>Municipal Court Jurisdiction</b>	<b>Exceptions to Jurisdiction</b>
Most registration offenses under Chapter 502, T.C.	Section 502.412, operating a vehicle at a weight greater than the registration application.
Safety responsibility law offenses under Chapter 601, T.C.	No exceptions to fine-only offenses.
Driver's license offenses under Chapter 521, T.C.	No exceptions to fine-only offenses.
Vehicle size and weight restrictions offenses under Chapter 621, T.C.	No exceptions to fine-only offenses.
Motorcycle helmet offenses under Chapter 661, T.C.	No exceptions to fine-only offenses.
Parking offenses under Chapter 681, T.C.	No exceptions to fine-only offenses.
Most driving offenses under Subtitle C, T.C.	No exceptions to fine-only offenses.

## **B. Penalty**

When a person under the age of 17 is charged with a traffic offense under the Transportation Code, the punishment is the same penalty that is applicable to adults. (Section 729.001, T.C.)

When that person is charged with a Subtitle C, Transportation Code violation that occurs in a construction or maintenance work zone when workers are present other than an offense under Chapter 548 (general provisions), Chapter 552 (pedestrian offenses), Section 545.412 (child passenger safety seat systems), or Section 545.413 (safety belts), the minimum and maximum penalty range that applies to the offense is twice the amount applicable to the offense if it were committed outside a construction or maintenance work zone. (Section 542.404, T.C.) Fines are not automatically double for offenses occurring in a construction or maintenance zone, but the judge has the discretion to increase the fine to double the minimum or maximum fine penalty.

## **PART 3 PENAL CODE**

The Penal Code does not provide special handling procedures for a person under the age of 17. Therefore, courts must use the special procedures in the Family Code and the Code of Criminal Procedure. The Code of Criminal Procedure and Family Code provides procedures for persons committing offenses who are at least 10 years of age but younger than age 17.

## **A. Offenses**

Municipal courts have jurisdiction over persons under the age of 17 charged with Class C misdemeanor Penal Code offenses, except for the offense of public intoxication. (Article 4.14, C.C.P., Section 8.07(4), P.C., and Section 51.03(f), F.C.)

Municipal court does have jurisdiction over defendants age 17 and older charged with the offense of public intoxication because it is a fine-only offense.

## **B. Penalty**

Persons under the age of 17 charged with Penal Code violations other than public intoxication are subject to the same penalties as adults. The penalty for a Class C misdemeanor offense in the Penal Code is a fine not to exceed \$500. (Section 12.23, P.C.)

The penalty for the offense of public intoxication for a person who is under the age of 21 is the same as a person charge with an Alcoholic Beverage Code offense such as minor in possession of an alcoholic beverage. See the following sections for more information on the Alcoholic Beverage Code offenses.

## **PART 4 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.

## **A. Offenses**

The following is a list of Alcoholic Beverage Code offenses with which persons under the age of 21 may be charged:

- Purchase of Alcohol by a Minor (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).

## **B. Penalty**

The penalties listed in the chart below regarding fine-only Alcoholic Beverage Code offenses also apply to a person under age 21 but at least age 17 charged with the offense of public intoxication. (Section 49.02(e), P.C.)

### **1. Alcoholic Beverage Code Offenses Involving a Minor, Except DUI**

Municipal court has jurisdiction over a minor charged with a first offense and a second offense. Municipal court does not have jurisdiction over a minor who is a juvenile charged with a third offense if there are two prior convictions of non-traffic offenses. Hence, the court must waive jurisdiction on the third offense unless the court has a juvenile case manager program under Article 45.056, C.C.P. See Part 1 Jurisdiction for information on waiver of jurisdiction.



<b>Penalty</b>	<b>First Offense</b>	<b>Second Offense (Charge Enhanced)</b>	<b>Third Offense</b>
<b>Fine</b>	Class C Misdemeanor – maximum fine of \$500.	Class C Misdemeanor – maximum fine of \$500.	If the minor is at least age 17 there is a minimum of \$250 and maximum of \$2000 fine; and/or confinement in jail for a term not to exceed 180 days. Municipal court does not have jurisdiction.
<b>Alcohol Awareness Program</b>  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.	Court must require attendance at an alcohol awareness program.  Evidence of completion must be presented to the court within 90 days after judgment. If defendant completes alcohol awareness program, judge may reduce fine to not less than one-half of amount of initial fine.  Judge may allow another 90 days to complete program if defendant fails to complete program within first 90 days.  Court should conduct a show cause hearing if defendant does not show evidence of completion within first 90 days. At the show cause hearing, the court may also require the parents to do any act or to refrain from doing anything that would increase the likelihood that the minor will complete the alcohol awareness program.	Not required, but judge may require attendance at program.	
Failure to complete the alcohol awareness program	The court is required to order the defendant’s driver’s license suspended or denied issuance of for a period not to exceed six months.	The court is required to order the defendant’s driver’s license suspended or denied issuance of for a period not to exceed one year.	

<b>Penalty</b>	<b>First Offense</b>	<b>Second Offense (Charge Enhanced)</b>	<b>Third Offense</b>
<b>Community Service</b>	Court must require defendant to perform eight to 12 hours of community service.	Court must require defendant to perform 20 to 40 hours of community service.	
Failure to complete the community service	The court is required to order the defendant's driver's license suspended or denied issuance of for a period not to exceed six months.	The court is required to order the defendant's driver's license suspended or denied issuance of for a period not to exceed one year.	
<b>Driver's License Suspension</b>	Court must require suspension or denial of issuance of DL for 30 days. Effective the 11 <sup>th</sup> day after the judgment.	Court must require suspension or denial of issuance of DL for 60 days. Effective the 11 <sup>th</sup> day after the judgment.	

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

Municipal court has jurisdiction over a minor charged with a first offense and a second offense of DUI. Municipal court does not have jurisdiction over a minor who is a juvenile charged with a third offense if there are two prior convictions of non-traffic offenses. Hence, the court must waive jurisdiction on the third offense unless the court has a juvenile case manager program under Article 45.056, C.C.P. See Part 1 Jurisdiction for information on waiver of jurisdiction.

Unlike other Alcoholic Beverage Code offenses charged to minors, municipal court does *not* order DPS to suspend or deny issuance of a driver's license as a sanction of DUI.

<b>Penalty</b>	<b>First Offense</b>	<b>Second Offense (Charge Enhanced)</b>	<b>Third Offense</b>
<b>Fine</b>	Class C Misdemeanor – Maximum fine of \$500.	Class C Misdemeanor – Maximum fine of \$500.	If minor is at least age 17, there is a minimum of \$500 and maximum of \$2000 fine; and/or confinement in jail for a term not to exceed 180 days. Municipal court does not have jurisdiction.

<b>Penalty</b>	<b>First Offense</b>	<b>Second Offense (Charge Enhanced)</b>	<b>Third Offense</b>
<p><b>Alcohol Awareness Program</b></p> <p>Alcohol awareness programs must be approved by the Texas Commission on Alcohol and Drug Abuse. (Section 106.115, A.B.C.)</p> <p>Courts can locate a program in their area by calling the Commission at (800) 832-9623.</p>	<p>Court must require attendance at an alcohol awareness program.</p> <p>Evidence of completion must be presented to the court within 90 days after judgment. If defendant completes alcohol awareness program, judge may reduce fine to not less than one-half of amount of initial fine.</p> <p>Judge may allow another 90 days to complete program if defendant fails to complete program within first 90 days.</p> <p>Court should conduct a show cause hearing if defendant does not show evidence of completion within first 90 days. At the show cause hearing, the court may also require the parents to do any act or to refrain from doing anything that would increase the likelihood that the minor will complete the alcohol awareness program.</p>	<p>Not required, but judge may require attendance at program.</p>	
<p>Failure to complete the alcohol awareness program</p>	<p>The court is required to order the defendant's driver's license suspended or denied issuance of for a period not to exceed six months.</p>	<p>If the court required the alcohol awareness program, the court is required to order the defendant's driver's license suspended or denied issuance of for a period not to exceed one year.</p>	
<p><b>Community Service</b></p>	<p>Court must require defendant to perform 20 to 40 hours of community service.</p>	<p>Court must require defendant to perform 40 to 60 hours of community service.</p>	
<p>Failure to complete the community service</p>	<p>The court is required to order the defendant's driver's license suspended or denied issuance of for a period not to exceed six months.</p>	<p>The court is required to order the defendant's driver's license suspended or denied issuance of for a period not to exceed one year.</p>	

**PART 5  
HEALTH AND SAFETY CODE**

The Health and Safety Code, for the purposes of charging tobacco offenses under Section 161.252, provides that an individual commits an offense if the individual is younger than 18 years of age. (Section 161.252(a), H.S.C.)

**A. Offenses**

An individual under the age of 18 commits an offense if he or she possesses, purchases, consumes, or accepts a cigarette or tobacco product. (Section 161.252(a)(1), H.S.C.) Also, if an individual falsely represents himself or herself as being 18 years of age or older to obtain possession of, purchase, or receive a cigarette or tobacco product, he or she commits an offense. (Section 161.252(a)(2), H.S.C.)

If a second or subsequent offense is filed with the court, to be charged as second or subsequent offenses, the complaint must allege the prior conviction; otherwise, the court must process and handle it as a first time offense.

**B. Penalty**

<b>Penalty</b>	<b>First Offense</b>	<b>Subsequent Offenses (Charge Enhanced)</b>
<b>Fine</b> (Section 161.252(d), H.S.C.)	Fine not to exceed \$250. Court required to suspend execution of the fine and require attendance at a tobacco awareness program. (Court costs required to be paid when fine suspended.)	Fine not to exceed \$250. Court required to suspend execution of the fine and require attendance at a tobacco awareness program. (Court costs required to be paid when fine suspended.)
<b>Tobacco Awareness Program</b>	Court must require attendance at a tobacco awareness program approved by the Texas Department of Health to be completed within 90 days of the suspended judgment.  The court may also require the parent or guardian of the individual to attend the tobacco awareness program	Court must require attendance at a tobacco awareness program approved by the Texas Department of Health to be completed within 90 days of the suspended judgment.  The court may also require the parent or guardian of the individual to attend the tobacco awareness program.
Completion of the tobacco awareness program	Court required to dismiss the charge.	Court required to impose the fine, but may reduce the fine to not less than one-half.
Failure to complete the tobacco awareness program	Court must order DPS to suspend or deny issuance of a DL not to exceed 180 days and impose the fine.	Court must order DPS to suspend or deny issuance of a DL not to exceed 180 days.

## PART 6 EDUCATION CODE

Section 25.085, E.C., states that a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached his or her 18<sup>th</sup> birthday must attend school unless specifically exempted. Section 25.086, E.C., lists the exemptions that apply if someone:

- attends a private or parochial school that includes in its course a study of good citizenship;
- is eligible to participate in a school district's special education program and cannot be appropriately served by the resident district;
- has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary conditions, indicating the treatment prescribed to remedy the temporary condition and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;
- is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011, F.C.;
- is at least 17 years of age, and
  - is attending a course of instruction to prepare for the high school equivalency examination, and
    - has the permission of the child's parent, or guardian to attend the course;
    - is required by court order to attend the course;
    - has established a residence separate and apart from the child's parent, guardian, or other person who has lawful control of the child; or
    - is homeless (as defined by 42 U.S.C. Section 11302); or
  - has received a high school diploma or high school equivalency certificate;
- is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order or is enrolled in a Job Corps training program;
- is enrolled in the Texas Academy of Mathematics and Science;
- is enrolled in the Texas Academy of Leadership in the Humanities; or
- is specifically exempted under another law.

### **A. Offenses**

#### **1. Offenses Committed by a Child**

Municipal court has jurisdiction over the following Education Code offenses:

- Failure to Attend School (Section 25.094);

- Rules Enacted by School Board (Section 37.102);
- Trespass on School Grounds (Section 37.107);
- Possession of Intoxicants on School Grounds (Section 37.122);
- Disruption of Classes (Section 37.124);
- Disruption of Transportation (Section 37.126); and
- A Member of a Fraternity, Sorority, Secret Society, or Gang that is Not Sanctioned by Higher Education (Section 37.121).

**a. School District’s Responsibility when Child is Truant**

Section 25.0951, E.C., requires a school district to file a complaint with a court within seven school days of a student’s last absence constituting the offense of failure to attend school. If a student fails to attend school without an excuse on 10 or more days or parts of days within a six-month period in the same school year, the school district must file a complaint against the student, the student’s parents, or both in a municipal or justice court, or if the school district is located in a county with a population of less than 100,000, refer the student to the juvenile court for conduct indicating a need for supervision. If a school district fails to file a complaint in the time required, the court shall dismiss the complaint. (Section 25.0951(d), E.C.)

If a student fails to attend school without an excuse on three or more days or parts of days within a four-week period, the school district may, but is not required to, file a complaint against the student or the student’s parent or both in the municipal or justice court, or in a county with a population of less than 100,000, refer the child to the juvenile court.

**b. Jurisdiction over Truancy and Failure to Attend School Cases**

Offense	Municipal Court Jurisdiction	Juvenile Court Jurisdiction
Failure to Attend School. (Criminal offense with a maximum fine of \$500; court may also require sanctions under Article 45.054, C.C.P.)	May be filed in the municipal court where the child lives or where the school that the child attends is located. (Section 25.094(b), E.C.)	If a school district is in a county with a population of less than 100,000, the school district may file a complaint in the justice or municipal court or refer the student to the juvenile court. (Section 25.0951, E.C.)
Truancy (Civil offense with only sanctions attached as a penalty. Section 54.021, F.C.)	No jurisdiction.	Must be filed in juvenile court where school is located.  Juvenile court may waive jurisdiction and transfer the case to the municipal or justice court as a failure to attend school case.

### **c. Custody in Failure to Attend School Cases**

Under Section 25.094(d), E.C., pursuant to an order of the justice or municipal court based on an affidavit showing probable cause to believe that an individual has committed the offense of failure to attend school, a peace officer may take the individual into custody. These custody provisions also apply to a 17 or 18 year-old student. A peace officer taking an individual into custody shall:

- promptly notify the individual’s parent, guardian, or custodian of the officer’s action and the reason for that action; and
- without unnecessary delay:
  - release the individual to his or her parent, guardian, or custodian or to another responsible adult if the person promises to bring the individual to the justice or municipal court as requested by the court; or
  - bring the individual to the municipal or justice court with venue over the offense.

## **2. Offense Committed by Parent**

Parents may be charged with the offense of parent contributing to non-attendance. (Section 25.093, E.C.) Section 25.0951, E.C., requires a school district to file a complaint with a court within seven school days of a student’s last absence constituting the offense of failure to attend school. If a student fails to attend school without an excuse on 10 or more days or parts of days within a six-month period in the same school year, the school district must file a complaint against the student, the student’s parents, or both in a municipal or justice court, or if the school district is located in a county with a population of less than 100,000, refer the student to the juvenile court for conduct indicating a need for supervision. If a school district fails to file a complaint in the time required, the court shall dismiss the complaint. (Section 25.0951(d), E.C.)

School officials or the school attendance officer may file a complaint in either municipal court or justice court against a parent accused of contributing to a child’s nonattendance. If the complaint is filed in a justice court, it can be filed in the precinct either where the school is located or where the parent resides. If it is filed in a municipal court, it can be filed in the municipal court in the municipality in which a parent resides or in which the school is located.

The burden is on the parent to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

## **B. Penalty**

### **1. Offenses Committed by Child**

#### **a. Chapter 37 Offenses**

The penalty for the Education Code offenses noted in this guide committed by a child is a Class C misdemeanor. The Education Code does not define a Class C misdemeanor, so the

court must use the Penal Code definition, which provides a fine not to exceed \$500. (Section 12.23, P.C.)

Under Article 45.057, C.C.P., when a child is convicted of a fine-only offense, the court may enter an order requiring additional requirements. See Part 11B of this guide for more information on the additional requirements.

#### **b. Failure to Attend School**

The offense is a Class C misdemeanor. (Section 25.094(e), F.C.) The maximum fine amount is \$500. Under Article 45.054(f), C.C.P., the court may order the Department of Public Safety to suspend or deny issuance of the driver's license or permit of the individual for a period specified by the court not to exceed 365 days. Article 45.054 provides for additional rehabilitative sanctions that the court may order upon conviction. The court may enter an order that includes one or more of the sanctions listed in Article 45.054, C.C.P. The sanctions are:

- attend school without unexcused absences;
- attend a preparatory class for the high school equivalency examination administered under Section 7.111, E.C., if the court determines that the individual is too old to do well in a formal classroom environment and/or, if the person is at least 16 years of age, take the high school equivalency examination;
- attend an alcohol or drug abuse program;
- attend a rehabilitation program;
- attend a counseling program, including self-improvement counseling;
- attend a program that provides training in self-esteem and leadership;
- attend a work and job skills training program;
- attend a program that provides training in manners;
- attend a program that provides training in violence avoidance;
- attend a program that provides sensitivity training;
- attend a program that provides training in advocacy and mentoring;
- complete reasonable community service requirements; or
- for the total number of hours ordered, the court can require that the individual participate in a tutorial program covering the academic subjects in which the student is enrolled provided by the school in which the student is enrolled.

The court can require the individual and the individual's parent to attend a class for students at risk of dropping out of school designed for both the individual and the individual's parent. The court can enforce the order on the parent by contempt.

A dispositional order under Article 45.054, C.C.P., is effective for the period specified by the court in the order, but it may not extend beyond the 180<sup>th</sup> day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer. (Article 45.054(g), C.C.P.)



If an individual convicted of the offense of failure to attend school violates a court order, the court may proceed as authorized by Article 45.050, Code of Criminal Procedure. See Part 9 for more information on violating a court order.

## **2. Offenses Committed by Parent**

The offense of Parent Contributing to Non-Attendance is a Class C misdemeanor and each day that a child remains out of school may constitute a separate offense. Two or more offenses may be consolidated and prosecuted in a single action. It is an affirmative defense if one or more of the absences was excused by a school official or should be excused by the court.

If the parent is convicted, one-half of the fine must be deposited to the credit of the operating fund of the school district in which the child attends school or the juvenile justice alternative program that the child has been ordered to attend. The city's portion is deposited into the city's general fund.

Upon conviction or if the court grants deferred disposition, the court may order the parent to attend a program, if one is available, that is designed to assist parents in identifying problems that contribute to the student's absences and to assist in developing strategies for resolving those problems. If the court orders deferred disposition under Article 45.051, C.C.P., the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral. If the parent refuses to obey a court order, the court may punish the parent for contempt under Section 21.002 of the Government Code.

## **C. Waiver**

A juvenile court is prohibited from refusing to accept the transfer of a case brought under Section 25.094, E.C. (Failure to Attend School) This prohibition is subject to the juvenile court prosecutor determining under Section 53.012, F.C. (Review by Prosecutor), that the case is legally sufficient under Section 53.01, F.C. (Preliminary Investigation and Determinations: Notice to Parents), for adjudication. (Section 51.08(e), F.C.)

# **PART 7 FAMILY CODE**

## **A. Definition of Child**

Section 51.02(2), F.C., defines "child" to mean a person who is at least 10 years of age and younger than age 17 or 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

## **B. Delinquent Conduct**

Juvenile court has jurisdiction over delinquent conduct. (Section 51.03, F.C.) This statute provides exceptions to delinquent conduct. The exceptions are fine-only offenses. (Sections

51.03(a) and (f), F.C.) The criminal court—justice courts and municipal court—have jurisdiction over these offenses.

### **C. Conduct in Need of Supervision**

Juvenile court has jurisdiction over conduct in need of supervision. (Section 51.03 (b), F.C.) This statute provides exceptions to delinquent conduct. The exceptions are fine-only offenses except public intoxication. (Section 51.03(f), F.C.)

### **D. Truant Conduct**

Subsection 54.021(b), F.C., provides that a municipal court or justice court may exercise authority over a person engaged in truant conduct, which is conduct indicating a need for supervision, if the juvenile court has waived its original jurisdiction and a complaint is filed by the appropriate authority in the municipal or justice court charging an offense under Section 25.094, E.C., which creates the offense of failure to attend school. Section 54.021(c), F.C., provides that a proceeding in a justice or municipal court based on a complaint under Section 25.094, E.C., is governed by Chapter 45, C.C.P. Municipal court only has jurisdiction over the offense of “failure to attend school” and does not have authority to conduct Family Code “truancy” hearings.

The offense of failure to attend school may be prosecuted in a justice court in the precinct where either the school is located or the individual resides. It may also be prosecuted in a municipal court where the school is located or the individual resides. (Section 25.094(b), E.C.)

If a school district is in a county with a population of less than 100,000, the school district may file a complaint in the justice or municipal court or refer the student to the juvenile court. (Section 25.0951, E.C.)

A juvenile court is prohibited from refusing to accept the transfer of a case brought under Section 25.094, E.C. (Failure to Attend School) This prohibition is subject to the juvenile court prosecutor determining under Section 53.012, F.C. (Review by Prosecutor), that the case is legally sufficient under Section 53.01, F.C. (Preliminary Investigation and Determinations: Notice to Parents), for adjudication. (Section 51.08(e), F.C.)

Section 51.08, F.C., contains provisions for waiver of municipal court jurisdiction. See Part 1B for information on waiver of jurisdiction.

## **PART 8 APPEARANCE**

### **A. Juvenile’s Appearance**

#### **1. Required in Open Court**

Article 45.0215, C.C.P., requires that defendants under age 17 appear in open court. This rule applies regardless of how the person wants to handle his or her case. Even if an attorney

appears in court on behalf of the juvenile, the juvenile must still appear with the attorney in open court. The parents must also be present.

Codes	Requirements
<b>Alcoholic Beverage Code</b>	All minors must appear in open court. (Section 106.10, A.B.C.) Minors under the age of 17 must appear in open court with a parent. (Article 45.0215, C.C.P.)
<b>Penal Code</b>	All persons under the age of 17 must appear in open court with a parent. (Article 45.0215, C.C.P.)
<b>Transportation Code</b>	All persons under the age of 17 must appear in open court with a parent. (Article 45.0215, C.C.P.)
<b>Health and Safety Code</b>	All persons under the age of 17 must appear in open court with a parent. (Article 45.0215, C.C.P.)
<b>Education Code</b>	All persons regardless of age charged with the offense of failure to attend school must appear in open court with a parent. (Article 45.054(c), C.C.P.)  All persons under the age of 17 charged with an Education Code offense must appear in open court with a parent or guardian. (Article 45.054(c), C.C.P.)

## 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 and place the notes in the case file. These notes may be used later if the juvenile fails to pay a fine or violates a court order because a judge must consider the juveniles' sophistication and maturity before issuing a *capias pro fine*. See the section in this material on *Capias Pro Fine*.

## 3. Notification of Change of Address

Article 45.057, C.C.P., provides that a child and parent required to appear before a court have an obligation to provide the court 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 their initial appearance before the court;
- a peace officer arresting and releasing a child under Article 45.058(a), C.C.P.; and
- a peace officer that issues a citation under Section 543.003, T.C., or Article 14.06(b), C.C.P.

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

#### **4. Juvenile Residing in Another County**

When a defendant younger than age 17 resides in a county other than the county in which the alleged offense occurred, the defendant, with permission of the court, may enter a plea before a judge in the county where the defendant resides. (Article 45.0215(c), C.C.P.) This does not mean that the case is transferred to the other court. After the other court receives the plea from the juvenile, it must send it to the court with jurisdiction over the case and the child. All other appearances of the juvenile and parent must be in the court in which the case is filed.

#### **5. Failure to Appear**

##### **a. Jailing Children**

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 *Unajudicated 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 this type of custody. See Part 10 of this guide for information on custody.

##### **b. Unajudicated 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.

#### **(1) Requirements before 17<sup>th</sup> Birthday**

The court must use all available procedures under Chapter 45 to secure the individual appearance to answer allegations made before the individual’s 17<sup>th</sup> birthday. The procedures that the court must use include the following:

- provide notice of 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, T.C.); and
- order the juvenile to be taken into nonsecure custody under Article 45.058, C.C.P.

**(2) 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 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 17<sup>TH</sup> 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 handle all the unadjudicated charges committed by this person as a juvenile.

**B. Parent’s Appearance**

Article 45.057(a)(3), C.C.P., defines parent to include a person standing in parental relation, a managing conservator, or a custodian.

**1. Required in Open Court**

A parent, managing conservator, or custodian is required to be present at all proceedings involving their child under the age of 17. (Article 45.0215, C.C.P.) Even if an attorney appears in court with the child, the court must still require the presence of the parents or guardian.

<b>Codes</b>	<b>Requirements</b>
<b>Alcoholic Beverage Code</b>	Parent must appear in open court if minor is under the age of 17. (Article 45.0215, C.C.P.)
<b>Penal Code</b>	Parent must appear in open court if minor is under the age of 17. (Article 45.0215, C.C.P.)
<b>Transportation Code</b>	Parent must appear in open court if minor is under the age of 17. (Article 45.0215, C.C.P.)
<b>Health and Safety Code</b>	Parent must appear in open court if minor is under the age of 17. (Article 45.0215, C.C.P.)

Codes	Requirements
<b>Education Code</b>	Parent must appear in open court with all persons charged with the offense of failure to appear regardless of the age of the person. (Article 45.054(c), C.C.P.)  Parent must appear in open court if minor is under the age of 17. (Article 45.0215, C.C.P.)

## 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. The summons should also contain a statement about the required notification of change of address that the parent must provide the court.

The summons is issued by the judge and served as other summonses are served—by a peace officer. (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 juvenile defendant.

## 3. Parent’s Failure to Appear

If the parent, guardian, or conservator fails to appear with his or her child, he or she could be charged with the offense of failure to appear at hearing with child. (Article 45.0215(d), C.C.P.) This charge should not be confused with the failure to appear offense in Section 38.10 of the Penal Code, which applies only to a defendant’s failure to appear.

## 4. Waiver of Presence

The court may waive the requirement of the presence of the parents or guardians only if, after diligent effort, the court cannot locate them or compel their presence. (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 their initial appearance before the court;
- a peace officer arresting and releasing a child under Article 45.058(a), C.C.P.; and
- a peace officer 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.

## **PART 9 FAILURE TO PAY OR VIOLATION OF A COURT ORDER**

### **A. General Procedures**

Article 45.050, C.C.P., provides that the municipal court may not order a child confined for failure to pay all or any part of a fine or costs or for contempt of another order of the court. Instead, if a child fails to obey an order of the court under circumstances that would constitute contempt of court, the court must give the child notice of a contempt hearing. The purpose of the hearing is to give the child an opportunity to tell why he or she had failed to pay or violated the court order.

If the court determines that the child's conduct constitutes contempt, the court decides whether to refer the child to the juvenile court for delinquent conduct or whether to retain jurisdiction. If the court 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. (Article 45.050, C.C.P.)

For purposes of Article 45.050, C.C.P., "child" has the meaning described in Article 45.058, C.C.P., 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.

### **B. *Capias Pro Fine***

Article 45.045, C.C.P. provides that a *capias pro fine* may not be issued for an individual convicted for an offense committed before the individual's 17 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, it could also include information from the Texas Department of Public Safety); and
- the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and
- the court has proceeded under Article 45.050, C.C.P., to compel the individual to discharge the judgment.

The court uses the same procedures under Article 45.050, C.C.P., even if the juvenile failed to obey a court order after he or she turned 17 years of age 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 17<sup>th</sup> 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.

### **C. Finding of Indigence after Default in Payment**

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

## **PART 10 CUSTODY**

### **A. General Custody Procedures**

Under Article 45.058, C.C.P., a child taken into nonsecure custody may be:

- released to a parent, guardian, custodian, or other responsible adult;
- taken before a municipal or justice court; or
- taken to a place of nonsecure custody.

A place of nonsecure custody is defined as:

- an unlocked multipurpose area;
- a lobby;
- an office;
- an interrogation room (suitable if the area is not designated or set aside, or used as a secure detention area and is not part of a secure detention area);
- a juvenile processing office (may be used as a nonsecure custody as long as it is not locked when being used as nonsecure custody area).



While in the custodial area of nonsecure custody, the child:

- cannot be handcuffed to a chair, rail, or any object; and
- must be under continuous visual observation by a law enforcement officer or a member of the facility staff.

The child cannot be held in the facility for longer than is necessary to take the child before a judge or to release the child to the parents. If the child is being held on charges other than municipal court matters, he or she may be held long enough to be:

- identified;
- investigated; and
- processed.

Under no circumstances is the child to be held for more than six hours. During that time, arrangements must be made for transportation to a juvenile detention facility. These same regulations apply to children who are taken into custody for curfew violations.

## **B. Failure to Attend School**

Under Section 25.094(d), E.C., pursuant to an order of the justice or municipal court based on an affidavit showing probable cause to believe that an individual has committed the offense of failure to attend school, a peace officer may take the individual into custody. These custody provisions also apply to a 17 or 18-year-old student. A peace officer taking an individual into custody shall:

- promptly notify the individual's parent, guardian, or custodian of the officer's action and the reason for that action; and
- without unnecessary delay:
  - release the individual to his or her parent, guardian, or custodian or to another responsible adult if the person promises to bring the individual to the justice or municipal court as requested by the court; or
  - bring the individual to the municipal or justice court with venue over the offense.

## **C. Curfew Ordinances**

Article 45.059, C.C.P., provides that a person who takes an individual under the age of 17 into nonsecure custody for violation of a juvenile curfew ordinance shall without unnecessary delay:

- release the person to the person's parent, guardian, or custodian;
- take the person before a municipal or justice court; or
- take the person to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person.

A juvenile curfew processing office:

- must be an unlocked multipurpose area that is not designated, set aside, or used as a secure detention area or part of a secure detention area;

- the person may not be secured physically to a cuffing rail, chair, desk, or stationary object;
- detention may not be longer than necessary to accomplish the purposes of identification, investigation, processing, release to parents, guardians, or custodians, and arrangement of transportation to school or court and in no case may the detention be longer than six hours; and
- the person must be under continuous visual supervision by a peace officer or other person during the time the person is detained in the office.

#### **D. Referral to Juvenile Court**

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

## **PART 11 SENTENCING**

#### **A. Community Service**

Fines and costs imposed by municipal courts can be discharged by performing community service. (Article 45.049, C.C.P.)

A judge may require a defendant who fails to pay a previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. A defendant may, at any time, discharge an obligation to perform community service by paying the fines and costs assessed. See study guide *Post-Trial Procedures*, for more information on community service.

#### **B. Additional Optional Requirements**

Under Article 45.057, C.C.P., when a child is convicted of a fine-only offense, the court may enter an order requiring additional requirements.

Article 45.057 defines:

- “child” as the same as Article 45.058, C.C.P., which provides that a “child” is a person who is at least age 10 and younger than age 17;
- “residence” to mean any place where the child lives or resides for a period of at least 30 days; and
- “parent” to include a person standing in parental relation, managing conservator, or a custodian.

The additional optional requirements include the following:

- referring the child or the child’s parents, managing conservators, or guardians for services under Section 264.302, F.C. (Section 264.302 provides for early youth intervention services. See the next section, 11B, for information on these 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 required to attend one of the above mentioned programs to pay an amount not greater than \$100 for the costs of the program (Article 45.057, C.C.P.); and
- both the child and the parent to attend a program, class, or function and to submit proof of attendance to the court (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.) See Section 9 in this study guide for information on Article 45.050, C.C.P.

## **C. Alternative Sentencing**

### **1. Teen Court**

Article 45.052, C.C.P., provides authority for municipal and justice courts to defer cases for a teen court program. Teen court is a deferral program in which defendants are sentenced by their peers. The defendant must complete the teen court program not later than the 90<sup>th</sup> day after the date of the teen court hearing to determine punishment or the last day of the deferral period, whichever date is earlier. The teen court program must be approved by the court. To be eligible, the defendant must:

- enter a plea of guilty or no contest in open court in the presence of parents or guardian and request, either in writing or orally, the teen court program;
- be under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma for 90 days;
- be charged with a misdemeanor punishable by fine-only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine-only; and

- not have successfully completed a teen court program in the two years preceding the date that the alleged offense occurred.

A court may transfer a case deferred under the teen court program to a court in another county if the court to which the case is transferred consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred. (Article 45.052(f), C.C.P.)

The judge must dismiss the charge at the conclusion of the deferral period if the defendant presents satisfactory evidence that he or she has successfully completed the program. A charge that is dismissed may not be part of the defendant's criminal record or driving record or used for any purpose. However, if the charge was for a traffic offense, the court shall report to the Department of Public Safety that the defendant successfully completed the teen court program and the date of completion for inclusion in the defendant's driving record. (Article 45.052(d), C.C.P.)

The court is required to collect all applicable court costs. The court may require the person requesting a teen court program to pay a fee not to exceed \$10 to cover the costs of administering the deferral for the teen court. This fee is to be deposited into the city's general treasury. The court may also require the defendant to pay a \$10 fee to cover the cost to the teen court for performing its duties. This fee should be paid to the teen court program. The teen court program must account to the court for the receipt and disbursal of the fee. A defendant who fails to complete the teen court program is not entitled to a refund of the \$10 fees. (Articles 45.052(e) and (g), C.C.P.)

The judge may exempt a defendant who has requested a teen court program from paying court costs or the fees. (Article 45.052(h), C.C.P.) If a judge does exempt a defendant, the judge should include some type of documentation in the file to show why the court costs or fees were not collected. Also, if a judge determines that a defendant is indigent and performing community service would be a hardship, the judge may waive court costs and fine. (Article 43.091, C.C.P.)

## **2. Driving Safety Course**

### **a. Appearance to Request**

Persons under the age of 17 are eligible to request a driving safety course. However, they must make a personal appearance with a parent or guardian in open court to request to take a driving safety course or a motorcycle operator course. For information on driving safety courses, see Level I study guide *Traffic Law*.

### **b. Failure to Complete the Driving Safety Course**

If the person fails to complete the driving safety course and does not appear for the show cause hearing, the court must set a contempt hearing under Article 45.050, C.C.P., and notify the defendant of the hearing. See Section 9 of this study guide for more information on failure to pay or violation of a court order. The court may not issue a *capias pro fine* unless the court complies with the procedures under Article 45.045, C.C.P. See Section 9B for information on issuing a *capias pro fine*.

### **3. Deferred Disposition**

As in all other proceedings involving persons under the age of 17, the court is required to summon the parent or guardian and require his or her presence when granting deferred disposition. Before granting deferred disposition, the judge accepts a plea of guilty or no contest or the defendant may be found guilty after a trial. The defendant must pay court costs before the judge grants deferred disposition. When deferred disposition is granted, the judge may impose reasonable conditions or requirements for the defendant to perform within a certain time. The judge has the discretion to impose a probation period of up to 180 days.

#### **a. Exceptions**

An alternative to a fine is placing the child on deferred disposition. (Article 45.051, C.C.P.) Deferred disposition is available for most offenses with a few exceptions noted below.

- Traffic offenses committed in a construction maintenance zone when workers are present. (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.)

#### **b. Alcoholic Beverage Code Offenses**

##### **(1) Enhancement of a Charge**

For the purpose of determining whether a minor has been previously convicted of an offense for possessing, consuming, purchasing, attempting to purchase alcohol, misrepresentation of age, driving under the influence of alcohol, or public intoxication, an order of deferred disposition is considered a conviction. (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.

##### **(2) Not Eligible for Deferred Disposition**

A minor who is not a child and who has been previously convicted at least twice of an offense to which Section 106.071(Punishment for Alcohol Related Offense by Minor) applies is not eligible to receive a deferral of final disposition of a subsequent offense. (Section 106.071(i), A.B.C.) A minor who commits the offense of driving under the influence of alcohol (DUI) and has been previously convicted twice or more of that offense is not eligible for deferred disposition. (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.)

### **(3) 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.)

### **(4) Community Service**

When a court grants deferred disposition to a minor charged with possessing, consuming, purchasing, or attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21), the court must require the minor to perform not less than eight or more than 12 hours community service if the minor does not have any previous convictions. If the minor has a previous conviction, the minor must perform not less than 20 or more than 40 hours of community service. (Section 106.071(d)(1), A.B.C.)

### **c. Failure to Complete Terms of Deferred Disposition**

If the person fails to complete the terms of deferred disposition, the court must set a contempt hearing under Article 45.050, C.C.P., and notify the defendant of the hearing. See Section 9 of this study guide for more information on failure to pay or violation of a court order. The court may not issue a *capias pro fine* unless the court complies with the procedures under Article 45.045, C.C.P. See Section 9B for information on issuing a *capias pro fine*.

## **PART 12 EXPUNCTION**

Expunge means to erase, remove, or wipe out. Municipal court has authority to expunge only records of juveniles and minors. In all instances, they must apply to the municipal court and pay a \$30 fee. Article 102.006, C.C.P. provides for fees in expunction proceedings that are in addition to any other required fees. See study guide *State and City Reports* for more information on fees.

### **A. Penal Offenses**

Under Article 45.0216, C.C.P., convictions of the following offenses may be expunged:

- Penal Code offenses except public intoxication;
- possession of drug paraphernalia;
- Chapter 37, Education Code offenses; and
- penal city ordinance offenses.

Also, records of a person under 17 years of age relating to a complaint for a penal offense dismissed under deferred disposition (Article 45.051, C.C.P.) or teen court (Article 45.052, C.C.P.) may be expunged under Article 45.0216.

## **1. Court Required to Inform Child and Parent of Right**

The judge must inform the child and his or her parent in open court of the child's expunction rights and provide both with a copy of Article 45.0216, C.C.P., which provides the expunction procedures.

## **2. Procedures**

When the child reaches the age of 17, he or she may apply to the court in which the conviction occurred to have the conviction expunged.

- The request must be in writing and made under oath.
- It must contain a statement that the person was not convicted while a child of any offense described by Subsections 8.07(a)(4) or (5), P.C., other than the offense the person seeks to have expunged.

If the court finds that the person was not convicted of any other offense described by those subsections while a child, the court shall order the conviction, together with the complaint, verdict, sentence, prosecutorial and law enforcement records, and any other documents relating to the offense expunged. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

## **3. Costs**

Article 45.0216(i), C.C.P., requires a \$30 fee to be paid by the petitioner to defray the cost of notifying state agencies of orders of expungement.

## **B. Alcoholic Beverage Code – Minor Offenses**

### **1. Notification**

Court not required to, but may, advise defendant and parent of right to expunction.

### **2. Procedures**

To be eligible:

- the minor must not have been convicted of more than one alcohol-related offense; and
- the minor 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.)

In recent years, the process of expunction has become a more complicated procedure. It is no longer just a matter of gathering relevant paper files and destroying them. To make a complete expunction, computer records must now also be deleted. These must be removed from the court and other agencies' computers. Records are typically stored in police department computers and in other agencies' files including the alcohol awareness programs and community service providers. These must be expunged so that complete eradication of the case history is accomplished.

### **3. Costs**

Section 106.12(d), A.B.C., requires courts to assess a \$30 fee for an application for expunction of a conviction of an offense involving a minor.

## **C. Health and Safety Code – Tobacco Offenses**

### **1. Notification**

The court is not required to notify defendants convicted of a tobacco offense of their right of expunction, but may do so. (Section 161.255, H.S.C.)

### **2. Procedures**

Since the statute requires the court to determine if the defendant satisfactorily completed a tobacco awareness program or tobacco-related community service, the court should set a hearing on the application. All agencies or persons who have a relation to the case, records about the case, or knowledge about the applicant should be notified.



At the hearing, if the judge determines that the defendant has complied, then the court orders the expunction. When a case is expunged, the judge issues an order that dictates that the conviction, along with the complaint, verdict, sentence, and other documents be expunged.

After the order is issued, the applicant is released from all disabilities arising from the conviction. Thereafter, the case cannot be shown or made known for any purpose. A defendant may request multiple expunctions as long as the defendant has completed the tobacco awareness course or the tobacco-related community service for each conviction that the defendant is applying for expunction.

### **3. Costs**

Section 161.255(b), H.S.C., requires the court to assess a \$30 fee for an application for an expunction of a conviction of a tobacco offense under Section 161.252, H.S.C.

## **D. Education Code Offenses**

### **1. Offenses under Chapter 37, E.C.**

Article 45.0216, C.C.P., expunction procedures and rules apply to a person under the age of 17 charged with an offense under Chapter 37 of the Education Code. See requirements and procedures under Section 12A *Expunction, Penal Offenses* of this study guide.

### **2. Offense of Failure to Attend School**

Article 45.054, C.C.P., requires courts, upon commencement of proceedings in a failure to attend case, to inform the individual and his or her parent in open court of the right to expunction and to give them a copy of Article 45.055, C.C.P., which provides the rules regarding the expunction for a conviction of the offense of failure to attend school.

The following is a list of the rules under Article 45.055.

- The individual can have been convicted of only one violation of failure to attend school.
- The individual can apply for the expunction on or after his or her 18th birthday.
- The application must be to the court in which the individual was convicted.
- The applicant must submit a written request made under oath stating that he or she has not been convicted of more than one violation of failure to attend school.
- The court may order the expunction without a hearing or, if the facts are in doubt, conduct a hearing on the application.
- If the court finds that the applicant has only the one conviction, the court must order the conviction, together with the complaint, verdict, sentence, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the applicant's record.
- After entry of the order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

- The court shall inform the applicant of the court's decision.
- The court may not require any fee or court costs for seeking the expunction.

Expunction is no longer a matter of gathering paper files and destroying them. Computer records must be deleted from the court's and other agencies' computers. Records kept in computers by the police department and other agencies including school districts, alcohol or drug abuse programs, counseling services, training programs, and community service providers, must all be expunged so that complete eradication of the case history is accomplished.

### **3. Costs**

Article 45.055(d), C.C.P., requires the court to assess a \$30 fee for an application for an expunction of a conviction for the offense of failure to attend school.

## **Part 13 Juvenile Records**

### **A. 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.

### **B. Local Juvenile Justice Information System**

Section 58.301, F.C., defines "local juvenile justice information system" to mean a county or multi-county computerized database of information concerning children, with data entry and access by the partner agencies that are members of the system. "Partner agency" is defined to mean a governmental service provider or governmental placement facility that is required to be a member of a local juvenile justice information system or that has applied to be a member of a local juvenile justice information system and has been approved by the county juvenile board or regional juvenile board committee as a member of the system. Section 58.305, F.C., lists who is included as agencies for a single county. Incorporated in the list are justice and municipal courts. Section 58.306, F.C., describes who has access to information at different levels in the juvenile justice information system.

Information is at Access Level 1 if the information relates to a child who:

- a school official has reasonable grounds to believe has committed an offense for which a report is required under Section 37.015, E.C.; or has been expelled, the expulsion of which is required to be reported under Section 52.041, F.C.; and
- has not been charged with a fine-only offense, a status offense, or delinquent conduct.

Information is at Access Level 2 if the information relates to a child who:

- is alleged in a justice or municipal court to have committed a fine-only offense, municipal ordinance violation, or status offense; and
- has not been charged with delinquent conduct or conduct indicating a need for supervision.

Information is at Access Level 3 if the information relates to a child who:

- is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision.

Level 1 access is by public school districts in the county or region served by the local juvenile justice information system. Level 2 access is by a justice or municipal court that processes juvenile cases. Level 3 access is by the juvenile court, the prosecuting attorney, the county juvenile probation department, law enforcement agencies, governmental service providers that are partner agencies, and government placement facilities that are partner agencies. (Section 58.306, F.C.)

Information that is part of a local juvenile justice system is not public information and may not be released to the public, except as authorized by law. Information that is part of a local juvenile justice information system is for the professional use of the partner agencies that are members of the system and may be used only by authorized employees of those agencies to discharge their duties. The information obtained from the local juvenile justice information system may not be disclosed to persons, agencies, or organizations that are not members of the system except to the extent disclosure is mandated by Title 3, F.C. Information in this system is subject to destruction, sealing, or restricted access as provided by Title 3. (Section 58.307, F.C.)

## **Part 14 Reports**

For more detailed information on reporting, see the study guide *State and City Reports*.

### **A. Reports to the 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. Traffic Convictions**

A record of traffic convictions and forfeitures of bail must be submitted no later than the 30<sup>th</sup> day after the date of the conviction or forfeiture. (Section 543.203, T.C.) The court counts the 30 days starting with the day after the judgment was entered. (Section 311.014, G.C.)

When a court grants an extension or a time payment plan, the court does not wait to receive the final payment before reporting. The court determines the proper reporting period by counting 30 days from the day after the date the judgment was entered by the judge. When a defendant discharges a fine by community service, the court starts counting the 30-day time period starting with the day after judgment was entered by the judge, not when the defendant completes the community service.

If a defendant appeals a conviction, the municipal court does not report a conviction. In non-record municipal courts, the appellate court reports the conviction, if there is one, to DPS. In municipal courts of record, if the judgment is affirmed in the appellate court, the court then reports the conviction to DPS.

## **2. Failure to Appear or Failure to Pay**

Section 521.3452, T.C., requires courts to report to DPS persons under the age of 17 who fail to appear. Section 521.201(7), T.C., provides that DPS may not issue a license to a person who has been reported by a court for failure to appear under Section 521.3452. Subsection 521.201(8), T.C., provides that DPS may not issue a license in any case where a person under the age of 17 failed to appear and has been reported to DPS. Section 521.294, T.C., provides that DPS shall revoke a license of a person who has been reported under Section 521.3452, T.C., for failure to appear. The defendant may not obtain a license or have the suspension lifted until the court reports that the defendant files a report on the final disposition of the case.

Article 45.050, C.C.P., allows the court after deciding to retain jurisdiction of a case involving a person who committed an offense under the age of 17 and failed to pay or violated a court order to order DPS to suspend or deny issuance of a driver's license. Section 521.201(8), T.C., provides that DPS may not issue a license to a person under the age of 17 who was reported for defaulting in payment of a fine. Section 521.3451, T.C., provides that DPS shall suspend or deny the issuance of a license or instruction permit on receipt of an order to suspend or deny the issuance of a license or permit from justice and municipal court under Article 45.050, C.C.P.

## **3. 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.

#### **4. 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

#### **5. Non-Attendance at a Tobacco Awareness Program**

If an individual under the age of 18 does not present evidence of completion of a tobacco awareness program within the 90 days of the conviction, the court must order the Department of Public Safety to suspend or deny issuance of a driver's license or permit. The order must specify the period of the suspension or denial, which may not exceed 180 days after the date of the order. (Section 161.254, H.S.C.) If the court is not automated, the court must use DPS form DIC-15 to report the order of suspension.

### **C. Reports 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 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.)

## **CONCLUSION**

Although offenders under the age of 17 require special handling, they have the right to a trial by jury or judge; an attorney may represent them; the burden of the proof is on the State; and they have the same appeal rights as adults. Youthful offenders in municipal court probably do not have a right to an appointed lawyer. The court, however, must be cautious. If a child does not understand the proceedings or is incompetent to handle his or her own defense, assistance

of appointed counsel may be necessary. Courts must always weigh the age and maturity of children. Handling children requires great care and a court can never be too cautious in protecting their rights.

## GLOSSARY

**Affidavit:** A sworn statement.

**Appearance:** The formal proceeding by which a defendant submits himself or herself to the jurisdiction of the court. Other than the defendant, only an attorney hired to represent the defendant may appear for the defendant.

**Appeal:** The process of having a higher court conduct a new trial or review either the facts and law or just questions of law from a proceeding held in a lower court. In municipal courts of records, the appellate court reviews the transcript of the trial. In municipal courts of non-record, there is a new trial in the appellate court. All defendants have a right to appeal their cases.

**Citation:** In a *criminal* case, it is a written notice to appear issued by a peace officer which may be used as the charging instrument in municipal court to which a defendant may plead; in a *civil* case, it is the notice to the defendant that he or she is being sued.

**Deferred Disposition:** A process where the judge may defer the imposition of the fine and grant probation requiring the defendant to adhere to certain terms. If a defendant successfully completes the terms of probation, the judge is required to dismiss the case.

**DIC-15:** Form submitted by the court to the Department of Public Safety (DPS) giving notice of the municipal court order to suspend or deny issuance of a minor's driver's license upon conviction for the following offenses: (1) possession of alcohol by a minor; (2) consumption of alcohol by a minor; (3) purchase of alcohol by a minor; (4) attempt to purchase alcohol by a minor; and (5) misrepresentation of age by a minor; or (6) upon a defendant's failure to take an alcohol awareness program.

**DIC-81:** Form submitted by the court to the Department of Public Safety (DPS) giving notice of the municipal court's order to DPS to either suspend the driver's license or keep a minor from obtaining a driver's license for failing to appear or failing to pay a fine.

**Diligence:** Characterized by persevering application; the attention and care legally expected or required of a person.

**Expunction:** The process by which the record of a criminal conviction is destroyed or sealed.

**Felony:** A classification of criminal offenses; felonies are more serious than misdemeanors; felonies are classified according to the relative seriousness of the offense into five categories: (1) capital felonies; (2) felonies of the first degree; (3) felonies of the second degree; (4) felonies of the third degree; and (5) state jail felonies.

**Guilty:** A plea by which a defendant confesses to the crime with which the defendant is charged, or the verdict by which a defendant is convicted.

**Jurisdiction:** The legal power or authority that municipal courts have over certain types of offenses and over certain geographical locations. The power to hear and decide cases.

**Juvenile:** Although there is no legal definition of juvenile, the Family Code defines a child as a person who is at least 10 years of age and under the age of 17. Courts usually use this definition to mean a juvenile.

**Magistrate:** A judicial officer whose duty it is to preserve the peace within a certain territorial jurisdiction by use of all lawful means, to issue all process intended to aid in preventing and suppressing crime, and to cause the arrest of all offenders by lawful means in order that they may be brought to trial or, after trial, to punishment. A municipal judge is a magistrate. Municipal judges, like all Texas judges, are magistrates.

**Minor:** In traffic law a minor is a person who is younger than 17 years of age; in the Alcoholic Beverage Code, a minor is a person who is under 21 years of age. In the Health and Safety Code, a minor is person under the age of 18.

**Misdemeanor:** Offenses lower than felonies and generally punishable by fine or imprisonment. Municipal court has jurisdiction over misdemeanors that are fine-only offenses.

**No Contest/*Nolo Contendere*:** A plea in which the defendant does not contest the charge. *Nolo contendere* has the same legal effect as a guilty plea; however, it may not be used against the defendant as an admission of guilt in a civil suit based upon or growing out of the act upon which the criminal prosecution is based.

**Nonsecure Custody:** An unlocked multipurpose area where juveniles may be detained for up to six hours. While the juvenile is in the custodial area, they cannot be handcuffed to a chair, railing, or any object and they must be under continuous visual observation by a law enforcement officer or a member of the facility staff.

**Not Guilty:** A plea in which the defendant informs the court that he or she denies guilt or has a defense in the case and that the state must prove what it has charged in the complaint.

**Plea:** The defendant's answer to the accusation, complaint, or petition brought against him or her by the state in municipal court. In criminal cases in municipal courts, there are four possible pleas: guilty, not guilty, *nolo contendere* (no contest), or the special plea of double jeopardy. In a truancy case, the pleas are true or not true.

**Respondent:** The juvenile in a truancy case.

**Sealing of Records:** The process whereby a juvenile's court records are closed and the matter is treated for all purposes as if it never occurred. The records will not be opened except by order of the juvenile court brought about by a petition of the person whose records were sealed.

**Trial *de Novo*:** A new trial as if the case had not been previously heard and as if no decision had been previously rendered.

**Truant Conduct:** The unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days of parts of days within a four-week period from school without the consent of the child's parents.

**Waive/Waiver:** Voluntary, knowing, and intentional relinquishment or surrender of a right, claim, or privilege.



**Appendix**  
**Municipal Juvenile/Minor Chart**



Jurisdiction	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<p>Yes. (See Art. 4.14, C.C.P.; Sec. 29.003, G.C.; Sec. 8.07, P.C.; and Sec. 51.03, F.C.)</p>	<p>Yes. (See Art. 4.14, C.C.P.; Sec. 29.003, G.C.; Sec. 8.07, P.C.; and Sec. 51.03, F.C.)</p>	<p>Yes. (See Art. 4.14, C.C.P.; Sec. 29.003, G.C.; and Sec. 51.03, F.C.)</p> <p>Court required to dismiss complaint for failure to attend school if not filed by 7<sup>th</sup> day after student's last absence.</p>	<p>Yes. (See Art. 4.14, C.C.P.; Sec. 29.003, G.C.; Sec. 8.07, P.C.; and Sec. 161.256, H.S.C.)</p>	<p>Yes. (See Art. 4.14, C.C.P.; Sec. 29.003, G.C.; and Sec. 51.03(f), F.C.)</p> <p>All fine-only offenses, except the offense of public intoxication.</p>	<p>Yes. (See Art. 4.14, C.C.P.; Sec. 29.003, G.C.; and Sec. 51.03, F.C.; and Sec. 729.001(a), T.C.)</p> <p>For exceptions, see section on offenses.</p>	<p>Yes. (See Art. 4.14, C.C.P.; Sec. 29.003, G.C.; and Sec. 51.03, F.C.; and Sec. 729.001(a), T.C.)</p> <p>For exceptions, see section on offenses.</p>
<p><b>Waiver of Jurisdiction - Transfer to Juvenile Court</b> Sec. 51.08, F.C.</p>	<p>Sec. 51.08, F.C. Under age 17: •May waive jurisdiction over first and second violations; •Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses. •At age 17 or more, after two previous convictions, charge may be enhanced and filed in county court.</p>	<p>Sec. 51.08, F.C. Under age 17: •May waive jurisdiction over first and second violations; •Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses. Age 17 – court retains jurisdiction.</p>	<p>Sec. 161.257, H.S.C. May not waive jurisdiction. Title 3, Family Code (including transfer to juvenile court) does not apply to Subchapter N, H.S.C.</p>	<p>Sec. 51.08, F.C. Under age 17: •May waive jurisdiction over first and second violations; •Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses.</p>	<p>Sec. 51.08, F.C. Municipal court may not waive its jurisdiction over traffic violations.</p>	<p>Sec. 51.08, F.C. Municipal court may not waive its jurisdiction over traffic violations.</p>
<p><b>Age</b> Art. 45.058(h), C.C.P.; Sec. 51.02, F.C.; Sec. 8.07, P.C.</p>	<p>Sec. 106.01. Definition of a minor - Under age 21. Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P. Child defined as at least 10 years of age &amp; younger than 17.</p>	<p>Sec. 106.01. Definition of a minor - Under age 21. Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P. Child defined as at least 10 years of age &amp; younger than 17.</p>	<p>Sec. 161.252, H.S.C. Definition of a minor - Under age 18. Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P. Child defined as at least 10 years of age &amp; younger than 17.</p>	<p>Sec. 8.07, Age Affecting Criminal Responsibility under age 17. Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P. Child defined as at least 10 years of age &amp; younger than 17.</p>	<p>Sec. 729.001, Operation of Motor Vehicle by Minor- Under age 17. Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P. Child defined as at least 10 years of age &amp; younger than 17.</p>	<p>Sec. 729.001, Operation of Motor Vehicle by Minor- Under age 17. Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P. Child defined as at least 10 years of age &amp; younger than 17.</p>
<p><b>Common Offenses</b></p>	<p>•Sec. 106.02. Purchase of Alcohol by Minor; •Sec. 106.025. Attempt to Purchase Alcohol by a Minor; •Sec. 106.04. Consumption of Alcohol by a Minor; •Sec. 106.05. Possession of Alcohol by a Minor; •Sec. 106.07. Misrepresentation of Age by a Minor.</p>	<p>•Sec. 25.094. Failure to Attend School; •Sec. 37.102. Rules (Enacted by School Board); •Sec. 37.107. Trespass on School Grounds; •Sec. 37.122. Possession of Intoxicants on School Grounds; •Sec. 37.124. Disruption of Classes; •Sec. 37.126. Disruption of Transportation.</p>	<p>Sec. 161.252 •Possession of cigarettes or tobacco; •Purchase of cigarettes or tobacco; •Consumption of cigarettes or tobacco; •Acceptance of cigarettes or tobacco; •Display false proof of age.</p>	<p>All fine-only offenses, except a person under 17 years of age may not be charged in municipal court for the offense of public intoxication (See Sec. 51.03(f), F.C.).</p>	<p>Sec. 729.001(a), T.C.; Sec. 8.07(a)(2), P.C.; P.C.; sec. 51.02(16), F.C. •Cpt. 502. Registration of Vehicles, except Secs. 502.282 or 502.412; •Cpt. 521. Driver's Licenses, except Sec. 521.457; •Subtitle C. Rules of the Road, except offenses punishable by imprisonment or by confinement in jail; •Cpt. 601. Safety Responsibility •Cpt. 621. Vehicle Size &amp; Weight; •Cpt. 661. Motorcycles &amp; All Terrain Vehicles; •Cpt. 681. Parking, Towing &amp; Storage of Vehicles.</p>	<p>Sec. 729.001(a), T.C.; Sec. 8.07(a)(2), P.C.; P.C.; sec. 51.02(16), F.C. •Cpt. 502. Registration of Vehicles, except Secs. 502.282 or 502.412; •Cpt. 521. Driver's Licenses, except Sec. 521.457; •Subtitle C. Rules of the Road, except offenses punishable by imprisonment or by confinement in jail; •Cpt. 601. Safety Responsibility •Cpt. 621. Vehicle Size &amp; Weight; •Cpt. 661. Motorcycles &amp; All Terrain Vehicles; •Cpt. 681. Parking, Towing &amp; Storage of Vehicles.</p>

Penalties <sup>2</sup>	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<p>Secs. 106.02, 106.025, 106.04, 106.05, 106.07</p> <p><b>1<sup>st</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•Class C misdemeanor (max \$500);</li> <li>•Mandatory alcohol awareness program, Sec. 106.115;</li> <li>•Mandatory 8-12 hours alcohol-related community service;</li> <li>•DL suspension or denial – 30 days; eff. 11<sup>th</sup> day after conviction.</li> </ul> <p><b>2<sup>nd</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•Class C misdemeanor (max \$500);</li> <li>•Optional alcohol awareness program;</li> <li>•Mandatory 20-40 hours alcohol-related community service;</li> <li>•DL suspension or denial – 60 days; eff. 11<sup>th</sup> day after conviction.</li> </ul> <p><b>3<sup>rd</sup> conviction</b></p> <p>Under age 17:</p> <ul style="list-style-type: none"> <li>•See waiver provisions in chart.</li> </ul> <p>Age 17 &amp; under 21</p> <ul style="list-style-type: none"> <li>•Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced.</li> </ul> <p><b>Complete alcohol awareness program</b></p> <p>Court may reduce the fine to half the amount assessed.</p> <p><b>Failure to complete program</b></p> <p>Court may give another 90 days to complete.</p> <ul style="list-style-type: none"> <li>•1<sup>st</sup> conviction: court must order DPS to suspend or deny issuance of DL for up to six months. Sec. 106.115(c), A.B.C.</li> <li>•2<sup>nd</sup> conviction: court must order DPS to suspend or deny issuance of DL not to exceed one year.</li> </ul>	<p>Sec. 106.041</p> <p><b>1<sup>st</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•Class C misdemeanor (max \$500);</li> <li>•Mandatory alcohol awareness program;</li> <li>•Mandatory 20 to 40 hours alcohol-related community service;</li> <li>•Administrative DL suspension (separate proceeding Chapters 524 and 724, T.C.).</li> </ul> <p><b>2<sup>nd</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•Class C misdemeanor (max \$500);</li> <li>•Optional alcohol awareness program;</li> <li>•Mandatory 40 to 60 hours of alcohol-related community service;</li> <li>•Administrative DL suspension (separate proceeding—Chapters 524 and 724, T.C.).</li> </ul> <p><b>3<sup>rd</sup> conviction</b></p> <p>Under age 17:</p> <ul style="list-style-type: none"> <li>•See waiver provisions in chart.</li> </ul> <p>Age 17 &amp; under 21</p> <ul style="list-style-type: none"> <li>•Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced.</li> </ul> <p><b>Complete alcohol awareness program</b></p> <p>Court may reduce the fine to half the amount assessed.</p> <p><b>Failure to complete program</b></p> <p>Court may give another 90 days to complete.</p> <ul style="list-style-type: none"> <li>•1<sup>st</sup> conviction: court must order DPS to suspend or deny issuance of DL for up to six months. Sec. 106.115(c), A.B.C.</li> <li>•2<sup>nd</sup> conviction: court must order DPS to suspend or deny issuance of DL not to exceed one year.</li> </ul>	<p>Secs. 25.094, 37.102, 37.107, 37.122, 37.124, 37.126.</p> <p>Class C misdemeanors (max \$500)</p> <p>Sec. 25.094(c)<sup>3</sup> – In addition to a fine, a court may order a sanction listed in Art. 45.054, C.C.P.:</p> <ul style="list-style-type: none"> <li>•Attend school without unexcused absences;</li> <li>•Attend preparatory class for GED (older child that will not do well in classroom environment) or, if child is 16 or older, take GED exam;</li> <li>•Attend a special program: <ul style="list-style-type: none"> <li>–alcohol &amp; drug abuse program, –rehabilitation program, –counseling program, –training in self-esteem &amp; leadership, –work and job skills training, –training in parenting, –manners training, –violence avoidance training, –sensitivity training, –advocacy, and –mentoring training;</li> </ul> </li> <li>•Attend class for student at risk of dropping out of school (may require parent to attend with child);</li> <li>•Community service;</li> <li>•Participate in tutorial program;</li> <li>•Order DPS to suspend or deny issuance of a DL for a period of time not to exceed 365 days.</li> </ul>	<p>Sec. 161.252 and 161.253</p> <p><b>1<sup>st</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•A fine not to exceed \$250, but court shall suspend execution of sentence (court costs must still be assessed and imposed) and order tobacco awareness program.</li> <li>•Court dismisses charge on completion of course.</li> <li>•If no course available, court shall require 8-12 hours tobacco-related community service.</li> <li>•Failure to complete tobacco awareness course or community service, court required to order DPS to suspend or deny issuance of DL for up to 180 days after date of order.</li> </ul> <p><b>Subsequent offenses</b></p> <ul style="list-style-type: none"> <li>•A fine not to exceed \$250;</li> <li>•Court shall suspend execution of sentence and order tobacco awareness course;</li> <li>•Upon completion of course, court may reduce fine to not less than half;</li> <li>•Failure to complete tobacco awareness course or community service, court required to order DPS to suspend or deny issuance of DL not to exceed 180 days after date of order.</li> </ul>	<p>Sec. 12.23</p> <p>Class C misdemeanor (max fine \$500) Under age 17 &amp; two prior convictions, see waiver provisions in chart.</p> <p><b>Public Intoxication (Sec. 49.02)</b></p> <p>Persons under age 21 (municipal court has jurisdiction if person is at least age 17) charged with public intoxication, the penalty is under Sec. 106.071, A.B.C. See penalties for Alcoholic Beverage Code Offenses other than DUI.</p>	<p>Secs. 729.001 and 729.002</p> <p>Penalty same as adult defendant. See general and specific penalty clauses throughout Transportation Code.</p>	

Appearance	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<p>Sees. 106.10, A.B.C. •Must be in open court; Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with child; •Court must summon parent or guardian; •Court may waive presence, if unable to locate or compel parent's presence. Art. 45.057, C.C.P. Court should provide notice of child (under age 17) and parent's obligation to notify the court in writing of the child's current address.</p>	<p>Sees. 106.10, A.B.C. •Must be in open court; Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with child; •Court must summon parent or guardian; •Court may waive presence, if unable to locate or compel parent's presence. Art. 45.057, C.C.P. Court should provide notice of child (under age 17) and parent's obligation to notify the court in writing of the child's current address.</p>	<p>Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with child; •Court must summon parent or guardian; •Court may waive presence, if unable to locate or compel parent's presence. Art. 45.054, C.C.P. Failure to Attend School Proceedings: court required to summon parents to appear with defendant regardless of defendant's age. Art. 45.057, C.C.P. Court should provide notice of child (under age 17) and parent's obligation to notify the court in writing of the child's current address.</p>	<p>Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summons parent or guardian; •Court may waive presence, if unable to locate or compel parent's presence. Age 17 – parent's presence not required. Art. 45.057, C.C.P. Court should provide notice of child (under age 17) and parent's obligation to notify the court in writing of the child's current address.</p>	<p>Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summon parent or guardian; •Court may waive presence if unable to locate or compel parent's presence. Art. 45.057, C.C.P. Court should provide notice of child and parent's obligation to notify the court in writing of the child's current address.</p>	<p>Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summon parent or guardian; •Court may waive presence if unable to locate or compel parent's presence. Art. 45.057, C.C.P. Court should provide notice of child and parent's obligation to notify the court in writing of the child's current address.</p>	<p>Art. 45.0215, C.C.P. Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summon parent or guardian; •Court may waive presence if unable to locate or compel parent's presence. Art. 45.057, C.C.P. Court should provide notice of child and parent's obligation to notify the court in writing of the child's current address.</p>
<p><b>Custody</b><sup>4</sup> Art. 45.058, C.C.P.</p>	<p>• A child at least age 10 and under age 17 may be taken into custody. • Child may be: -released to parents, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours. • If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility. • A minor age 17 when offense committed may be handled as an adult.</p>	<p>• A child at least age 10 and under age 17 may be taken into custody. • Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours. • If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility. • A minor age 17 when offense committed may be handled as an adult.</p>	<p>• A child at least age 10 and under age 17 may be taken into custody. • Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours. • If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility. • A minor age 17 when offense committed may be handled as an adult.</p>	<p>• A child at least age 10 and under age 17 may be taken into custody. • Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours. • If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility. • A minor age 17 when offense committed may be handled as an adult.</p>	<p>• A child at least age 10 and under age 17 may be taken into custody. • Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours. • If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility. • A minor age 17 when offense committed may be handled as an adult.</p>	<p>• A child at least age 10 and under age 17 may be taken into custody. • Child may be: -released to parent, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours. • If a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</p>

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<b>Failure to Appear</b>	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 543.009, T.C. May be charged with offense of Violation of Promise to Appear for Subtitle C, Rules of the Road offenses.</p> <p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear for other traffic offenses outside of Subtitle C.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Sec. 521.3452, T.C. Court shall report failure to appear to DPS.</p>
<b>Violation of a Court Order; Failure to Pay Fine; Art. 45.050, C.C.P.</b>	<p>Art. 45.050, C.C.P. Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and conduct a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:          • Failure to complete alcohol awareness course, see section on penalties this chart.</p>	<p>Art. 45.050, C.C.P. Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and conduct a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:          • Failure to complete alcohol awareness course, see section on penalties this chart.</p>	<p>Art. 45.050, C.C.P. Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:          • Failure to complete tobacco awareness course, see section on penalties this chart.</p>	<p>Art. 45.050, C.C.P. Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:          • Failure to complete tobacco awareness course, see section on penalties this chart.</p>	<p>Art. 45.050, C.C.P. Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:          • Failure to complete tobacco awareness course, see section on penalties this chart.</p>	<p>Art. 45.050, C.C.P. Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>retain jurisdiction and hold child/person in contempt of court (max fine \$500); and/or</li> <li>order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants:          • Failure to complete tobacco awareness course, see section on penalties this chart.</p>

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<p><b>Expunction<sup>5</sup></b></p>	<p>Sec. 106.12 Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</p> <p>Sec. 106.12(d) Court shall charge \$30 fee for each application.</p>	<p>Sec. 106.12 Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</p> <p>Sec. 106.12(d) Court shall charge \$30 fee for each application.</p>	<p>Sec. 25.094(g) Only for offense of failure to attend school.</p> <ul style="list-style-type: none"> <li>•Court must notify child of right;</li> <li>•Court must give copy of Art. 45.055, C.C.P.</li> </ul> <p>Art. 45.055, C.C.P. •May apply at age 18 if only one conviction for offense of Failure to Attend School;</p> <ul style="list-style-type: none"> <li>•Must submit written request made under oath;</li> <li>•Form of submission determined by applicant;</li> <li>•Must pay \$30 fee.</li> </ul> <p>Art. 45.0216, C.C.P. Other fine-only Education Code Offenses: Court must notify child of right;</p> <ul style="list-style-type: none"> <li>•Court must give copy of Art. 45.016, C.C.P.</li> <li>•Not more than one conviction;</li> <li>•Child may apply on or after age 17;</li> <li>•Apply to trial court;</li> <li>•Child makes request under oath;</li> <li>•Court shall charge \$30 fee.</li> </ul>	<p>Sec. 161.255, H.S.C. Yes.</p> <ul style="list-style-type: none"> <li>•May apply to the court to have conviction expunged;</li> <li>•Applicant must have completed tobacco awareness course;</li> <li>•May have multiple convictions expunged as long as applicant completed tobacco awareness course for each conviction.</li> <li>•Court shall charge \$30 fee</li> </ul>	<p>Art. 45.0216, C.C.P. •Court must notify child of right;</p> <ul style="list-style-type: none"> <li>•Court must give copy of Art. 45.016, C.C.P.</li> <li>•Not more than one conviction;</li> <li>•Child may apply on or after age 17;</li> <li>•Apply to trial court;</li> <li>•Child makes request under oath;</li> <li>•Court shall charge \$30 fee.</li> </ul>	<p>Chpt. 55, C.C.P. Expunction order must be filed in district court.</p>
<p><b>Child Turns age 17 after Failure to Appear</b></p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<b>Child Turns age 17 after failing to pay fine; capias pro fine; Art. 45.045, C.C.P.</b>	<p>Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i>:</p> <ul style="list-style-type: none"> <li>that person is age 17 or older;</li> <li>that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<p>Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i>:</p> <ul style="list-style-type: none"> <li>that person is age 17 or older;</li> <li>that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<p>Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i>:</p> <ul style="list-style-type: none"> <li>that person is age 17 or older;</li> <li>that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<p>Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i>:</p> <ul style="list-style-type: none"> <li>that person is age 17 or older;</li> <li>that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<p>Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i>:</p> <ul style="list-style-type: none"> <li>that person is age 17 or older;</li> <li>that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<p>Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i>:</p> <ul style="list-style-type: none"> <li>that person is age 17 or older;</li> <li>that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>
<b>Reports</b>	<p>Sec. 51.08(c), F.C. Under age 17:</p> <ul style="list-style-type: none"> <li>Juvenile court when case filed;</li> <li>Juvenile court when case disposed.</li> </ul> <p>Secs. 521.201(8) and 521.294(6), T.C. Under age 17:</p> <ul style="list-style-type: none"> <li>DPS, if child fails to appear;</li> <li>DPS, when case adjudicated.</li> </ul> <p>Sec. 521.3451, T.C. DPS, when child fails to pay under Art. 45.050, C.C.P.</p> <p>DPS, when child makes final disposition.</p> <p>Sec. 106.116, A.B.C. Tex. Alcoholic Bev. Commission, if requested.</p> <p>Sec. 106.117, A.B.C. All minors: DPS, upon conviction or order of deferred.</p>	<p>Sec. 51.08(c), F.C. Under age 17:</p> <ul style="list-style-type: none"> <li>Juvenile court when case filed;</li> <li>Juvenile court when case disposed.</li> </ul> <p>Secs. 521.201(8) and 521.294(6), T.C. Under age 17:</p> <ul style="list-style-type: none"> <li>DPS, if child fails to appear;</li> <li>DPS, when case adjudicated.</li> </ul> <p>Sec. 521.3451, T.C. DPS, when child fails to pay under Art. 45.050, C.C.P.</p> <p>DPS, when child makes final disposition.</p> <p>Sec. 106.116, A.B.C. Tex. Alcoholic Bev. Commission, if requested.</p> <p>Sec. 106.117, A.B.C. All minors: DPS, upon conviction, order of deferred, and acquittal under 106.041.</p>	<p>Sec. 51.08(c), F.C. Under age 17:</p> <ul style="list-style-type: none"> <li>Juvenile court when case filed;</li> <li>Juvenile court when case disposed of.</li> </ul> <p>Secs. 521.201(8) and 521.294(6), T.C. Under age 17:</p> <ul style="list-style-type: none"> <li>DPS, if child fails to appear;</li> <li>DPS, when case adjudicated.</li> </ul> <p>Sec. 521.3451, T.C. DPS, when child fails to pay under Art. 45.050, C.C.P.</p> <p>DPS, when child makes final disposition.</p>	<p>Sec. 161.254, H.S.C. All minors: DPS, if defendant fails to present evidence of completion of tobacco-related program or community service.</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Under age 17:</p> <ul style="list-style-type: none"> <li>DPS, if child fails to appear;</li> <li>DPS, when case adjudicated.</li> </ul> <p>Sec. 521.3451, T.C. DPS, when child fails to pay under Art. 45.050, C.C.P.</p> <p>DPS, when child makes final disposition.</p>	<p>Sec. 51.08(c), F.C. Under age 17:</p> <ul style="list-style-type: none"> <li>Juvenile court when case filed;</li> <li>Juvenile court when case disposed of.</li> </ul> <p>Secs. 521.201(8) and 521.294(6), T.C. Under age 17:</p> <ul style="list-style-type: none"> <li>DPS, if child fails to appear;</li> <li>DPS, when case adjudicated.</li> </ul> <p>Sec. 521.3451, T.C. DPS, when child fails to pay under Art. 45.050, C.C.P.</p> <p>DPS, when child makes final disposition.</p> <p>Sec. 15.27, P.C. Upon conviction, prosecutor required to notify school of conviction of assault and possession of drug paraphernalia.</p>	<p>Sec. 543.203, T.C. Convictions reported to DPS.</p> <p>Sec. 521.3452, T.C. Under age 17:</p> <ul style="list-style-type: none"> <li>Court required to report failure to appear.</li> </ul> <p>Secs. 521.201(7) and 521.294(5), T.C. DPS, if child fails to appear; <p>DPS when case adjudicated.</p> <p>Sec. 521.3451, T.C. DPS, when child fails to pay under Art. 45.050, C.C.P.</p> <p>DPS, when child makes final disposition.</p> </p>



	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<b>Parents</b> <sup>6</sup>	<p><b>Art. 45.057(g), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Parent includes a person standing in parental relation, a managing conservator, or a custodian.</li> </ul> <p><b>Art. 45.0215, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Court required to issue summons for parents.</li> </ul> <p><b>Art. 45.057(g), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to appear with child in court is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057(h), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Attend a parenting class.</li> <li>•Attend child's school classes &amp; functions.</li> <li>•Pay up to \$100 for special program for child.</li> </ul> <p><b>Sec. 106.011, A.B.C.</b></p> <ul style="list-style-type: none"> <li>•Required to appear in open court with any minor under age 18.</li> </ul> <p><b>Sec. 106.115(d), A.B.C.</b></p> <ul style="list-style-type: none"> <li>•Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program.</li> </ul>	<p><b>Art. 45.057(a), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Parent includes a person standing in parental relation, a managing conservator, or a custodian.</li> </ul> <p><b>Art. 45.0215, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Court required to issue summons for parents.</li> </ul> <p><b>Art. 45.057(g), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to appear with child in court is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057(h), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Attend a parenting class.</li> <li>•Attend child's school classes &amp; functions.</li> <li>•Pay up to \$100 for special program for child.</li> </ul> <p><b>Sec. 106.011, A.B.C.</b></p> <ul style="list-style-type: none"> <li>•Required to appear in open court with any minor under age 18.</li> </ul> <p><b>Sec. 106.115(d), A.B.C.</b></p> <ul style="list-style-type: none"> <li>•Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program.</li> </ul>	<p><b>Art. 45.057(a), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Parent includes a person standing in parental relation, a managing conservator, or a custodian.</li> </ul> <p><b>Art. 45.0215, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Court required to issue summons for parents.</li> </ul> <p><b>Art. 45.057(g), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to appear with child in court is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057(h), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Attend a parenting class.</li> <li>•Attend child's school classes &amp; functions.</li> <li>•Pay up to \$100 for special program for child.</li> </ul> <p><b>Art. 45.057(h), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</li> </ul>	<p><b>Art. 45.057(a), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Parent includes a person standing in parental relation, a managing conservator, or a custodian.</li> </ul> <p><b>Art. 45.0215, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Court required to issue summons for parents.</li> </ul> <p><b>Art. 45.057(g), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to appear with child in court is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057(h), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Attend a parenting class.</li> <li>•Attend child's school classes &amp; functions.</li> <li>•Pay up to \$100 for special program for child.</li> </ul> <p><b>Art. 45.057(h), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</li> </ul>	<p><b>Art. 45.057(a), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Parent includes a person standing in parental relation, a managing conservator, or a custodian.</li> </ul> <p><b>Art. 45.0215, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Court required to issue summons for parents.</li> </ul> <p><b>Art. 45.057(g), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to appear with child in court is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057(h), C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</li> </ul> <p><b>Art. 45.057, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Attend a parenting class.</li> <li>•Attend child's school classes &amp; 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<sup>1</sup> Art. 45.056, C.C.P., provides authority for municipal court to employ case managers for juvenile cases. Sec.51.08, F.C., provides that a court that has implemented a juvenile case manager program under Art. 45.056, C.C.P., may, but is not required to, waive its original jurisdiction under subsection (b)(1) of Section 51.08, F.C. Article 102.0174, C.C.P., provides that cities may adopt an ordinance creating a juvenile case manager fund and collect a \$5 fee to fund a juvenile case manager. (Effective January 1, 2006)

<sup>2</sup> Art. 45.057, C.C.P. – When a child who is at least 10 years old and younger than age 17 is charged with a fine-only offense, the court may, in addition to a fine, order the following sanctions: 1) Refer the child or child's parent for services under Sec. 264.302, F.C.; 2) Require child to attend a special program that is in best interest of child, including rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy or mentoring program; 3) Require parents to do an act or refrain from an act that will increase the likelihood that the child will comply with court orders, including attending a parenting class or parental responsibility program and attending the child's school classes or functions; 4) Order the parents of a child required to attend a special program to pay an amount not greater than \$100 for the costs of the program; 5) Require both the child and parent to submit proof of attendance. (If program involves the expenditure of county funds, county must approve child's attendance.)

#### Deferred Disposition

- If the court grants deferred for all Alcoholic Beverage Code offenses except DUJ, the court must require the defendant to perform the community service requirements and attend an alcohol awareness course; for DUI, the court must require an alcohol awareness course.
- If defendant charged with the offense of public intoxication is at least age 17 and under age 21, and the court grants deferred, the court must order the community service requirements under Sec. 106.071, A.B.C., and attendance at an alcohol awareness course.

<sup>3</sup> A dispositional order under Art. 45.054, C.C.P., is effective for the period specified by the court in the order but may not extend beyond the 180<sup>th</sup> day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

<sup>4</sup> Art. 45.059, C.C.P., Children Taken into Custody for Violation of Juvenile Curfew or Order: 1) Release person to parent, guardian or custodian; 2) Take person before a justice or municipal court; or 3) Take person to juvenile curfew processing office (similar to juvenile curfew processing office and not held for more than six hours).

<sup>5</sup> Art. 45.0216, C.C.P., provides that proceedings under Art. 45.051, C.C.P. (Deferred Disposition), and proceedings under Art. 45.052, C.C.P. (Teen Court), may be expunged under Art. 45.0216, C.C.P.

<sup>6</sup> Under Sec. 25.093(f), E.C., when a court grants deferred disposition to a parent charged with parent contributing to nonattendance, the court may require the defendant to attend a program that provides instruction designed to assist the parent in identifying problems that contribute to his or her child's absence from school and strategies for resolving those problems.

FUNDED BY A GRANT FROM THE  
TEXAS COURT OF CRIMINAL APPEALS

## **TEXAS MUNICIPAL COURTS EDUCATION CENTER**

1609 SHOAL CREEK BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701  
TELEPHONE (512) 320-8274  
1-800-252-3718  
FAX (512) 320-0996

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# **ENFORCEMENT ON DEFAULTS**

**Presented by**

**Linda Frank  
Municipal Judge  
Plano**

Participants will be able to:

- List resources to help the court enforce and collect on defendants who default;  
and
- Develop processes and procedures for enforcing collections on defendant who default.



**ENFORCEMENT TOOLS**

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- Tools**
- ↻ Capias Pro Fine
  - ↻ DPS FTA Program
  - ↻ Contracts with Texas Dept. of Transportation
  - ↻ Nonresident Violator Compact
  - ↻ Outside Vendors
  - ↻ Civil Enforcement

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- Capias Pro Fine***  
***Art. 45.045, C.C.P.***
- ↻ May be issued
    - When defendant not in custody
    - When defendant defaults in payment

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**Capias Pro Fine**

- ↻ **Must state**
  - Amount of judgment and sentence
- ↻ **Must command officer**
  - To bring defendant before court or
  - Place defendant in jail until can be brought before court

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**Commitment**  
**Art. 45.046, C.C.P.**

- ↻ **Defendant defaults in discharge of judgment**
- ↻ **Judge may order confinement if**
  - Defendant intentionally failed to make good faith effort to discharge judgment
  - Defendant is not indigent
- ↻ **Certified copy of judgment, sentence, and order sufficient to order confinement**

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**DPS FTA Program**  
**Chpt. 706, T.C.**

- ↻ **City may contract with DPS**
- ↻ **Denial of renewal of driver's license**
- ↻ **Defendant**
  - Fails to appear
  - Fails to pay
  - Fails to discharge fine as ordered by court
- ↻ **Warrants not required to be issued**

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**DPS FTA Program**

⚡ **Warning on traffic citations**

- If you fail to appear in court as provided by law for the prosecution of the offense or if you fail to pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the court, you may be denied renewal of your driver's license.

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**DPS FTA Program**

⚡ **Cost**

- Free to city
- Defendant pays additional \$30 court cost unless
  - Acquitted
  - Case dismissed because defendant had defense (no insurance, fail to display DL)
    - Report as an acquittal

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**DPS FTA Program**

⚡ **\$30 shall be paid when there is:**

- Appeal
- Dismissal
- Posting bond
- Payment of fine
- Suitable arrangements to pay (within court's discretion)

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**DPS FTA Program**

↻ **State and city not liable for damage**

- For acts of omission

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**Contracts with TX DOT**  
Chpt. 702, T.C.

↻ **Only home-rule cities can contract**

↻ **Refuse to register motor vehicles**

↻ **Defendant**

- Failed to appear
- Failed to pay
- Traffic offense

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**Contracts with TX DOT**

↻ **Warning on citation**

- If you fail to appear in court as provided by law for the prosecution of the offense or fail to pay the fine for a traffic violation, you might not be permitted to register a motor vehicle in this State.

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<b>Contracts with TX DOT</b>					
<ul style="list-style-type: none"> <li>↳ <b>Costs – No costs</b></li> <li>↳ <b>Court notifies county or TX DOT</b> <ul style="list-style-type: none"> <li>• <b>Entry of judgment &amp; payment of fine</b></li> <li>• <b>Appeal</b></li> <li>• <b>Dismissal</b></li> </ul> </li> </ul>					

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<b>Nonresident Violator Compact (Chpt 703, T.C.)</b>					
<ul style="list-style-type: none"> <li>↳ <b>Out-of-state-motorist</b> <ul style="list-style-type: none"> <li>• <b>Treated same as motorist living in state</b></li> <li>• <b>Some exceptions to offenses that can be reported</b></li> </ul> </li> </ul>					

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<b>Exceptions to reporting</b>							
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> <li>↳ <b>Moving traffic violations which alone carry a suspension;</b></li> <li>↳ <b>Equipment violations;</b></li> <li>↳ <b>Motor carrier violations;</b></li> <li>↳ <b>Lease law violations</b></li> <li>↳ <b>Registration law violations</b></li> </ul> </td> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> <li>↳ <b>Offenses which mandate personal appearances;</b></li> <li>↳ <b>Size and weight limit violations</b></li> <li>↳ <b>Parking and Standing violations</b></li> <li>↳ <b>Transportation of hazardous material violations</b></li> </ul> </td> </tr> </table>						<ul style="list-style-type: none"> <li>↳ <b>Moving traffic violations which alone carry a suspension;</b></li> <li>↳ <b>Equipment violations;</b></li> <li>↳ <b>Motor carrier violations;</b></li> <li>↳ <b>Lease law violations</b></li> <li>↳ <b>Registration law violations</b></li> </ul>	<ul style="list-style-type: none"> <li>↳ <b>Offenses which mandate personal appearances;</b></li> <li>↳ <b>Size and weight limit violations</b></li> <li>↳ <b>Parking and Standing violations</b></li> <li>↳ <b>Transportation of hazardous material violations</b></li> </ul>
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<h2 style="margin: 0;">Procedure</h2> <ul style="list-style-type: none"> <li>↳ <b>Mail first page of form to defendant</b> <ul style="list-style-type: none"> <li>• Defendant has 15 days to respond</li> </ul> </li> <li>↳ <b>If defendant does not respond</b> <ul style="list-style-type: none"> <li>• Mail 2<sup>nd</sup> and 3<sup>rd</sup> pages of form to DPS                             <ul style="list-style-type: none"> <li>• DPS notifies home state</li> <li>• Home state suspends DL until case taken care of in your court</li> </ul> </li> </ul> </li> <li>↳ <b>When defendant complies</b> <ul style="list-style-type: none"> <li>• Send defendant 4<sup>th</sup> page as receipt</li> <li>• Send DPS to withdraw suspension</li> <li>• Keep 6<sup>th</sup> page for court record</li> </ul> </li> </ul>
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<h2 style="margin: 0;">Nonresident Violators Compact</h2> <ul style="list-style-type: none"> <li>↳ <b>Time limit for reporting</b> <ul style="list-style-type: none"> <li>• 6 months</li> </ul> </li> </ul>
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<h2 style="margin: 0;">Collection Contracts</h2> <p style="margin: 0;">Art. 103.0031, C.C.P.</p> <ul style="list-style-type: none"> <li>↳ <b>City may contract</b> <ul style="list-style-type: none"> <li>• Fines &amp; costs owed</li> <li>• Defendant's who fail to appear</li> </ul> </li> <li>↳ <b>30% of amount owed</b></li> <li>↳ <b>60 days past due</b></li> </ul>
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**Collection Contracts**

- ↻ 30% paid by defendant
- ↻ If debt incurred before 6/18/2003, 30% or an amount contracted for paid by city
- ↻ Vendor has no authority
  - To make payment plans
  - Take payments on FTA cases

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**Civil Enforcement**  
Art. 45.047, C.C.P.

- ↻ Defendant defaults in payment of fine
- ↻ Judge may order fine and costs
  - Collected by execution against defendant's property
  - Same as a civil suit

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**Civil Enforcement**

- ↻ Writ of Execution
  - Usually Issued by clerk
  - Requested by prosecutor
  - Legal process of enforcing judgment by seizing and selling property of debtor

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**Civil Enforcement**

\* **Abstract of Judgment**

- Lien filed on property
- File with county clerk
- Must renewed every 10 years

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**The End**

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## CODE OF CRIMINAL PROCEDURE

**Art. 45.045. CAPIAS PRO FINE.** (a) If the defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according to its terms, the court may order a capias pro fine issued for the defendant's arrest. The capias pro fine shall state the amount of the judgment and sentence, and command the appropriate peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court.

(b) A capias pro fine may not be issued for an individual convicted for an offense committed before the individual's 17th birthday unless:

(1) the individual is 17 years of age or older;

(2) the court finds that the issuance of the capias pro fine is justified after considering:

(A) the sophistication and maturity of the individual;

(B) the criminal record and history of the individual; and

(C) the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and

(3) the court has proceeded under Article 45.050 to compel the individual to discharge the judgment.

(c) This article does not limit the authority of a court to order a child taken into custody under Article 45.058 or 45.059.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1971, 62nd Leg., p. 2991, ch. 987, Sec. 6, eff. June 15, 1971. Renumbered from Vernon's Ann.C.C.P. art. 45.51 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 45, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 283, Sec. 31, eff. Sept. 1, 2003.

**Art. 45.046. COMMITMENT.** (a) When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge determines that:

(1) the defendant intentionally failed to make a good faith effort to discharge the judgment; or

(2) the defendant is not indigent.

(b) A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1971, 62nd Leg., p. 2991, ch. 987, Sec. 7, eff. June 15, 1971. Renumbered from Vernon's Ann.C.C.P. art. 45.52 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 46, eff. Sept. 1, 1999.

**Art. 45.047. CIVIL COLLECTION OF FINES AFTER JUDGMENT.** If after a judgment and sentence is entered the defendant defaults in payment of a fine, the justice or judge may order the fine and costs collected by execution against the defendant's property in the same manner as a judgment in a civil suit.

Added by Acts 1999, 76th Leg., ch. 1545, Sec. 47, eff. Sept. 1, 1999.

**Art. 45.048. DISCHARGED FROM JAIL.** (a) A defendant placed in jail on account of failure to pay the fine and costs shall be discharged on habeas corpus by showing that the defendant:

(1) is too poor to pay the fine and costs; or

(2) has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than \$50 for each period of time served, as specified by the convicting court in the judgment in the case.

(b) A convicting court may specify a period of time that is not less than eight hours or more than 24 hours as the period for which a defendant who fails to pay the fines and costs in the case must remain in jail to satisfy \$50 of the fine and costs.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1981, 67th Leg., p. 2648, ch. 708, Sec. 3, eff. Aug. 31, 1981. Renumbered from Vernon's Ann.C.C.P. art. 45.53 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 48, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 872, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 65(a), eff. Jan. 1, 2004.

**Art. 45.049. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS.** (a) A justice or 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 discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.

(b) In the justice's or judge's order requiring a defendant to participate in community service work under this article, the justice or judge must specify the number of hours the defendant is required to work.

(c) The justice or judge may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this article 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 justice or judge who ordered the community service.

(d) A justice or judge may not order a defendant to perform more than 16 hours per week of community service under this article unless the justice or judge determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.

(e) A defendant is considered to have discharged not less than \$50 of fines or costs for each eight hours of community service performed under this article.

(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant under this article if the act or failure to act:

- (1) was performed pursuant to court order; and
- (2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

Added by Acts 1993, 73rd Leg., ch. 298, Sec. 1, eff. May 27, 1993. Renumbered from Vernon's Ann.C.C.P. art. 45.521 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 49, eff. Sept. 1, 1999; Subsec. (e) amended by Acts 2003, 78th Leg., ch. 209, Sec. 66(a), eff. Jan. 1, 2004.

**Art. 103.0031. COLLECTION CONTRACTS.** (a) The commissioners court of a county or the governing body of a municipality may enter into a contract with a private attorney or a public or private vendor for the provision of collection services for one or more of the following items:

(1) debts and accounts receivable such as unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid by:

- (A) a court serving the county or a court serving the municipality, as applicable; or
- (B) a hearing officer serving the municipality under Chapter 682, Transportation Code;

(2) amounts in cases in which the accused has failed to appear:

- (A) as promised under Subchapter A, Chapter 543, Transportation Code, or other law;
- (B) in compliance with a lawful written notice to appear issued under Article 14.06(b) or other law;
- (C) in compliance with a lawful summons issued under Article 15.03(b) or other law;
- (D) in compliance with a lawful order of a court serving the county or municipality; or
- (E) as specified in a citation, summons, or other notice authorized by Section 682.002,

Transportation Code, that charges the accused with a parking or stopping offense; and

(3) false alarm penalties or fees imposed by a county under Chapter 118 or 233, Local Government Code, or by a municipality under a municipal ordinance.

(b) A commissioners court or governing body of a municipality that enters into a contract with a private attorney or private vendor under this article may authorize the addition of a collection fee in the amount of 30 percent on each item described in Subsection (a) that is more than 60 days past due and has been referred to the attorney or vendor for collection. The collection fee does not apply to a case that has been dismissed by a court of competent jurisdiction or to any amount that has been satisfied through time-served credit or community service. The collection fee may be applied to any balance remaining after a partial credit for time served or community service if the balance is more than 60 days past due. Unless the contract provides otherwise, the court shall calculate the amount of any collection fee due to the governmental entity or to the private attorney or private vendor performing the collection services and shall receive all fees, including the collection fee. With respect to cases described by Subsection (a)(2), the amount to which the 30 percent collection fee applies is:

(1) the amount to be paid that is communicated to the accused as acceptable to the court under its standard policy for resolution of the case, if the accused voluntarily agrees to pay that amount; or

(2) the amount ordered paid by the court after plea or trial.

(c) The governing body of a municipality with a population of more than 1.9 million may authorize the addition of collection fees under Subsection (b) for a collection program performed by employees of the governing body.

(d) A defendant is not liable for the collection fees authorized under Subsection (b) if the court of original jurisdiction has determined the defendant is indigent, or has insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs.

(e) If a county or municipality has entered into a contract under Subsection (a) and a person pays an amount that is less than the aggregate total to be collected under Subsections (a) and (b), the allocation to the comptroller, the county or municipality, and the private attorney or vendor shall be reduced proportionately.

(f) An item subject to collection services under Subsection (a) and to the additional collection fee authorized by Subsection (b) is considered more than 60 days past due under Subsection (b) if it remains unpaid on the 61st day after the following appropriate date:

(1) with respect to an item described by Subsection (a)(1), the date on which the debt, fine, fee, forfeited bond, or court cost must be paid in full as determined by the court or hearing officer;

(2) with respect to an item described by Subsection (a)(2), the date by which the accused promised to appear or was notified, summoned, or ordered to appear; or

(3) with respect to an item described by Subsection (a)(3), the date on which a penalty or fee is due under a rule or order adopted under Chapter 233, Local Government Code, or an ordinance, policy, procedure, or rule of a municipality.

(g) A county or municipality that enters into a contract under Subsection (a) may not use the additional 30 percent collection fee authorized by Subsection (b) for any purpose other than compensating the private attorney or private vendor who earns the fee.

(h) This section does not apply to the collection of commercial bail bonds.

(i) The commissioners court of a county or the governing body of a municipality may enter into a contract as described in this article to collect a debt incurred as a result of the commission of a criminal or civil offense committed before the effective date of this subsection. The collection fee does not apply to a debt collected pursuant to a contract entered into under this subsection.

(j) A communication to the accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case must include a notice of the person's right to enter a plea or go to trial on any offense charged.

Added by Acts 1993, 73rd Leg., ch. 809, Sec. 3, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1279, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 346, Sec. 1, eff. June 18, 2003. Subsecs. (a), (b), (f) amended by Acts 2005, 79th Leg., ch. 1296, Sec. 4, eff. June 18, 2005.

## TRANSPORTATION CODE

**§ 702.001. DEFINITIONS.** In this chapter:

- (1) "Department" means the Texas Department of Transportation.
- (2) "Registration" of a motor vehicle includes a renewal of the registration of that vehicle.
- (3) "Traffic law" means a statute or ordinance, a violation of which is a misdemeanor punishable by a fine not to exceed \$200, that regulates, on a street, road, or highway of this state:
  - (A) the conduct or condition of a person while operating a motor vehicle; or
  - (B) the condition of a motor vehicle being operated.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 30.160(a), eff. Sept. 1, 1997.

**§ 702.002. APPLICATION.** This chapter applies only to a home-rule municipality.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 744, § 1, eff. June 18, 1999.

**§ 702.003. REFUSAL TO REGISTER VEHICLE.** (a) A county assessor-collector or the department may refuse to register a motor vehicle if the assessor-collector or the department receives under a contract information from a municipality that the owner of the vehicle has an outstanding warrant from that municipality for failure to appear or failure to pay a fine on a complaint that involves the violation of a traffic law.

(b) A municipality may contract with a county in which the municipality is located or the department to provide information to the county or department necessary to make a determination under Subsection (a).

(c) A municipality that has a contract under Subsection (b) shall notify the county or the department regarding a person for whom the county assessor-collector or the department has refused to register a motor vehicle on:

- (1) entry of a judgment against the person and the person's payment to the court of the fine for the violation and of all court costs;
- (2) perfection of an appeal of the case for which the arrest warrant was issued; or
- (3) dismissal of the charge for which the arrest warrant was issued.

(d) After notice is received under Subsection (c), the county assessor-collector or the department may not refuse to register the motor vehicle under Subsection (a).

(e) A contract under Subsection (b) must be entered into in accordance with Chapter 791, Government Code, and is subject to the ability of the parties to provide or pay for the services required under the contract.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 30.160(b), eff. Sept. 1, 1997.

**§ 702.004. WARNING; CITATION.** (a) A peace officer authorized to issue citations in a municipality that has a contract under Section 702.003 shall issue a written warning to each person to whom the officer issues a citation for a violation of a traffic law in the municipality.

(b) The warning must state that if the person fails to appear in court as provided by law for the prosecution of the offense or fails to pay a fine for the violation, the person might not be permitted to register a motor vehicle in this state.

(c) The warning required by this section may be printed on the citation.



Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Transportation Code § 702.005 and amended by Acts 1997, 75th Leg., ch. 165, § 30.160, eff. Sept. 1, 1997.

**§ 703.001. DEFINITIONS.** In this chapter:

(1) "Citation" and "motorist" have the meanings assigned by Article II, Section (b), Nonresident Violator Compact of 1977.

(2) "Department" and "licensing authority" mean the Department of Public Safety.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

**§ 703.002. ENACTMENT; TERMS OF COMPACT.** The Nonresident Violator Compact of 1977 is enacted and entered into as follows:

**NONRESIDENT VIOLATOR COMPACT OF 1977**

**Art. I. FINDINGS, DECLARATION OF POLICY, AND PURPOSE**

(a) The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

(i) Must post collateral or bond to secure appearance for trial at a later date; or

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

(b) It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

## **Art. II. DEFINITIONS**

(a) In the Nonresident Violator Compact, the following words have the meaning indicated, unless the context requires otherwise.

(b)(1) "Citation" means any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) "Court" means a court of law or traffic tribunal.

(4) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(6) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(7) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(10) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(11) "Terms of the citation" means those options expressly stated upon the citation.

## **Art. III. PROCEDURE FOR ISSUING JURISDICTION**

(a) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

(b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

(c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the Compact Manual as minimum requirements for effective processing by the home jurisdiction.

(d) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content as contained in the Compact Manual.

(e) The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

#### **Art. IV. PROCEDURE FOR HOME JURISDICTION**

(a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

(b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the Compact Manual.

#### **Art. V. APPLICABILITY OF OTHER LAWS**

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

#### **Art. VI. COMPACT ADMINISTRATOR PROCEDURES**

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a Board of Compact Administrators is established. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the Board of Compact Administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

(c) The board shall elect annually, from its membership, a chairman and a vice chairman.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize, and dispose of the same.

(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, person, firm, or corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the Compact Manual.

#### **Art. VII. ENTRY INTO COMPACT AND WITHDRAWAL**

(a) This compact shall become effective when it has been adopted by at least two jurisdictions.

(b)(1) Entry into the compact shall be made by a Resolution of Ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

(2) The resolution shall be in a form and content as provided in the Compact Manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(ii) Agreement to comply with the terms and provisions of the compact.

(iii) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than 60 days after notice has been given by the chairman of the Board of Compact Administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(c) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

#### **Art. VIII. EXCEPTIONS**

The provisions of this compact shall not apply to offenses which mandate personal appearance, moving traffic violations which alone carry a suspension, equipment violations, inspection violations, parking or standing violations, size and weight limit violations, violations of law governing the transportation of hazardous materials, motor carrier violations, lease law violations, and registration law violations.

#### **Art. IX. AMENDMENTS TO THE COMPACT**

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the Board of Compact Administrators and may be initiated by one or more party jurisdictions.

(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective 30 days after the date of the last endorsement.

(c) Failure of a party jurisdiction to respond to the compact chairman within 120 days after receipt of the proposed amendment shall constitute endorsement.

#### **Art. X. CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person, or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

#### **Art. XI. TITLE**

This compact shall be known as the Nonresident Violator Compact of 1977.

**§ 703.003. NONRESIDENT VIOLATOR COMPACT ADMINISTRATOR.** (a) The office of nonresident violator compact administrator is created.

(b) The governor shall appoint the compact administrator with the advice and consent of the senate to a two-year term that expires on February 1 of each odd-numbered year.

(c) The compact administrator is entitled to compensation and reimbursement for expenses as provided by legislative appropriation.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

**§ 703.004. REPORTS OF FAILURE TO COMPLY WITH CITATION.** (a) The department shall report the failure of a motorist to comply with the terms of a citation.

(b) The department shall establish procedures for making the reports required by Subsection (a).

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

## **CHAPTER 706 DENIAL OF RENEWAL OF LICENSE FOR FAILURE TO APPEAR**

**§ 706.001. DEFINITIONS.** In this chapter:

(1) "Complaint" means a notice of an offense as described by Article 27.14(d) or 45.019, Code of Criminal Procedure.

(2) "Department" means the Department of Public Safety.

(3) "Driver's license" has the meaning assigned by Section 521.001.

(4) "Highway or street" has the meaning assigned by Section 541.302.

(5) "Motor vehicle" has the meaning assigned by Section 541.201.

(6) "Operator" has the meaning assigned by Section 541.001.

(7) "Political subdivision" means a municipality or county.

(8) "Public place" has the meaning assigned by Section 1.07, Penal Code.

(9) "Traffic law" means a statute or ordinance, a violation of which is a misdemeanor punishable by a fine in an amount not to exceed \$1,000, that:

(A) regulates an operator's conduct or condition while operating a motor vehicle on a highway or street or in a public place;

(B) regulates the condition of a motor vehicle while it is being operated on a highway or street;

(C) relates to the driver's license status of an operator while operating a motor vehicle on a highway or street; or

(D) relates to the registration status of a motor vehicle while it is being operated on a highway or street.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, § 17.37(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1545, § 74, eff. Sept. 1, 1999.

**§ 706.002. CONTRACT WITH DEPARTMENT.** (a) A political subdivision may contract with the department to provide information necessary for the department to deny renewal of the driver's license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the court in a matter involving any offense that a court has jurisdiction of under Chapter 4, Code of Criminal Procedure.

(b) A contract under this section:

(1) must be made in accordance with Chapter 791, Government Code; and

(2) is subject to the ability of the parties to provide or pay for the services required under the contract.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, § 17.37(b), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 999, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1498, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 346, § 3, eff. June 18, 2003.

**§ 706.003. WARNING; CITATION.** (a) If a political subdivision has contracted with the department, a peace officer authorized to issue a citation in the jurisdiction of the political subdivision shall issue a written warning to each person to whom the officer issues a citation for a violation of a traffic law in the jurisdiction of the political subdivision.

(b) The warning under Subsection (a):

- (1) is in addition to any other warning required by law;
- (2) must state in substance that if the person fails to appear in court as provided by law for the prosecution of the offense or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court, the person may be denied renewal of the person's driver's license; and
- (3) may be printed on the same instrument as the citation.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1498, § 2, eff. Sept. 1, 2001.

**§ 706.004. DENIAL OF RENEWAL OF DRIVER'S LICENSE.** (a) If a political subdivision has contracted with the department, on receiving the necessary information from the political subdivision the department may deny renewal of the person's driver's license for failure to appear based on a complaint or citation or failure to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002(a).

(b) The information must include:

- (1) the name, date of birth, and driver's license number of the person;
- (2) the nature and date of the alleged violation;
- (3) a statement that the person failed to appear as required by law or failed to satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002(a); and
- (4) any other information required by the department.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, § 17.37(c), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 999, § 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1498, § 3, eff. Sept. 1, 2001.

**§ 706.005. CLEARANCE NOTICE TO DEPARTMENT.** (a) A political subdivision shall notify the department that there is no cause to continue to deny renewal of a person's driver's license based on the person's previous failure to appear or failure to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002(a), on payment of a fee as provided by Section 706.006 and:

- (1) the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
- (2) the dismissal of the charge for which the warrant of arrest was issued or judgment arose;
- (3) the posting of bond or the giving of other security to reinstate the charge for which the warrant was issued;

(4) the payment or discharge of the fine and cost owed on an outstanding judgment of the court; or

(5) other suitable arrangement to pay the fine and cost within the court's discretion.

(b) The department may not continue to deny the renewal of the person's driver's license under this chapter after the department receives notice:

(1) under Subsection (a);

(2) that the person was acquitted of the charge on which the person failed to appear; or

(3) from the political subdivision that the failure to appear report or court order to pay a fine or cost relating to the person:

(A) was sent to the department in error; or

(B) has been destroyed in accordance with the political subdivision's records retention policy.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, § 17.37(c), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 999, § 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1498, § 4, eff. Sept. 1, 2001.

**§ 706.006. PAYMENT OF ADMINISTRATIVE FEE.** (a) A person who fails to appear for a complaint or citation for an offense described by Section 706.002(a) shall be required to pay an administrative fee of \$30 for each complaint or citation reported to the department under this chapter, unless the person is acquitted of the charges for which the person failed to appear. The person shall pay the fee when:

(1) the court enters judgment on the underlying offense reported to the department;

(2) the underlying offense is dismissed; or

(3) bond or other security is posted to reinstate the charge for which the warrant was issued.

(b) A person who fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner the court orders shall be required to pay an administrative fee of \$30.

(c) The department may deny renewal of the driver's license of a person who does not pay a fee due under this section until the fee is paid. The fee required by this section is in addition to any other fee required by law.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, § 17.37(d), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 999, § 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1498, § 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, § 79(a), eff. Jan. 1, 2004.

**§ 706.007. RECORDS RELATING TO FEES; DISPOSITION OF FEES.** (a) An officer collecting a fee under Section 706.006 shall keep records and deposit the money as provided by Subchapter B, Chapter 133, Local Government Code.

(b) The custodian of the municipal or county treasury may deposit each fee collected under Section 706.006 as provided by Subchapter B, Chapter 133, Local Government Code.

(c) The custodian shall keep records of money received and disbursed under this section as provided by Subchapter B, Chapter 133, Local Government Code, and shall provide an annual report, in the form approved by the comptroller, of all money received and disbursed under this section to:

(1) the comptroller;

(2) the department; and

(3) another entity as provided by interlocal contract.

(d) Of each fee collected under Section 706.006, the custodian of a municipal or county treasury shall:

(1) send \$20 to the comptroller on or before the last day of each calendar quarter; and

(2) deposit the remainder to the credit of the general fund of the municipality or county.

(e) Of each \$20 received by the comptroller, the comptroller shall deposit \$10 to the credit of the department to implement this chapter.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 209, § 80(a), eff. Jan. 1, 2004.

**§ 706.008. CONTRACT WITH PRIVATE VENDOR; COMPENSATION.** (a) The department may contract with a private vendor to implement this chapter.

(b) The vendor performing the contract may be compensated by each political subdivision that has contracted with the department.

(c) Except for an action based on a citation issued by a peace officer employed by the department, the vendor may not be compensated with state money.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997.

**§ 706.009. VENDOR TO PROVIDE CUSTOMER SUPPORT SERVICES.** (a) A vendor must establish and maintain customer support services as directed by the department, including a toll-free telephone service line to answer and resolve questions from persons who are denied renewal of a driver's license under this chapter.

(b) The vendor shall comply with terms, policies, and rules adopted by the department to administer this chapter.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997.

**§ 706.010. USE OF INFORMATION COLLECTED BY VENDOR.** Information collected under this chapter by a vendor may not be used by a person other than the department, the political subdivision, or a vendor as provided by this chapter.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997.

**§ 706.011. LIABILITY OF STATE OR POLITICAL SUBDIVISION.** (a) An action for damages may not be brought against the state or a political subdivision based on an act or omission under this chapter, including the denial of renewal of a driver's license.

(b) The state or a political subdivision may not be held liable in damages based on an act or omission under this chapter, including the denial of renewal of a driver's license.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997.

**§ 706.012. RULES.** The department may adopt rules to implement this chapter.

Added by Acts 1997, 75th Leg., ch. 165, § 30.161(a), eff. Sept. 1, 1997.

#### INFORMATION FROM DPS WEBSITE

This is the cached copy of  
[http://www.txdps.state.tx.us/administration/driver\\_licensing\\_control/license\\_issuance/FTAPamphlet041404.pdf](http://www.txdps.state.tx.us/administration/driver_licensing_control/license_issuance/FTAPamphlet041404.pdf).



As a result of nonpayment of fines and costs associated with certain violations, political subdivisions and the State of Texas have encountered a significant loss of revenue. The TDPS offers a solution to serve the political subdivisions by denying the renewal of the driver license for failure to appear or failure to pay or satisfy a judgment ordered by a court. It is estimated that between 95 and 98 percent of the FTA offenders will comply with the political subdivisions that contract with the Department.

The intent of the Failure to Appear Program is to provide a system that requires the violator to appear before the originating court for a final disposition. This pamphlet identifies the sequence of events designed to bring both traffic and non-traffic violators to justice.

Texas Transportation Code Chapter 706 authorizes the Department to contract with political subdivisions to deny the renewal of an individual’s driver license for failure to appear for a complaint or citation or failure to pay or satisfy a judgment ordering payment of a fine or cost in the manner ordered by the court in a matter involving any offense that a court has jurisdiction of under Chapter 4, Code of Criminal Procedure. The main provisions of Chapter 706 are as follows:

- Authorizes the Department to contract with a private vendor to implement the system.
- Requires the political subdivision to compensate the vendor for services (prohibits the use of state funds to compensate a private vendor).
- Provides for an administrative fee of \$30.00 for each offense.
- Establishes immunity from suit and damages for the state and political subdivisions.
- Authorizes the Department to adopt rules to implement the provisions of the bill.
- Requires the peace officer to give written notice of the sanction at the time a citation for a traffic law violation is issued.
- Applies to offenses that occur on or after September 1, 1999.

Chapter 706 applies to both *traffic* and *non-traffic* violations. *Traffic violations* regulate a driver’s conduct or condition while operating a motor vehicle, or the condition of a motor vehicle while it is being operated on a street, road or highway. *Non-traffic violations* are those usually found in the Texas Penal Code and associated state laws and city ordinances.

**Required Warning on Citations for Traffic Law Violations:**

A peace officer authorized to issue citations within the jurisdiction of the local political subdivision shall issue a written warning to each person to whom the officer issues a citation for a traffic law violation. This warning shall be provided in addition to any other warnings required by law. The warning must state in substance that if the person fails to appear in court for the prosecution of **TEXAS DEPARTMENT OF PUBLIC SAFETY FAILURE TO APPEAR PROGRAM** the offense, or fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court, the person may be denied renewal of the person’s driver license.

The written warning may be printed on the citation or on a separate document.

**Warrants:**

It is currently estimated that as few as 25 percent of warrants issued are brought to final disposition. This means that over one and three quarter million offenders are ultimately not brought to justice.

The **FTA Program** does not require a warrant to be issued in response to a person’s failure to appear. Whether a political subdivision issues a warrant or not is irrelevant to an offense being accepted into the **FTA** system. It is the opinion of the political subdivision whether or not to continue issuing warrants. However, the warrant fee can only be enforced if a warrant is issued.

Some courts have decided to issue a warrant in addition to entering an individual into the **FTA** system, while others have stated they will no longer issue warrants.

### **Program Summary**

#### **Court Requirements:**

A contract between the Texas Department of Public Safety and the political subdivision must be in effect to implement the provisions of Texas Transportation Code Chapter 706. The Contract automatically renews on a yearly basis, absent notification of non-renewal. However, either party may terminate the Contract upon thirty (30) days written notice to the other party. After termination, the local political subdivision has a continuing obligation to report final dispositions and collect fees for all violators in the **FTA** system at the time of termination.

In order to have a violator entered into the **FTA** system, political subdivisions must electronically send a **FTA** report with the following information:

?

- The jurisdiction in which the alleged offense occurred
- Name of the political subdivision submitting the report
- Name, date of birth and Texas Driver License number of the person who failed to appear
- or failed to pay or satisfy a judgment
- The date(s) of the alleged violation(s)
- Brief description of the alleged violation(s)
- Fine amount
- Docket number
- Statement that the person failed to appear or failed to pay or satisfy a judgment
- Date that the person failed to appear or failed to pay or satisfy a judgment

The \$30.00 administrative fee should be included in the reported court fee in order to provide accurate fine information to the violator. It is the responsibility of all political subdivisions to provide accurate, complete and non-duplicative information.

#### **Vendor Services:**

The Texas Department of Public Safety has contracted with OmniBase Services of Texas, LP, to assist with the automation of the **FTA Program**. OmniBase will be utilized as the source database of original **FTA** record entries from the political subdivisions. This automated information system accurately stores and accesses records that will be made available to the Department.

OmniBase will maintain records on each person after compliance for five years and indefinitely on those who do not comply. This contractor will also maintain accessible customer support services, including a toll-free telephone line to answer and resolve questions from persons who are subject to denial of their driver license.

OmniBase will provide and maintain complete and accurate records on all transactions with political subdivisions and the Department. Data collected from any political subdivision, including the Department, shall be considered confidential and such data shall be used only for the purposes established in the contract.

OmniBase will provide the necessary protocol for using electronic methods and software to the political subdivisions at no cost.

OmniBase will mail the initial letter to the offender on modified Department letterhead. This document lists the court name, offense date, docket number, outstanding offense description, fines, costs, and fee amount,

the originating court's address and telephone number, a toll-free number for inquiries, as well as sanctions for non-compliance.

**Clearance Requirements:**

Within 5 business days of the time and date that payment or compliance information is received, the originating court should provide clearance information on the reported violator to the Vendor. All information will be entered on a computer and uploaded to the Vendor. If final disposition is received, it should be provided in the following manner:

- Name
- Texas Driver License number
- Docket number
- Plea
- Disposition
- Penalty

A \$30.00 administrative fee will apply to each **FTA** offense. Twenty dollars (\$20.00) of each fee collected will be sent to the State Comptroller's office on or before the last day of the month following the end of the calendar quarter. The local political subdivision must pay the Vendor a fee of six dollars (\$6.00) for each offense that has been reported to the Vendor and for which the political subdivision has collected the \$30 fee. The remaining four dollars (\$4.00) will be retained by the political subdivision. In the event that the individual is acquitted of the underlying charge, the originating court shall not require payment of the administrative fee. In the event that court costs and fees are not received by the local political subdivision (e.g. if the court rules an individual as indigent or the individual dies) then the administrative fee shall not be required. If an individual is ordered to pay court costs and fees, but is not assessed a fine, payment of the administrative fee is still required.

Timely payment must be made by the local political subdivision to the Vendor no later than the last day of the month following the close of the calendar quarter in which the payment was received by the local political subdivision.

**DPS Services:**

Once information has been transmitted to the Vendor, a data cartridge tape is produced and delivered to DPS. The tape contains all entries as well as final dispositions that have occurred since the previously delivered tape. Upon receipt at DPS, the **FTA** data cartridge is downloaded into the mainframe computer. The Department will perform an edit against all driver records and all erroneous data will be rejected and returned to the political subdivision for correction. All accepted data will automatically turn on a **FTA** flag for the appropriate driver record.

In lieu of a driver license renewal notice, the Department will notify **FTA** offenders by letter and inform the offender that the renewal of his/her license will be denied. In addition, the letter will provide the toll-free number for compliance information and will inform the offender of the consequences of driving while license invalid (DWLI). (See Transportation Code Sec. 521.457)

If the **FTA** offender should go to the Driver License office to renew their license, after receiving notice of denial, they will be issued a sixty-day temporary permit. If the offender inquires about outstanding **FTA** citations, the clerk will refer the offender to the toll-free number provided by the Vendor.

Upon receipt at DPS headquarters, renewal requests with outstanding **FTA** citations will be withheld from the license manufacturing process. The renewal request is updated on the basic screen and the driver record is marked, "DENY RENEWAL LTR #2-**FTA**".

The Department will generate a second letter to the **FTA** offender that will inform the offender that his/her driver license will not be renewed because of outstanding **FTA** citations. In addition, the letter will inform the offender that upon the expiration of the temporary permit, all driving privileges will be denied. The letter will provide the toll-free number for compliance information, inform the offender of the driving while license invalid (DWLI) consequences, and inform him/her that upon compliance, the driver license will be produced and mailed.

After compliance is received, an automated process will be utilized to produce a driver license and the record will reflect "COMPLIANCE RECEIVED-**FTA**." The driver license is then mailed to the individual. If a person does not comply and/or the person does not attempt to renew their license (including offenders who attempt to renew their license up to one year prior to the expiration), sixty days after the expiration of the driver license or the issuance of a temporary permit, whichever comes first, a third letter will be generated to notify the individual that he/she is officially denied renewal of his/her driver license. The Department will simultaneously update the driver record to reflect "DENY RENEWAL-**FTA**." The **FTA** offender will then fall under the existing DWLI statutes if found operating a vehicle.

## **Technical Overview**

### **Equipment and Software Requirements:**

Participation in the **FTA program** requires the participating jurisdiction to have an appropriate computer. For other than a few large jurisdictions, participation requires a Windows 95, Windows 98, Windows NT, or later version of a Windows operating system, and an IBM PC or compatible with a minimum 486 processor, 16 megabytes of Random Access Memory, 500 megabyte or larger hard drive, and a compatible modem. The Vendor will provide the software necessary for the jurisdiction to participate in the **FTA Program** at no charge. The software is referred to as Remote Entry System (RES) software. If the jurisdiction uses a third-party court software vendor, (i.e., OCA, CSI, HCS, etc.) the court software vendor's application will manage the database, do the reporting of offenses, make corrections on denied/rejected records and export them to RES. Accordingly, the jurisdiction may be able to avoid the double entry of violations and only use RES for the transmission of the offenses to the Vendor.

The jurisdiction will use its computer to upload data through a modem to the Vendor's server. Each business day, the Vendor will download the data received from jurisdictions and export the data to a 3480 data tape. The tape is delivered to DPS daily where it is processed against driver license records. After processing, DPS provides confirmation or a rejected status of the records that were transmitted the previous day. The Vendor retrieves the daily tapes and processes the confirmations and rejections into the Vendor database server for the jurisdiction to download the next time the jurisdiction transmits. RES will report all records rejected by DPS. The jurisdiction may correct and retransmit the records that were rejected.

An alternative means of transmission may be available to large jurisdictions that have a mainframe or server and are expecting to transmit a large volume of cases each day. These systems may either use the RES system or transmit records directly to the Vendor server by modem or the Internet. This alternative may require special programming by the jurisdiction and would be at the jurisdiction's own expense.

This summary is intended to provide a general description of the technical application of the Failure to Appear **Program**. For more specific information on the technical systems, jurisdictions may contact the vendor, OmniBase Services of Texas, LP, at (512) 346-6511.

## **PROPERTY CODE**

### **42. PERSONAL PROPERTY**

**§ 42.001. PERSONAL PROPERTY EXEMPTION.** (a) Personal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if:

(1) the property is provided for a family and has an aggregate fair market value of not more than \$60,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property; or

(2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than \$30,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.

(b) The following personal property is exempt from seizure and is not included in the aggregate limitations prescribed by Subsection (a):

(1) current wages for personal services, except for the enforcement of court-ordered child support payments;

(2) professionally prescribed health aids of a debtor or a dependent of a debtor; and

(3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor.

(c) This section does not prevent seizure by a secured creditor with a contractual landlord's lien or other security in the property to be seized.

(d) Unpaid commissions for personal services not to exceed 25 percent of the aggregate limitations prescribed by Subsection (a) are exempt from seizure and are included in the aggregate.

Acts 1983, 68th Leg., p. 3522, ch. 576, § 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 175, § 1, eff. May 24, 1991; Acts 1997, 75th Leg., ch. 1046, § 1, eff. Sept. 1, 1997.

**§ 42.002. PERSONAL PROPERTY.** (a) The following personal property is exempt under Section 42.001(a):

(1) home furnishings, including family heirlooms;

(2) provisions for consumption;

(3) farming or ranching vehicles and implements;

(4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;

(5) wearing apparel;

(6) jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);

(7) two firearms;

(8) athletic and sporting equipment, including bicycles;

(9) a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person;

(10) the following animals and forage on hand for their consumption:

(A) two horses, mules, or donkeys and a saddle, blanket, and bridle for each;

(B) 12 head of cattle;

(C) 60 head of other types of livestock; and

(D) 120 fowl; and

(11) household pets.

(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code, or Subchapter F, Chapter 501, Transportation Code, or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.

Acts 1983, 68th Leg., p. 3522, ch. 576, § 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 175, § 1, eff. May 24, 1991; Acts 1993, 73rd Leg., ch. 216, § 1, eff. May, 17, 1993; Acts 1997, 75th Leg., ch. 165,

§ 30.245, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, § 2.36, eff. July 1, 2001; Acts 1999, 76th Leg., ch. 846, § 1, eff. Aug. 30, 1999.

**§ 42.0021. ADDITIONAL EXEMPTION FOR CERTAIN SAVINGS PLANS.** (a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, and under any annuity or similar contract purchased with assets distributed from that type of plan, and under any retirement annuity or account described by Section 403(b) or 408A of the Internal Revenue Code of 1986, and under any individual retirement account or any individual retirement annuity, including a simplified employee pension plan, and under any health savings account described by Section 223 of the Internal Revenue Code of 1986, is exempt from attachment, execution, and seizure for the satisfaction of debts unless the plan, contract, or account does not qualify under the applicable provisions of the Internal Revenue Code of 1986. A person's right to the assets held in or to receive payments, whether vested or not, under a government or church plan or contract is also exempt unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974. If this subsection is held invalid or preempted by federal law in whole or in part or in certain circumstances, the subsection remains in effect in all other respects to the maximum extent permitted by law.

(b) Contributions to an individual retirement account, other than contributions to a Roth IRA described in Section 408A, Internal Revenue Code of 1986, or an annuity that exceed the amounts deductible under the applicable provisions of the Internal Revenue Code of 1986 and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law. Amounts qualifying as nontaxable rollover contributions under Section 402(a)(5), 403(a)(4), 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts treated as qualified rollover contributions under Section 408A, Internal Revenue Code of 1986, are treated as exempt amounts under Subsection (a). In addition, amounts qualifying as nontaxable rollover contributions under Section 402(c), 402(e)(6), 402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10), 408(d)(3), or 408A of the Internal Revenue Code of 1986 on or after January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts qualifying as nontaxable rollover contributions under Section 223(f)(5) of the Internal Revenue Code of 1986 on or after January 1, 2004, are treated as exempt amounts under Subsection (a).

(c) Amounts distributed from a plan or contract entitled to the exemption under Subsection (a) are not subject to seizure for a creditor's claim for 60 days after the date of distribution if the amounts qualify as a nontaxable rollover contribution under Subsection (b).

(d) A participant or beneficiary of a stock bonus, pension, profit-sharing, retirement plan, or government plan is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the plan to secure a loan to the participant or beneficiary from the plan, and the right to the assets held in or to receive payments from the plan is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

(e) If Subsection (a) is declared invalid or preempted by federal law, in whole or in part or in certain circumstances, as applied to a person who has not brought a proceeding under Title 11, United States Code, the subsection remains in effect, to the maximum extent permitted by law, as to any person who has filed that type of proceeding.

(f) A reference in this section to a specific provision of the Internal Revenue Code of 1986 includes a subsequent amendment of the substance of that provision.

Added by Acts 1987, 70th Leg., ch. 376, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1122, § 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 963, § 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 106, § 1, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 130, § 1, 2, eff. May 24, 2005.

**§ 42.0022. EXEMPTION FOR COLLEGE SAVINGS PLANS.** (a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments or benefits under any of the following is exempt from attachment, execution, and seizure for the satisfaction of debts:

(1) any fund or plan established under Subchapter F, Chapter 54, Education Code, including the person's interest in a prepaid tuition contract;

(2) any fund or plan established under Subchapter G, Chapter 54, Education Code, including the person's interest in a savings trust account; or

(3) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986, as amended.

(b) If any portion of this section is held to be invalid or preempted by federal law in whole or in part or in certain circumstances, this section remains in effect in all other respects to the maximum extent permitted by law.

Added by Acts 2003, 78th Leg., ch. 113, § 1, eff. Sept. 1, 2003.

**§ 42.003. DESIGNATION OF EXEMPT PROPERTY.** (a) If the number or amount of a type of personal property owned by a debtor exceeds the exemption allowed by Section 42.002 and the debtor can be found in the county where the property is located, the officer making a levy on the property shall ask the debtor to designate the personal property to be levied on. If the debtor cannot be found in the county or the debtor fails to make a designation within a reasonable time after the officer's request, the officer shall make the designation.

(b) If the aggregate value of a debtor's personal property exceeds the amount exempt from seizure under Section 42.001(a), the debtor may designate the portion of the property to be levied on. If, after a court's request, the debtor fails to make a designation within a reasonable time or if for any reason a creditor contests that the property is exempt, the court shall make the designation.

Acts 1983, 68th Leg., p. 3524, ch. 576, § 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 175, § 1, eff. May 24, 1991.

**§ 42.004. TRANSFER OF NONEXEMPT PROPERTY.** (a) If a person uses the property not exempt under this chapter to acquire, obtain an interest in, make improvement to, or pay an indebtedness on personal property which would be exempt under this chapter with the intent to defraud, delay, or hinder an interested person from obtaining that to which the interested person is or may be entitled, the property, interest, or improvement acquired is not exempt from seizure for the satisfaction of liabilities. If the property, interest, or improvement is acquired by discharging an encumbrance held by a third person, a person defrauded, delayed, or hindered is subrogated to the rights of the third person.

(b) A creditor may not assert a claim under this section more than two years after the transaction from which the claim arises. A person with a claim that is unliquidated or contingent at the time of the transaction may not assert a claim under this section more than one year after the claim is reduced to judgment.

(c) It is a defense to a claim under this section that the transfer was made in the ordinary course of business by the person making the transfer.

Acts 1983, 68th Leg., p. 3524, ch. 576, § 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 175, § 1, eff. May 24, 1991.

**§ 42.005. CHILD SUPPORT LIENS.** Sections 42.001, 42.002, and 42.0021 of this code do not apply to a child support lien established under Subchapter G, Chapter 157, Family Code.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, § 4.07, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 165, § 7.56, eff. Sept. 1, 1997.





**TMCEC FORMS**



**AFFIDAVIT FOR PROBABLE CAUSE FOR DEFAULT IN CAPIAS PRO FINE**

**CAUSE NUMBER:** \_\_\_\_\_

**STATE OF TEXAS**

§

**IN THE MUNICIPAL COURT**

**VS.**

§

**CITY OF** \_\_\_\_\_

§

\_\_\_\_\_ **COUNTY, TEXAS**

I, \_\_\_\_\_, being duly sworn, upon oath, state that I have good reason to believe and do believe that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, \_\_\_\_\_, Defendant, defaulted in payment of a fine and court costs. My belief is based upon the following:

I am the Municipal Court Clerk and custodian of the records for the \_\_\_\_\_ Municipal Court, City of \_\_\_\_\_, \_\_\_\_\_ County, Texas. On \_\_\_\_\_, 200\_\_, I personally examined the official records of this Municipal Court. The records indicate that the Defendant in the above styled and numbered cause was charged with the offense of \_\_\_\_\_ and was found guilty of the offense on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_. The records indicate that the Defendant was ordered to make (a payment)(certain prescribed payments) on the fine and costs imposed in the above mentioned case on the following date(s): \_\_\_\_\_.

The official Court record indicates that the Defendant did not appear on \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ to make a payment or to request an extension as ordered by the Court. The official Court record shows that said Defendant owes \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in fine and court costs to satisfy the judgment.

\_\_\_\_\_  
Affiant

Sworn to and subscribed before me on \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
(Judge) (Clerk) (Deputy Clerk)

City of \_\_\_\_\_

\_\_\_\_\_ County, Texas

\*Effective 1/04



CAPIAS PRO FINE WARRANT

b

CAUSE NUMBER: \_\_\_\_\_

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF \_\_\_\_\_

\_\_\_\_\_

§

\_\_\_\_\_ COUNTY, TEXAS

To the Chief of Police of the City of \_\_\_\_\_ or any peace officer of the State of Texas – GREETINGS

Whereas on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before Judge \_\_\_\_\_ of Municipal Court of the City of \_\_\_\_\_, Texas, \_\_\_\_\_, Defendant, date of birth \_\_\_\_\_, Texas driver's license number \_\_\_\_\_, was convicted of the offense of: \_\_\_\_\_ and a judgment was rendered by said Court in favor of the State, against said Defendant for the sum of \$ \_\_\_\_\_ and all costs of court; and there is due and unpaid of said judgment the amount of \$ \_\_\_\_\_.

The Court hereby finds that the said defendant has defaulted and failed to wholly satisfy the judgment in the above styled case.

You are therefore commanded to bring said Defendant before the Municipal Court of the City of \_\_\_\_\_, Texas or place him or her in jail until (he)(she) can be brought before the Court without delay. You are commanded to notify the Court immediately upon arrest of the Defendant.

In witness whereof, I have hereunto set my hand at my office in the Municipal Court of the City of \_\_\_\_\_, Texas this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Judge, Municipal Court

OFFICER'S RETURN

Came to hand the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, at \_\_\_\_\_ o'clock \_\_.m. Executed on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, at \_\_\_\_\_ o'clock \_\_.m. the same by arresting \_\_\_\_\_, the named Defendant.

\_\_\_\_\_  
Arresting Officer



ORDER OF FINE COMMITMENT

b

CAUSE NUMBER: \_\_\_\_\_

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

TO THE SHERIFF OF \_\_\_\_\_ COUNTY, TEXAS – GREETINGS:

You are commanded to take into custody and commit to the jail of your County the above-named Defendant, who was, on the \_\_\_\_\_, day of \_\_\_\_\_, 200\_\_\_\_, convicted before the Municipal Court in the City of \_\_\_\_\_, \_\_\_\_\_ County, Texas of the offense of \_\_\_\_\_ and was assessed a fine and court costs totaling \$ \_\_\_\_\_, of which \$ \_\_\_\_\_ is unpaid.

The undersigned finds that (1) the arrestee is the same person as the Defendant in the cause described above; (2) the Defendant has intentionally failed to make a good faith effort to pay said fine and costs; and (3) the Defendant is not indigent; or (4) the Defendant was determined to be indigent but has failed to make a good faith effort to discharge said fine and costs by means of community service.

Therefore, you are commanded to keep the Defendant in custody until the sum of \$ \_\_\_\_\_ is fully paid or defendant is otherwise discharged by law. Unless otherwise specified in the judgment or sentence in said cause, 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.

In the event Defendant is committed for defaulting in more than one judgment, jail credit is to be assessed:

- Concurrently (at the same time, per judgment until jail credit exceeds or equals the sum total of fine and costs).
- Consecutively (“stacked,” one sentence of confinement is to follow another until jail credit exceeds or equals the sum total of fine and costs).
- Consecutively with following cause(s): (List cause number(s), Court(s), date of judgment(s), offense(s), and fine and costs total(s).)

Ordered on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
 Judge, Municipal Court  
 City of \_\_\_\_\_  
 \_\_\_\_\_ County, Texas

\*Effective 1/04





**ABSTRACT OF JUDGMENT**

**CAUSE NUMBER:** \_\_\_\_\_

**STATE OF TEXAS**

§

**IN THE MUNICIPAL COURT**

**VS.**

§

**CITY OF** \_\_\_\_\_

§

\_\_\_\_\_ **COUNTY, TEXAS**

I, \_\_\_\_\_, Municipal Court Clerk for the City of \_\_\_\_\_, do hereby verify that on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, in the \_\_\_\_\_ Municipal Court, \_\_\_\_\_ County, Texas, in a cause entitled State of Texas vs. \_\_\_\_\_, Cause Number \_\_\_\_\_ on the docket of the Court, judgment was rendered in favor of the City of \_\_\_\_\_, (address) \_\_\_\_\_ against \_\_\_\_\_, (Defendant's address) \_\_\_\_\_, whose birth date is \_\_\_\_\_, whose Social Security Number is \_\_\_\_\_, and whose driver's license number is \_\_\_\_\_, in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) which includes court costs. The balance due on said judgment is \$ \_\_\_\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Municipal Court Clerk  
City of \_\_\_\_\_  
\_\_\_\_\_  
County, Texas

Subscribed, sworn to and acknowledged before me, the undersigned authority, by \_\_\_\_\_, Court Clerk for the City of \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

After recording, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



WRIT OF EXECUTION

CAUSE NUMBER: \_\_\_\_\_

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF \_\_\_\_\_

§

\_\_\_\_\_ COUNTY, TEXAS

To Any Sheriff or Any Constable within the State of Texas:

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, \_\_\_\_\_ Municipal Court recovered a judgment in the Municipal Court of the City of \_\_\_\_\_, \_\_\_\_\_ County, Texas against \_\_\_\_\_, which judgment is recorded in the minutes of said Court. Said judgment is for the sum of \$ \_\_\_\_\_, of which \$ \_\_\_\_\_ is actually due.

Therefore, you are commanded that out of the property of \_\_\_\_\_, Defendant in execution, subject to execution by law, you cause to be made the sum of \$ \_\_\_\_\_, together with the costs of executing this writ.

You shall execute this writ according to its terms, and according to law, and have the said sums of money, together with this writ, showing how you have executed the same, before said Court, at the Courthouse in the City of \_\_\_\_\_, \_\_\_\_\_ County, Texas, within ninety (90) days from the date of this writ.

Witness, \_\_\_\_\_, Municipal Court Clerk for the City of \_\_\_\_\_, Texas this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Attest:

\_\_\_\_\_  
Municipal Court Clerk

Officer's Return

Received this writ of execution the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m. Executed at \_\_\_\_\_, State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by seizing and selling property, to wit: \_\_\_\_\_  
on \_\_\_\_\_ day \_\_\_\_\_, 200\_\_.



**STATE OF**



**TEXAS**

Nonresident

CITATION NO.		DATE OF VIOLATION		LOCATION OF VIOLATION		SECTION VIOLATED				
DESCRIPTION OF VIOLATION					FINE AND COST		TRIAL DATE:			
DRIVER'S LICENSE NO.		STATE	DATE OF BIRTH		<b>C O U R T  I N F O</b>					
NAME	LAST	FIRST	MIDDLE	SEX				NAME OF COURT		
STREET ADDRESS								MAILING ADDRESS		
CITY	STATE		ZIP CODE					CITY	STATE	ZIP CODE
REGIS. (TAG) NO	STATE	YEAR	MAKE	MODEL				TELEPHONE		DATE
								AREA CODE	NUMBER	

**DEFENDANTS NOTICE**

Copies of form

1. Original sent to defendant  
Hold in pending file for 15 days
2. 2<sup>nd</sup> and 3<sup>rd</sup> copies are mailed to Texas Department of Public Safety to address on notice if payment not received, Department of Public Safety will notify defendant's home state.
3. 5<sup>th</sup> and 6<sup>th</sup> copies of the notice are held in the court file. If at any time beyond this point in the process the defendant resolves the case with the court it is imperative that the court complete the 4<sup>th</sup> and 5<sup>th</sup> copies of the notice "Defendants Receipt" and "Notice of Withdrawal of Suspension". The receipt should be mailed to the defendant and the notice of withdrawal of suspension to Texas Department of Public Safety Department of Public Safety will notify home state of payment being received.

ADDED 8/03

MEMBER JURISDICTIONS OF  
NONRESIDENT VIOLATOR COMPACT

Alabama  
Arizona  
Arkansas  
Colorado  
Connecticut  
Delaware  
District of Columbia  
Florida  
Georgia  
Hawaii  
Idaho

Illinois  
Indiana  
Iowa  
Kansas  
Kentucky  
Louisiana  
Maine  
Maryland  
Massachusetts  
Minnesota  
Mississippi  
Missouri

Nebraska  
Nevada  
New Hampshire  
New Jersey  
New Mexico  
New York  
North Carolina  
North Dakota  
Ohio  
Oklahoma

Pennsylvania  
Rhode Island  
South Carolina  
South Dakota  
Tennessee  
Texas  
Utah  
Vermont  
Virginia  
Washington  
West Virginia  
Wyoming

Revised (11/04) 1

**Interlocal Cooperation Contract**

**STATE OF TEXAS**

§

**COUNTY OF \_\_\_\_\_**

§

§

**I. Parties**

This Interlocal Cooperation Contract ("Contract") is made and entered into between the Texas Department of Public Safety ("TDPS"), a political subdivision of the State of Texas, and the \_\_\_\_\_ of \_\_\_\_\_, a local political subdivision of the State of Texas.

**II. Overview**

The purpose of this Contract is to implement the provisions of Texas Transportation Code Chapter 706. A local political subdivision may contract with the TDPS to provide information necessary to deny renewal of the driver license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the court in a matter involving any offense that a court has jurisdiction of under Chapter 4, Code of Criminal Procedure.

The TDPS has authority to contract with a private vendor ("Vendor") pursuant to Texas Transportation Code §706.008. The Vendor will provide the necessary goods and services to establish an automated system ("FTA System") whereby information regarding violators subject to the provisions of Texas Transportation Code Chapter 706 may be accurately stored and accessed by the TDPS. Utilizing the FTA System as a source of information, the TDPS may deny renewal of a driver license to a person who is the subject of an FTA System entry.

Each local political subdivision contracting with the TDPS will pay monies to the Vendor based on a fee certain established by this Contract. The TDPS will make no direct or indirect payments to the Vendor. The Vendor will ensure that accurate information is available to the TDPS, political subdivisions and persons seeking to clear their licenses at all reasonable times.

**III. Definitions**

"Complaint" means notice of an offense as defined in Article 27.14(d) or Article 45.019, Code of Criminal Procedure.

"Department" or "TDPS" means the Texas Department of Public Safety.

“Failure to Appear Program” or “FTA Program” refers to the implementation efforts of all parties, including those system components provided by the TDPS, local political subdivisions and the Vendor, including the FTA System.

“Failure to Appear System” or “FTA System” refers to the goods and services, including all hardware, software, consulting services, telephone and related support services, supplied by the Vendor.

“FTA Software” refers to computer software developed or maintained now or in the future by the Vendor to support the FTA System.

“Originating Court” refers to the court in which an applicable violation has been filed for which a person has failed to appear or failed to pay or satisfy a judgment and which has submitted an appropriate FTA Report.

“State” refers to the State of Texas.

“Local political subdivision” refers to a city or county of the State of Texas. Unless otherwise defined, terms used herein shall have the meaning assigned by Texas Transportation Code Chapter 706 or other relevant statute. Terms not defined in this Contract or by other relevant statutes shall be given their ordinary meanings.

#### **IV. Governing Law**

This Contract is entered into pursuant to Texas Government Code Chapter 791 and is subject to the laws and jurisdiction of the State of Texas and shall be construed and interpreted accordingly.

#### **V. Venue**

The parties agree that this contract is deemed performable in Travis County, Texas, and that venue for any suit arising from the interpretation or enforcement of this Contract shall lie in Travis County, Texas.

#### **VI. Application and Scope of Contract**

This Contract applies to each FTA Report submitted to and accepted by the TDPS or the Vendor by the local political subdivision pursuant to the authority of Texas Transportation Code Chapter 706.

#### **VII. Required Warning on Citation for Traffic Law Violations**

A peace officer authorized to issue citations within the jurisdiction of the local political subdivision shall issue a written warning to each person to whom the officer issues a citation for a traffic law violation. This warning shall be provided in addition to any other warnings required by law. The warning must state in substance that if the person fails to appear in court for the prosecution of the offense or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court, the person may



be denied renewal of the person's driver license. The written warning may be printed on the citation or on a separate instrument.

### **VIII. FTA Report**

If the person fails to appear or fails to pay or satisfy a judgment as required by law, the local political subdivision may submit an FTA Report containing the following information:

- (1) the jurisdiction in which the alleged offense occurred;
- (2) the name of the local political subdivision submitting the report;
- (3) the name, date of birth and Texas driver license number of the person who failed to appear or failed to pay or satisfy a judgment;
- (4) the date of the alleged violation;
- (5) a brief description of the alleged violation;
- (6) a statement that the person failed to appear or failed to pay or satisfy a judgment as required by law;
- (7) the date that the person failed to appear or failed to pay or satisfy a judgment; and
- (8) any other information required by the TDPS.

There is no requirement that a criminal warrant be issued in response to the person's failure to appear. The local political subdivision must make reasonable efforts to ensure that all FTA Reports are accurate, complete and non-duplicative.

### **IX. Clearance Reports**

The originating court that files the FTA Report has a continuing obligation to review the report and promptly submit appropriate additional information or reports to the Vendor or the TDPS. The clearance report shall identify the person, state whether or not a fee was required, advise the TDPS to lift the denial of renewal and state the grounds for the action. All clearance reports must be submitted within five business days of the time and date that the originating court receives appropriate payment or other information that satisfies the citizen's obligation to that court.

To the extent that a local political subdivision utilizes the FTA Program by submitting an FTA Report, there is a corresponding obligation to collect the statutorily required \$30.00 administrative fee. If the person is acquitted of the underlying offense for which the original FTA Report was filed, the originating court shall not require payment of the administrative fee. The local political subdivision shall submit a clearance report within five business days advising the TDPS to lift the denial of renewal and identifying the grounds for the action.

The local political subdivision must promptly file a clearance report upon payment of the administrative fee and:

- (1) the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
- (2) the dismissal of the charge for which the warrant of arrest was issued or judgment arose;
- (3) the posting of a bond or the giving of other security to reinstate the charge for which the warrant was issued;
- (4) the payment or discharge of the fine and cost owed on an outstanding judgment of the court; or

(5) other suitable arrangement to pay the fine and cost within the court's discretion.

The TDPS will not continue to deny renewal of the person's driver license after receiving notice from the local political subdivision that the FTA Report was submitted in error or has been destroyed in accordance with the local political subdivision's record retention policy.

#### **X. Compliance with Law**

The local political subdivision understands and agrees that it will comply with all local, state and federal laws in the performance of this Contract, including administrative rules adopted by the TDPS.

#### **XI. Accounting Procedures**

An officer collecting fees pursuant to Texas Transportation Code §706.006 shall keep separate records of the funds and shall deposit the funds in the appropriate municipal or county treasury. The custodian of the municipal or county treasury may deposit such fees in an interest-bearing account and retain the interest earned thereon for the local political subdivision. The custodian shall keep accurate and complete records of funds received and disbursed in accordance with this Contract and the governing statutes.

The custodian shall remit \$20.00 of each fee collected pursuant to Texas Transportation Code §706.006 to the Comptroller on or before the last day of each calendar quarter and retain \$10.00 of each fee for payment to the Vendor and credit to the general fund of the municipal or county treasury.

#### **XII. Payments to Vendor**

The TDPS has contracted with OmniBase Services of Texas ("Vendor"), a corporation organized and incorporated under the laws of the State of Texas, with its principal place of business in Austin, Texas, to assist with the implementation of the FTA Program.

Correspondence to the Vendor may be addressed as follows:

OmniBase Services of Texas  
7320 North Mo Pac Expressway, Suite 310  
Austin, Texas 78731  
(512) 346-6511 ext. 100; (512) 346-9312 (fax)

The local political subdivision must pay the Vendor a fee of \$6.00 per person for each violation which has been reported to the Vendor and for which the local political subdivision has subsequently collected the statutorily required \$30.00 administrative fee. In the event that the person has been acquitted of the underlying charge, no payment will be made to the Vendor or required of the local political subdivision.

The parties agree that payment shall be made by the local political subdivision to the Vendor no later than the last day of the month following the close of the calendar quarter in which the payment was received by the local political subdivision.

#### **XIII. Litigation and Indemnity**

In the event that the local political subdivision is aware of litigation in which this Contract or Texas Transportation Code Chapter 706 is subject to constitutional, statutory, or common-law challenge, or is struck down by judicial decision, the local political subdivision shall make a good faith effort to notify the TDPS immediately.

Each party may participate in the defense of a claim or suit affecting the FTA Program, but no costs or expenses shall be incurred for any party by the other party without written consent.

To the extent authorized by law, the local political subdivision agrees to indemnify and hold harmless the TDPS against any claims, suits, actions, damages and costs of every nature or description arising out of or resulting from the performance of this Contract, and the local political subdivision further agrees to satisfy any final judgment awarded against the local political subdivision or the TDPS arising from the performance of this Contract, provided said claim, suit, action, damage, judgment or related cost is not attributed by the judgment of a court of competent jurisdiction to the sole negligence of the TDPS.

It is the agreement of the parties that any litigation involving the parties to this Contract may not be compromised or settled without the express consent of the TDPS, unless such litigation does not name the TDPS as a party.

This section is subject to the statutory rights and duties of the Attorney General for the State of Texas.

#### **XIV. Contract Modification**

No modifications, amendments or supplements to, or waivers of, any provision of this Contract shall be valid unless made in writing and executed in the same manner as this Contract.

#### **XV. Severability**

If any provision of this Contract is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom.

#### **XVI. Multiple Counterparts**

This agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitutes, collectively, one agreement. But, in making proof of this agreement, it shall not be necessary to produce or account for more than one such counterpart.

#### **XVII. Effective Date of Contract**

This contract shall be in effect from and after the date that the final signature is set forth below. This contract shall automatically renew on a yearly basis. However, either party may terminate this agreement upon thirty days written notice to the other party.

Notice may be given at the following addresses:

Local Political Subdivision  
\_\_\_\_\_  
Program  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Texas Department of Public Safety  
Safety Project Administrator, FTA  
  
5805 North Lamar Boulevard  
Austin, Texas 78773-0001  
(512) 424-5948 [fax]

Notice is effective upon receipt or three days after deposit in the U. S. mail, whichever occurs first. After termination, the local political subdivision has a continuing obligation to report dispositions and collect fees for all violators in the FTA System at the time of termination.

**TEXAS DEPARTMENT OF  
PUBLIC SAFETY**

**LOCAL POLITICALSUBDIVISION\***

\_\_\_\_\_  
Oscar Ybarra  
Chief of Finance

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\*An additional page may be attached if more than one signature is required to execute this Contract on behalf of the local political subdivision. Each signature block must contain the person's title and date.

FUNDED BY A GRANT FROM THE  
TEXAS COURT OF CRIMINAL APPEALS

## **TEXAS MUNICIPAL COURTS EDUCATION CENTER**

1609 SHOAL CREEK BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701  
TELEPHONE (512) 320-8274  
1-800-252-3718  
FAX (512) 320-0996

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# **CASE PROCESSING**

**Presented by**

**Margaret Robbins  
Program Director  
TMCEC**

Participants will be able to:

- List the steps how a case is file;
- List the steps how to file FTA/VPTA and issue warrants;
- Explain how to handle defendants at the window;
- Explain how to summon a jury; and
- Explain how to handle an appeal.



# OVERVIEW OF PROCESSING CASES

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# OVERVIEW OF PROCESSING CASES

Prepared by Margaret Robbins, Program Director, TMCEC

## JURISDICTION

### A. Criminal (Art. 4.01, C.C.P.)

### B. Exclusive Original Jurisdiction

1. Exclusive original jurisdiction over city ordinance violations. (Art. 4.14, C.C.P. & Sec. 29.003, G.C.)
2. Exclusive original jurisdiction over criminal cases that arise under a resolution, rule, or order of a joint board operating an airport under Section 22.074, T.C. (Sec. 29.003, G.C.)
3. Article 4.14, C.C.P., provides authority over city ordinance violations and Section. 29.003, G.C., provides authority for municipal court jurisdiction over criminal cases that arise under city ordinance violations and under resolutions, rules or orders of a joint board with the following penalties:
  - a. Up to a maximum fine of \$2,000 in all cases arising under the ordinances, resolutions, rules, or orders of a joint board that govern:
    - Fire safety,
    - Zoning,
    - Public health,
    - Sanitation (including dumping of refuse);
  - b. Up to a maximum fine of \$500 for all other city ordinance violations, or violations of a resolution of a joint board.

### C. Geographical Jurisdiction

1. Territorial limits (corporate limits) of the city over fine-only offenses. (Art. 4.14, C.C.P. & Sec. 29.003(a)(1) and (b)(1), G.C.)
2. Exclusive original jurisdiction over property owned by the municipality located in the municipality's extraterritorial jurisdiction in all cases that arise under city ordinances and rules, resolutions, and orders of a joint airport board. (Sec. 29.003, G.C.)
3. Concurrent jurisdiction with justice of the peace courts over state law fine-only offenses that occur on property owned by the city in its extraterritorial jurisdiction. (Sec. 29.003, G.C.)
4. Municipal courts of records have exclusive original jurisdiction over city ordinance violations authorized by Sections 215.072, 217.042, 341.903,

and 401.002, L.G.C. that occur in a city's extraterritorial jurisdiction. (Sec. 30.00005, G.C.)

5. Where a municipality is authorized to adopt a nuisance ordinance applicable to conduct occurring outside city limits and where the municipality has adopted such an ordinance, a municipal court has implied jurisdiction over cases arising from violations of the ordinance that occur outside city limits. (A.G. Op. No. JC-0025, March 1999)

#### **D. Concurrent Jurisdiction**

1. Concurrent jurisdiction with justice of the peace courts within the territorial limits of the city or property owned by the municipality located in the municipality's extraterritorial jurisdiction in all criminal cases involving state law punishable by fine-only. (Art. 4.14, C.C.P. & Sec. 29.003, G.C.)
2. The governing body of a municipality may by ordinance provide that the municipal court of record has civil jurisdiction for the purpose of enforcing dangerous structures and junked vehicle ordinances and has concurrent jurisdiction with a court or county court at law for the purpose of enforcing health and safety or nuisance abatement ordinances. (Sec. 30.00005, G.C.)

#### **E. Penalties**

1. Fine-only is defined as an offense that is punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment (Art. 4.14, C.C.P. and Sec. 29.003, G.C.) and includes:
  - a. Offenses under Chapter 106, A.B.C. that do not include confinement as an authorized sanction. (Art. 4.14(b)(2), C.C.P.)
  - b. Offenses under Subchapter N, Tobacco Use by Minors, of the Health and Safety Code. (Sec. 161.256, H.S.C.)
  - c. Class C misdemeanors - offenses punishable by fine only not to exceed \$500. (Sec. 12.23, P.C.) Any offense that is punishable by a fine-only outside the Penal Code is a Class C misdemeanor. (Sec. 12.41, P.C.)
  - d. Traffic offenses under the Transportation Code that do not include confinement as an authorized sanction.
  - e. Education Code fine-only offenses.
2. Theft Jurisdiction
  - Theft of property of a value less than \$50 (Class C misdemeanor) (Sec. 31.03, P.C.);
  - Theft of property of a value less than \$20 if the defendant obtained the property by issuing or passing a check or sight order and the

person did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding (Class C misdemeanor) (Sec. 31.03, P.C.);

- Theft of services of a value less than \$20 (Class C misdemeanor) (Sec. 31.04, P.C.);
  - Theft of service or credit by intentionally or knowingly making a false or misleading written statement to obtain property or credit for himself/herself or another is a Class C misdemeanor if the value of the property or the amount of the credit is less than \$50 (Section 32.32, P.C.); and
  - Theft of gasoline requires an affirmative finding in the judgment and if it is a subsequent conviction, a special affirmative finding. The court must report the theft to the Department of Public Safety who will upon a subsequent conviction automatically suspend the driver's license or deny issuance. (Article 42.019, C.C.P.)
3. Criminal Mischief is a Class C misdemeanor if the amount of pecuniary loss is less than \$50. (Sec. 28.03 P.C.)
  4. For additional sanctions the court may order upon conviction of a juvenile (under age 17), see the next section on Juveniles.

#### **F. Juveniles – under the Age of 17**

1. Municipal court has jurisdiction over traffic offenses, except Section 502.282 (vehicle carrying mobile amateur radio equipment); Section 502.412 (operation of vehicle at weight greater than stated in registration application); Section 550.021 (accident involving personal injury or death); Section 550.022 (duty to give information and render aid punishable as a Class B misdemeanor); and Section 550.024 (duty on striking unattended vehicle punishable as a Class B misdemeanor). (Sec. 729.001, T.C.) Juveniles (minors) under the age of 17 are punished by the fine or other sanction, other than confinement or imprisonment, authorized by statute for violation of the traffic law listed under subsection (a) that is the basis of the prosecution under this section. (Sec. 729.001(c), T.C.)
2. Other fine-only state law violations including Alcoholic Beverage Code offenses; Health and Safety Code offenses; Penal Code offenses, except public intoxication; and Education Code offenses. (Sec. 51.03(f), F.C.; Sec. 8.07, P.C.)
3. City ordinance violations. (Sec. 51.03(b), F.C.)
4. Municipal court and justice court may hold a child in contempt of the municipal court or justice court order and order the child to pay a fine not to exceed \$500 and/or order the Department of Public Safety to suspend or deny issuance of a driver's license or permit until the child fully complies. (Art. 45.050, C.C.P.)

5. Municipal court may refer a child to the appropriate juvenile court for delinquent conduct for contempt of the municipal or justice court order. (Article 45.050, C.C.P.)
6. Expunctions – Municipal Court Jurisdiction
  - Alcoholic Beverage Code offenses (minors under age 21); minor may petition municipal court for expunction if had only one conviction for an Alcoholic Beverage Code offense upon reaching age 21. (Sec. 106.12, A.B.C.)
  - Tobacco offenses – (minors under age 18); may petition municipal court to expunge tobacco convictions as long as defendant has completed the tobacco awareness course. (Sec. 161.255, H.S.C.)
  - Fail to attend school; court must admonish child and parent of right to expunge one conviction upon attaining age 18. Court must give the child and parent a copy of Article 45.055, C.C.P., which contains the expunction provisions. (Art. 45.054(e), C.C.P.)
  - Penal Code and penal ordinance convictions – court must admonish child and parent of right to expunction and give them a copy of Article 45.0216, C.C.P. person can petition the court at age 17 or after to expunge one conviction.
7. Waiver of jurisdiction (Sec. 51.08, F.C.)
  - a. Jurisdiction over pending complaint *shall* be waived by municipal court and child shall be referred to juvenile court in the following instance:
    - Two or more previous convictions of fine-only misdemeanors, except traffic;
    - Two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or
    - One or more of each of the types of misdemeanors stated above.
  - b. Jurisdiction over pending complaint *may* be waived by municipal court and the child referred to juvenile court in the following instances:
    - No convictions of fine-only misdemeanors, other than traffic including traffic offenses governed by city ordinances;
    - Has previously been convicted of fewer than two misdemeanors punishable by fine-only other than a traffic offense.
  - c. Exception to mandatory waiver – If a court implements a juvenile case manager program under Article 45.056 (written consent of the city council must be obtained first), then the court may, but is not required to, waive its original jurisdiction. (Section 51.08(d), F.C.)

**G. Retaining Jurisdiction**

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

**H. Bond Forfeitures**

Municipal court has jurisdiction to conduct bond forfeiture hearings. (Art. 4.14, C.C.P.)

**I. Statute of Limitations**

For misdemeanors - a complaint must be filed within two years of commission of an offense to be prosecuted. (Art. 12.02, C.C.P.)

**J. Civil Jurisdiction – Municipal Court of Record**

The governing body of a municipality may by ordinance provide that the municipal court of record have civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Local Government Code, or Subchapter E, Chapter 683, T.C or concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Local Government Code, within the municipality's territorial limits and property owned by the municipality located in the city's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances. (Section 30.0005, G.C.)

**FILING WITH CLERK BY MAIL (MAILBOX RULE)**

1. Notwithstanding any other law, for the purposes of Chapter 45, a document is considered timely filed with the clerk of a court if:
  - The document is deposited with the United States Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk; and
  - The clerk receives the document not later than the 10<sup>th</sup> day after the date the document is required to be filed with the clerk.
2. A 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. In this article, "day" does not include Saturday, Sunday, or a legal holiday. (Art. 45.013, C.C.P.)

## **DIGITAL SIGNATURE (Art. 2.26, C.C.P.)**

### **A. Definition**

Digital signature means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

### **B. Electronically Transmitted Documents**

An electronically transmitted document issued or received by a court in a criminal matter is considered signed if a digital signature is transmitted with the document.

### **C. Digital Signature Subject to Criminal Laws**

The use of a digital signature under this section is subject to criminal laws pertaining to fraud and computer crimes, including Chapters 32 and 33, P.C.

### **D. Documents Issued by Court or Law Enforcement**

A document issued by a justice or municipal court or a notice or citation issued by a law enforcement officer may be created by electronic means, including optical imaging, optical disk, digital imaging, or other electronic reproduction technique that does not permit changes, additions, or deletions to the originally created document. A statutory requirement that a document contain the signature of any person, including a judge, clerk of the court, or defendant, is satisfied if the document contains that signature as captured on the electronic device. (Art. 45.012, C.C.P.)

### **E. Promise to Appear (Sec. 543.005, T.C.)**

The signature securing the release of a person arrested may be obtained on a duplicate form or on an electronic device capable of creating a copy of the signed notice. The arrest officer shall retain the paper or electronic original of the notice and deliver the copy of the notice to the person arrested.

### **F. Electronically Recorded Judgments (Art. 45.012, C.C.P.)**

An electronically recorded judgment has the same force and effect as a written or signed judgment. A statutory requirement that a document contain the signature of any person, including a judge, clerk of the court, or defendant, is satisfied if the document contains that signature as captured on the electronic device. (Art. 45.012(h), C.C.P.)



## COMPLAINTS

### A. Charging Instrument (Arts. 45.018 and 45.019, C.C.P.)

1. Initiates proceedings.
2. Accuses defendant with the commission of an offense.
3. Defendant entitled to notice of a complaint not later than the day before the date of any proceeding in the prosecution. Defendant may waive the right to notice. (Section 45.018, C.C.P.)
4. Article 45.019, provides the requisites of a complaint:
  - It must be in writing;
  - It must commence "In the name and by the authority of the State of Texas";
  - It must state the name of the accused, if known, or if unknown, must include a reasonably definite description of the accused;
  - It must show that the accused has committed an offense against the law of this State, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this State;
  - It must state the date the offense was committed as definitely as the affiant is able to provide;
  - It must bear the signature or mark of the affiant; and
  - It must conclude with the words "Against the peace and dignity of the State: and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words "Contrary to the said ordinance."
5. If a defendant does not object to a defect, error, or irregularity of form or substance in the charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time. (Art. 45.019, C.C.P.)
6. Complaint must allege that offense committed in the territorial limits of the municipality in which the complaint is made. (Art. 45.019, C.C.P.)
7. The complaint may be sworn to before the municipal judge, clerk, deputy clerk, city secretary, city attorney, or deputy city attorney. (Art. 45.019, C.C.P.)
8. Seal – Between September 1, 1999 and August 30, 2000, no seal was required in non-record courts. For offenses committed on or after September 1, 2000, non-record courts were required to use a seal on all

papers issued out of the court except for subpoenas and to authenticate the acts of the clerk and judge. (Art. 45.012(g), C.C.P.) When the requirement became effective on September 1, 2000, there was no provision regarding the form or information on the seal. You may want to look to municipal courts of record whose seal under Section 30.000125, G.C. must include the phrase "Municipal Court of/in \_\_\_\_\_, Texas."

**B. When Judge May Issue a Warrant**

When a sworn complaint or affidavit based on probable cause has been filed, the judge may issue a warrant. (Arts. 45.014 and 15.05, C.C.P.)

**C. Citation for Fine-Only Misdemeanor Offenses**

1. Citation may serve as complaint for defendants to plead not guilty, guilty or nolo contendere. (Art. 27.14(d), C.C.P.)(A.G. Op. Nos. JM-869, JM-876) (Note: Since Art. 14.06(b), C.C.P., provides that a citation may be issued for any Class C misdemeanor offense except public intoxication, a sworn complaint must be filed to initiate the proceedings for public intoxication.)
2. If defendant pleads not guilty, the court is required to file a sworn complaint that complies with the requirements of Chapter 45, C.C.P., unless the defendant waives the filing of the sworn complaint and elects that the prosecution proceed on the citation, signs an agreement with the prosecutor, and files it with the court. (Art. 27.14(d), C.C.P.)
3. If a defendant fails to appear and the court is issuing an arrest warrant for the defendant, a sworn complaint or an affidavit based on probable cause is required. (Art. 45.014, C.C.P.)

**D. Culpable Mental States**

1. A person does not commit an offense unless he or she intentionally, knowingly, recklessly or with criminal negligence engages in conduct as the definition of the offense requires. (Sec. 6.02, P.C.)
2. A culpable mental state is a required element of a criminal offense unless the definition of the offense plainly dispenses with any mental element. (Sec. 6.02(b), P.C.)
3. Exception – Most offenses charged under the Transportation Code do not require pleading a culpable mental state in the complaint. (*Veevers v. State*, 354 S.W.2d 161 [1962])

## DOCKETING

### A. Judge Required to Keep and Enter Proceedings (Art. 45.017, C.C.P.)

(A docket is a formal record of each case with brief entries of the proceedings – *Black's Law Dictionary, Fifth Edition*)

### B. Requirements (Art. 45.1017, C.C.P.)

- The style and file number of each criminal action;
- The nature of the offense charged;
- The plea offered by the defendant and the date the plea was entered;
- The date the warrant, if any, was issued and the return made thereon;
- The date examination or trial was held and if a trial was held, whether it was by a jury or by the justice or judge;
- The verdict of the jury, if any, and the date of the verdict;
- The judgment and sentence of the court, and the date each was given; (An electronically recorded judgment has the same force and effect as a written or signed judgment. (Art. 45.012, C.C.P.)
- The motion for new trial, if any, and the decision thereon; and
- Whether an appeal was taken and the date of that action.

### C. Format of the Docket

The information in the docket may be processed and stored by the use of electronic data processing equipment, at the discretion of the judge. (Art. 45.017, C.C.P.; Secs. 201.001-205.009, L.G.C.) (A.G. Op. DM-139)

### D. Electronically Created Records (Art. 45.012, C.C.P.)

The court may use electronic means to maintain a docket.

## WARRANTS AND FAILURE TO APPEAR

### A. Probable Cause (U.S. Const., 4th Amend.)

No warrant shall issue, but upon 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. All process issuing out of a municipal court may be served and shall be served when directed by the court, by a peace officer or marshal of the municipality within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable. (Art. 45.202, C.C.P.)
2. The peace officer or marshal may serve all process issuing out of municipal court anywhere in the county in which the city, town, or village is situated. (Art. 45.202, C.C.P.)
3. If the city, town, or village is situated in more than one county, the peace officer or marshal may serve the process throughout those counties. (Art. 45.202, C.C.P.)

**C. Commitment**

1. Whenever a peace officer is authorized to retain a defendant in custody, the peace officer may place the defendant in jail in accordance with the Code of Criminal Procedure or other law. (Art. 45.015, C.C.P.)
2. When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge determines that:
  - the defendant intentionally failed to make a good faith effort to discharge the judgment; or
  - the defendant is not indigent. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. (Art. 45.046, C.C.P.)
3. A municipal court may waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that the defendant is indigent; and each alternative method of discharging the fine or costs under Article 43.09 would impose an undue hardship on the defendant. (Art. 43.091, C.C.P.)

**D. Juveniles (Age Ten and under the Age of 17)**

1. In lieu of taking a child into custody, a peace officer may issue a field release citation as provided by Art. 14.06, C.C.P. (Art. 14.06(b), C.C.P.)
2. Juveniles may be taken into custody pursuant to the laws of arrest. (Sec. 52.01, F.C.)
3. Custody of juveniles (Article 45.058, C.C.P.)
  - a. For the purposes of taking a child into custody, a child is at least 10 years of age and younger than 17 years of age and who is charged with or convicted of an offense that a justice or municipal court has

jurisdiction of under Article 4.11 or 4.14, C.C.P., other than public intoxication.

- b. Juveniles taken into custody for fine-only offenses other than public intoxication 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. 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 place of nonsecure custody may be a juvenile processing office designated under Sec. 52.025, F.C., if the area is not locked when it is used as a place of nonsecure custody.
  - c. Procedures required to be followed in a place of nonsecure custody (Article 45.058, C.C.P.):
    - a child may not be secured physically to a cuffing rail, chair, desk, or other stationary object;
    - a child may be held in the nonsecure facility only long enough to accomplish the purpose of identification; investigation; processing; release to parents; or the arranging of transportation to the appropriate juvenile court, juvenile detention facility, municipal court, or justice court;
    - residential use of the area is prohibited;
    - the child shall be under continuous visual supervision by a law enforcement officer or facility staff person during the time the child is in nonsecure custody; and
    - A child may not under any circumstances be detained in a place of nonsecure custody for more than six hours.
  - d. A child taken into custody for a misdemeanor offense within the jurisdiction of justice or municipal court may only be taken to a juvenile detention facility if the case is transferred or referred to the juvenile court. (Art. 45.058(f), C.C.P.)
5. Children Taken into Custody for Violation of Juvenile Curfew Ordinance or Order (Art. 45.059, C.C.P.)
- a. A peace officer taking into custody a person under 17 years of age for violation of a juvenile curfew ordinance of a municipality or order of the commissioners' court of a county shall, without unnecessary delay:
    - release the person to the person's parent, guardian, or custodian;

- - take the person before a municipal or justice court to answer the charge; or
  - take the person to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person.
- b. Juvenile curfew processing office must observe the following procedures:
  - the office must be an unlocked, multipurpose area that is not designated, set aside, or used as a secure detention area or part of a secure detention area;
  - the person may not be secured physically to a cuffing rail, chair, desk, or stationary object;
  - the person may not be held longer than necessary to accomplish the purposes of identification, investigation, processing, release to parents, guardians, or custodians, and arrangement of transportation to school or court;
  - a juvenile curfew processing office may not be designated or intended for residential purposes;
  - the person must be under continuous visual supervision by a peace officer or other person during the time the person is in the juvenile curfew processing office; and
  - a person may not be held in a juvenile curfew processing office for more than six hours.
- c. A place designated as a juvenile curfew processing office is not subject to the approval of the juvenile board having jurisdiction where the governmental entity is located.

**E. Unadjudicated Children Now Adults (Art. 45.060, C.C.P.)**

1. Court must have used all available procedures to compel the child's appearance before the child turned age 17.
2. On or after the child's 17<sup>th</sup> birthday, the court may issue notice of continuing obligation to appear by personal service or by mail to the last known address and residence of the individual. The notice must order the individual to appear at a designated time, place, and date to answer the allegations detailed in the notice.
3. The notice must contain the following statement in boldfaced 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.”

**F. Adjudicated Children Who Fail to Pay (Art. 45.045, C.C.P.)**

1. A *capias pro fine* may not be issued for an individual convicted for an offense committed before the individual's 17<sup>th</sup> 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 criminal record and history of the individual; 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 to compel the individual to discharge the judgment.

**G. Warrant of Arrest (Adult Defendants)**

1. Warrant of arrest issued by a municipal judge.
  - a. A municipal judge may issue a warrant when a sworn complaint or affidavit based on probable cause has been filed before the judge. (Art. 45.014, C.C.P.)
  - b. Requisites of warrant issued by judge (Art 45.014, C.C.P.); the warrant is sufficient if:
    - i. It is issued in the name of “The State of Texas”;
    - ii. It is directed to the proper sheriff, constable, or some other person specially named in the warrant;
    - iii. It includes a command that the body of the accused be taken and brought before the authority issuing the warrant, at the time and place stated in the warrant;
    - iv. It states the name of the person whose arrest is ordered, if it be known, and if not known, it describes the person as in the complaint;
    - v. It states that the person is accused of some offense against the laws of the State, naming the offense; and
    - vi. It is signed by the justice or judge naming the office of the justice or judge in the body of the warrant or in connection with the signature of the justice or judge.
  - c. How warrant issued by judge – The warrant shall be delivered to the proper officer to be executed. (Art. 45.014, C.C.P.)

2. Magistrate may issue warrant. (Art. 15.03, C.C.P.)
  - a. Municipal judges and mayors are magistrates. (Art. 2.09, C.C.P.)
  - b. Requisites of warrant issued by magistrate (Art. 15.02, C.C.P.):
    - i. It issues in the name of "The State of Texas;"
    - ii. It must specify the name of the person whose arrest is ordered, if it be known, if unknown, then some reasonably definite description must be given of him or her;
    - iii. It must state that the person is accused of some offense against the laws of the State, naming the offense; and
    - iv. It must be signed by the magistrate, and his or her office be named in the body of the warrant or in connection with his or her signature.
  - c. Warrant extends to every part of State. (Art. 15.06, C.C.P.)
  - d. Warrant issued by mayor as a magistrate cannot be executed in another county than the one in which it is issued, except when it is endorsed by a judge of a court of record, in which case it may be executed anywhere in the State or if it is endorsed by a magistrate in the county in which the accused is found. (Art. 15.07, C.C.P.)
  - e. Warrant may be telegraphed. (Art. 15.08, C.C.P.)
  - f. Warrant directed to a peace officer or some other person specially named. (Art. 15.01, C.C.P.)
  - g. How warrant issued by magistrate is executed. (Arts. 15.16, 15.17, C.C.P.)
    - i. The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him or her taken before a magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which the person was arrested. (Art. 15.16, C.C.P.)
    - ii. The person making the arrest shall without unnecessary delay take the person arrested or have him or her taken before some magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested the warnings described in Article 15.17, before a magistrate in a county bordering the county in which the arrest was made. (Art. 15.17, C.C.P.)
  - h. The arrest warrant and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and



beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies. (Art. 15.26, C.C.P.)

**H. Seizure of Cruelly Treated Animals**

Municipal court may issue warrants that order seizure of animals being cruelly treated. (Sec. 821.022, H.S.C.)

**I. Seizure of Dangerous Dogs**

Municipal court may issue a warrant ordering the animal control authority to seize a dangerous dog. (Sec. 822.002, H.S.C.)

The governing body of the municipality or county may prescribe the amount of fees that an owner shall pay related to the seizure of a dog. (Sec. 822.042, H.S.C.)

The court, after determining that a dog is a dangerous dog, may order the animal control authority to continue to impound the dangerous dog in secure and humane conditions until the court orders disposition of the dog under Section 822.042, H.S.C. and the dog is returned to the owner or destroyed. (Sec. 822.0422(e), H.S.C.)

**J. Seizure Warrant for Nuisance Abatement (Section 30.00005, G.C.)**

A governing body of a municipality by ordinance may provide that the municipal court of record has authority to issue a seizure warrant for the purpose of securing, removing, or demolishing offending property and removing debris from the premises.

**K. Capias (Arts. 23.01, C.C.P.)**

1. Capias means a written order issued by the court (judge) and directed "To any peace officer of the State of Texas", commanding him or her to arrest a person accused of an offense and bring the person before the court immediately. (Art. 23.01, C.C.P.)

2. Requisites. (Art. 23.02, C.C.P.)

- It shall run in the name of "The State of Texas";
- That it name the person who arrest is ordered, or if unknown, describe the person;
- That it specify the offense of which the defendant is accused, and it appear thereby that he or she is accused of some offense against the penal laws of the State;

- That it name the court to which and the time when it is returnable; and
  - That it be dated and attested officially by the authority issuing the same.
3. In misdemeanor cases. (Art. 23.04, C.C.P.)
  4. After bond forfeiture, capias required to be issued. (Art. 23.05, C.C.P.)
  5. Capias does not lose its force if not executed and returned at the time fixed in the writ. (Art. 23.07, C.C.P.)
  6. Return of capias. (Art. 23.18, C.C.P.)

## **L. Summons**

1. Summons issued by a magistrate.
  - a. Form of summons. (Art. 15.03(b), C.C.P.)
  - b. When a summons may be issued. (Art. 15.03(a), C.C.P.)
  - c. Who may issue. (Art. 15.03(a), C.C.P.)
  - d. How served. (Art. 15.03(b), C.C.P.)
  - e. If defendant fails to respond, warrant shall be issued. (Art. 15.03(b), C.C.P.)
2. Summons issued by judge.
  - a. Form of summons. (Art. 23.03(c), C.C.P.)
  - b. Summons may be issued only upon request from prosecutor. (Art. 23.04, C.C.P.)
  - c. Court (judge) issues summons. (Art. 23.04, C.C.P.)
  - d. How served. (Art. 23.03(c), C.C.P.)
  - e. If defendant fails to respond, capias shall be issued. (Art. 23.03(b), C.C.P.)
  - f. A summons issued for a felony must include the following notice, clearly and prominently stated in English and in Spanish:  
 English: "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." (Art. 23.03, C.C.P.) (Note: Although this section presumably is for felony summons, a misdemeanor summons is to be in the same form as the felony summons; thus municipal court summons should also include this wording.)

- g. A summons issued to the parents, managing conservator, or guardian of minors (under the age of 17) charged with a non-traffic offense must include a warning that the failure of the parent, managing conservator, or guardian to appear may be punishable as a Class C misdemeanor. (Art. 45.057(e), C.C.P.)
- h. Article 45.0215, C.C.P., requires the court to summon the parent or guardian to appear with his or her child (under age 17) to be present for all proceedings.

**M. Search Warrants (Chapter 18, C.C.P.)**

- 1. Municipal judges are magistrates. (Article 2.09, C.C.P.) Magistrates have authority to issue search warrants. There are some exceptions; see evidentiary search warrants.
- 2. Evidentiary search warrants – Only a municipal judge of a court of record who is a licensed attorney may issue an evidentiary search warrant for mere evidence (Art. 18.01(h), C.C.P.), except any magistrate in counties where the only attorney-judge is the district judge and the district court encompasses more than one county, or in which the only judges serving the county who are licensed attorneys are two or more district judges each of whose district includes more than one county may issue evidentiary or contraband search warrants. (Arts. 18.01(i), 18.02, C.C.P.)
- 3. Grounds for issuance. (Art. 18.02, C.C.P.)
- 4. Content of search warrant. (Art. 18.04, C.C.P.)
- 5. Execution and return of search warrant. (Arts. 18.06, 18.07, and 18.10, C.C.P.)
- 6. Power of officer executing warrant. (Art. 18.08, C.C.P.)
- 7. A magistrate's clerk shall make a copy of the affidavit (the probable cause affidavit is public information if executed) available for public inspection in the clerk's office during normal business hours. (Art. 18.01(b), C.C.P.)
- 8. The governing body of a municipality may by ordinance provide authority to a judge of a municipal court of record to issue a search warrant for the purpose of investigating a health and safety or nuisance abatement ordinance violation. (Sec. 30.0005, G.C.)

**N. Failure to Appear**

- 1. Failure to Appear – may be filed when a person has been in custody and released with or without bail and fails to appear according to the terms of being released. (Sec. 38.10, P.C.)
- 2. Violation of Promise to Appear – may be filed only when the original offense is one charged under Subtitle C, Transportation Code. (Sec. 543.009, T.C.)

3. Juveniles.
  - a. A court shall report to the Department of Public Safety a person charged with a traffic offense under Chapter 729 who does not appear before the court as required by law. The court shall also report to the Department on final disposition of the case. (Sec. 729.003, T.C.)
  - b. Municipal court may file a report with the Department of Public Safety to suspend or deny issuance of a driver's license for failure to appear or default of a payment of a fine for a misdemeanor punishable by a fine only. This only applies to a person under the age of 17 when the offense was committed. DPS may not reinstate a license until the court that filed the report files an additional report on the final disposition of the case. (Sec. 521.294, T.C.)
  - c. If the parents, managing conservator, or guardian fails to appear with their child who is charged with a non-traffic offense, they can be charged with failure to appear with their child, which is punishable as a Class C misdemeanor. (Art. 45.057, C.C.P.)

**O. Warrant Fees and Fees for Peace Officer's Service**

1. Special expense fee for failure to appear warrants. (Art. 45.203, C.C.P.)
  - a. City must have ordinance governing the collection of fee.
  - b. Collected if a peace officer executes warrant.
  - c. Collected for Failure to Appear offense found in Sec. 38.10, P.C., and Violation of Promise to Appear found in Sec. 543.009, T.C.
  - d. Amount to Charge - not to exceed \$25.
  - e. Paid to city treasury.
2. Fees for services performed by a peace officer. (Art. 102.011, C.C.P.)
  - a. Fifty dollars required to be collected upon conviction for processing or executing an arrest warrant or capias. (Art. 102.011(a)(2). C.C.P.)
    - Collected only if a peace officer served or processed warrant or capias.
    - For the services of the following:
      - The law enforcement agency that executed the arrest warrant or capias, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or capias, the imposition of the fee on conviction;
      - The law enforcement agency that processed the arrest warrant or capias, if the executing law enforcement agency failed to request the fee within 15 days; or

- When service is performed by a peace officer employed by the State, 20 percent (\$10) of the fees collected must be remitted to the State Comptroller's Office.
- b. Thirty-five dollars required to be collected upon conviction for serving a writ not otherwise listed in Article 102.011. Summons would come under this provision. Hence a summons for a defendant or for a parent or guardian would require \$35 payment in cost if it is served and there is a conviction. (Art. 102.011(a)(4), C.C.P.)
- c. Costs for Executing Process - The defendant is required to pay necessary and reasonable expenses for meals and lodging incurred by a peace officer executing criminal process. (Mileage is assessed at 29 cents per mile.) (Art. 102.011(b), C.C.P.)

**P. Contracts**

1. Contracts with DPS for denial of renewal of license for Failure to Appear. (Chpt. 706, T.C.)
  - a. A city may contract with the Department of Public Safety to provide information necessary for the Department to deny renewal of the driver's license of a person who has failed to appear for a complaint or citation, or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner order by the court in a matter involving fine-only offenses that municipal court has jurisdiction to hear. (Sec. 706.002(a), T.C.)
  - b. If a city has contracted with the Department under this statute, a peace officer authorized to issue citations in the jurisdiction of the city shall issue a written warning to each person to whom the officer issues a citation for a violation of a traffic law. The warning is in addition to any other warning required by law. The warning must state in substance that if the person fails to appear in court as provided by law for the prosecution of the offense, or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner order by the court, the person may be denied renewal of the person's driver's license. The written warning may be printed on the same instrument as the citation.
  - c. Administrative Fee – \$30 for each offense submitted to DPS under contract is paid by the defendant.
  - d. A person who is acquitted of the charge on which the person failed to appear; or the submission was sent to DPS in error; or the records have been destroyed in accordance with the political subdivision's records retention policy does not have to pay the administrative fee and DPS cannot continue to deny driver's license renewal.
2. Contracts for enforcement of certain warrants. (Chpt. 702, T.C.)

- a. A home-rule municipality may contract with a county assessor-collector or the Department of Transportation to deny registration or re-registration of a motor vehicle or an outstanding warrant from that municipality for failure to appear or failure to pay a fine on a complaint that involving the violation of a traffic law. (Sec. 702.002, T.C.)
- b. Warning may be on citation - If a city has contracted with a county or state agency, a peace officer who is authorized to issue citations in the city shall issue a written warning to each person to whom the officer issued a citation for a violation of a traffic law in the city. The warning must state that if the person fails to appear in court, as provided by law, for the prosecution of the offense or to pay a fine for the violation, the person might not be permitted to register or reregister a motor vehicle in this State.

**Q. Nonresident Violator Compact (Chpt. 703, T.C.)**

1. Procedures.
  - a. The "Notice of Failure to Comply" form is completed and the original copy is mailed to the defendant. The court retains copies in a "tickle" or suspense file awaiting reply from the defendant.
  - b. If the defendant fails to respond within 15 days, the court forwards the second and third copies of the "failure to comply" notice to the Department of Public Safety for action under the Compact.
  - c. The fourth, fifth, and sixth copies of the notice are still held in the court file. If at any time beyond this time in the process the defendant resolves the case with the court, it is imperative that the court completes the fourth and fifth copies of the notice "Defendant's Receipt" and "Notice of Withdrawal of Suspension." The receipt should be mailed to the defendant and the "Notice of Withdrawal of Suspension" to the Department of Public Safety.
2. Under the terms of the Compact, the following violations are statutorily exempt and no action will be taken:
  - Moving traffic violations which alone carry a suspension,
  - Equipment violations,
  - Inspection violations,
  - Motor carrier violations,
  - Lease law violations,
  - Registration law violations,
  - Offenses which mandate personal appearance,
  - Size and weight limit violations,
  - Parking or standing violations, and

- Transportation of hazardous material violations.
3. No action will be taken on any violation if the date of request of the member state is more than six months after the date on which the traffic citation was issued.

## **AFTER ARREST**

### **A. Officer's Duty**

1. Warrantless arrest – The person making the arrest or the person having custody of the person arrested shall take the person arrested or have him or her taken without unnecessary delay, but not later than 48 hours after the person is arrested before the magistrate who may have ordered the arrest, before a magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warning described by Article 15.17, C.C.P., before a magistrate in a county bordering the county in which the arrest was made. (Art. 14.06(a), C.C.P.)
2. Arrest under warrant – The person making the arrest or the person having custody of the person arrested shall take the person arrested or have him or her taken without unnecessary delay, but not later than 48 hours after the person is arrested before the magistrate who may have ordered the arrest, before a magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warning described by Article 15.17, C.C.P., before a magistrate in any county. (Art. 15.17(a), C.C.P.)
3. If magistrate is not available, in cases of misdemeanor, the officer may, whether during the term of court or in vacation, where he or she has a defendant in custody, take of the defendant a bail bond. (Art. 17.20, C.C.P.)

### **B. Magistrate's Duty**

1. The magistrate shall inform in clear language the person arrested, either in person or by closed circuit television, of the accusation against the defendant and of any affidavit filed therewith, of his or her right to retain counsel, of his or her right to remain silent, of his or her right to have an attorney present during any interview with peace officers or attorney represent the state, of his or her right to terminate the interview at any time, and of his or her right to have an examining trial. (Art. 15.17(a), C.C.P.)
2. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel.

The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, C.C.P. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04, C.C.P. to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051, C.C.P. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the court's designee authorized under Article 26.04, C.C.P., to appoint counsel in the county, the forms requesting the appointment of counsel. (Art. 15.17(a), C.C.P.)

3. A person who is arrested without a warrant and who is detained in jail must be released on bond in an amount not to exceed \$5000, not later than the 24<sup>th</sup> hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond the person must be released on personal bond. If the person arrested was arrested for a felony, the person must be released on bond in an amount not to exceed \$10,000 not later than the 48 hour after person's arrest and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the person must be released on personal bond. On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested. (Art. 17.033, C.C.P.)
4. Out-of-County Fine-only Offenses – A magistrate may take a written plea of guilty or nolo contendere, assess the fine, determine costs, give jail credit, accept payment, or determine indigence, and discharge the defendant where appropriate. The magistrate accepting a plea must forward, the plea, order of the court, and any fine and costs collected to the original court within 10 business days. (Art. 15.18, C.C.P.)



## BONDS

(A.G. Op. Nos. JM-363, JM-461, JM-701, JM-760, DM-57)

### A. Bond Rules

Bond rules applicable to every criminal case and every court. (Art. 17.38, C.C.P.)

### B. Definition of Bail (Art. 17.01, C.C.P.)

"Bail" is the security given by the accused that he/she will appear and answer before the proper court the accusation brought against him/her, and includes a bail bond or personal bond.

### C. Bail Bond

1. Definition of bail bond. (Art. 17.02, C.C.P.)
2. Requisites of a bail bond. (Art. 17.08, C.C.P.)
3. Sureties.
  - a. Corporation surety. (Art. 17.06, C.C.P.)
    - i. Corporation to file with county clerk power of attorney designating agent. (Art. 17.07, C.C.P.)
    - ii. Agents making bail bonds shall be binding and binding obligation on corporation.
  - b. Disqualified Sureties (Arts. 17.10 and 17.11, Sec. 2, C.C.P.) Article 17.11 provides when a surety is deemed in default. "A surety shall be deemed in default from the time execution may be issued on a final judgment in a bond forfeiture proceeding under the Texas Rules of Civil Procedure, unless the final judgment is superseded by the posting of a *supersedeas* bond." (Arts. 17.10 and 17.11, C.C.P.) (A *supersedeas* bond is a bond required of one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful.)
  - c. Sureties required to show evidence of sufficiency. (Art. 17.11, C.C.P.)
  - d. Oath of sureties. (Art. 17.13, C.C.P.)
  - e. Affidavit not conclusive. (Art. 17.14, C.C.P.)
  - f. Surety may relieve himself/herself of undertaking. (Art. 17.16, C.C.P.)
  - g. Surety may obtain a warrant (Art. 17.19, C.C.P.) (Article 17.19 provides that any surety desiring to surrender his or her principal must notify the principal's attorney if the principal is represented by an attorney, in a manner provided by Rule 21a, Texas Rules of Civil Procedure, of the surety's intention to surrender the principal before

filing an affidavit of intention to surrender with the court. The affidavit must include a statement regarding the notice to the attorney.)

4. A magistrate, judge, or peace officer may take a bail bond. (Arts. 17.05, 17.20, 17.21, 17.22, C.C.P.)
5. A bond may not be altered except with consent of the parties of the bond. [*Gilford v. State*, 362 S.W.2d 843 (Tex. Crim. App. 1962)]

**D. Personal Bond (Art. 17.03, C.C.P.) (A.G. Op. JM-760)**

1. Release on personal bond when complaint and warrant do not originate in county of arrest. (Art. 17.031, C.C.P.)
2. Requisites of personal bond. (Art. 17.04, C.C.P.)
3. Only a magistrate may release on personal bond. (Art. 17.03, C.C.P.) (A.G. Op. JM-760)

**E. Bail Bond Certificates (Art. 17.045, C.C.P.)**

**F. Cash Bond (Art. 17.02, C.C.P.) (A.G. Op. C-740)**

1. No authority to require cash to exclusion of others. [*Ex parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1979); *Ex parte Rodriques*, 583 S.W.2d 792 (Tex. Crim. App. 1979)]
2. Only instance where a cash bond may be required is in case of bond forfeiture and *capias* issued for defendant's arrest. (Art. 23.05, C.C.P.)

**G. Rules for Fixing Amount of Bail (Art. 17.15, C.C.P.)**

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
2. The power to require bail is not to be so used as to make it an instrument of oppression.
3. The nature of the offense and the circumstances under which it was committed are to be considered.
4. The ability to make bail is to be regarded, and proof may be taken upon this point. (Factors that need to be considered when determining the bail applicant's ability to make bail include work record, family ties, residency, prior criminal record, and adherence to previous bail bond conditions. *Ex parte Goosby*, 685 S.W.2d 440 (Tex. App.-Houston [1st Dist.] 1985, no writ). The punishment permitted by law is to be considered in addition to the ability to make bail. *Ex parte Penagos*, 810 S.W. 796 [Tex. App.-Houston (1st Dist. 1991)]

5. The future safety of a victim of the alleged offense and the community shall be considered. (Art. 17.15, C.C.P.) [Considering the safety of a victim is just one factor in setting bail and does not justify the detention of a presumptively innocent defendant by the use of excessive bail. *Ludwig v. State*, 812 S.W.2d (Tex. Crim. App. 1991)]

#### **H. Conditions of Bail**

1. Persons charged with prostitution: magistrate may require person to receive counseling or education or both relating to AIDS. (Art. 17.45, C.C.P.)
2. Persons charged with sexual offenses, assaultive offenses, incest, solicitation of a child, or sexual performance by a child if committed against a child 12 years of age or younger: magistrate may require defendant to not directly communicate with the alleged victim or go near a residence, school, or other location as specifically described in the bond frequented by the alleged victim. (Art. 17.41, C.C.P.)
3. A magistrate may require as a condition of release on personal bond that the defendant submit to home curfew and electronic monitoring under the supervision of an agency designated by the magistrate. The cost of monitoring may be assessed as court costs or ordered paid directly by the defendant as a condition of bond. (Art. 17.43, C.C.P.)
4. A magistrate may require as a condition of release on bond that the defendant submit to:
  - Home confinement and electronic monitoring under the supervision of an agency designated by the magistrate; or
  - Testing on a weekly basis for the presence of a controlled substance in the defendant's body. (Art. 17.44, C.C.P.)

If a defendant violates a condition of home confinement and electronic monitoring, refuses to submit to a test for controlled substance, or submits to a test for controlled substances and the test indicates the presence of a controlled substance in the defendant's body, the magistrate may revoke the bond and order the defendant arrested. (Art. 17.44, C.C.P.)

5. A magistrate shall require on release that a defendant charged with a subsequent offense under Section 49.04-49.06, P.C., or an offense under Section 49.07 or 49.08, P.C. (unless the magistrate finds that to require the device would not be in the best interest of justice), the installation on a motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant a device that uses a deep-lung breath analysis mechanism (ignition interlock) to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator; and not operate any motor vehicle unless the vehicle is equipped with that device. (Art. 17.441, C.C.P.)

If the defendant is required to have the device installed, the magistrate shall require that the defendant have the device installed on the appropriate motor vehicle at the defendant's expense, before the 30th day after the date the defendant is released on bond. (Art. 17.441. C.C.P.)

The magistrate may designate an appropriate agency to verify the installation of the device and to monitor the device. If the magistrate designates an agency under this subsection, in each month during which the agency verifies the installation of the device or provides a monitoring service the defendant shall pay a fee to the designated agency in the amount set by the magistrate. The defendant shall pay the initial fee at the time the agency verifies the installation of the device. In each subsequent month during which the defendant is required to pay a fee, the defendant shall pay the fee on the first occasion in that month that the agency provides a monitoring service. The magistrate shall set the fee in an amount not to exceed \$10 as determined by the county auditor, or by the commissioners court of the county if the county does not have a county auditor, to be sufficient to cover the costs incurred by the designated agency in conducting the verification or providing the monitoring service, as applicable in that county. (Art. 17.441(d), C.C.P.)

6. Defendants who may be mentally ill. (Arts. 16.22 and 17.032)
  - a. Magistrate is required to release on personal bond, a mentally ill defendant, if:
    - Defendant has not been charged with or previously convicted of a violent offense (murder; capital murder; kidnapping; aggravated kidnapping; indecency with a child; assault aggravated assault; aggravated sexual assault; injury to a child, elderly individual, or invalid; or aggravated robbery);
    - Defendant is examined by mental health expert;
    - Examining expert, in a report submitted to magistrate, concludes that the defendant is mentally ill and is nonetheless competent to stand trial; and recommends mental health treatment for the defendant;
    - Magistrate determines in consultation with the mental health provider that appropriate mental health services for the defendant are available through the Texas Department of Mental Health and Mental Retardation under Section 534.053, H.S.C., or through another mental health services provider.
    - Magistrates may order a defendant to submit to an examination in a mental health facility determined by a local authority on that authority's request. (Art. 16.22, C.C.P.)
  - b. Magistrate may require as a condition of release on personal bond that the defendant submit to outpatient or inpatient mental health treatment if:

- the defendant's mental illness is chronic in nature; or
  - ability to function independently will continue to deteriorate if the defendant is not treated.
- c. In addition, the magistrate may require the defendant to comply with other conditions that are reasonably necessary to protect the community.
7. Persons charged with stalking. (Sec. 42.072, P.C.)
- a. Magistrate may require as a condition of release on bond that a defendant not communicate directly or indirectly with the victim; or go to or near the residency, place of employment, or business of the victim or to or near a school, day-care facility, or similar facility where a dependent child or the victim is in attendance; if the magistrate requires the prohibition, the magistrate shall specifically describe the prohibited locations and the minimum distances, if any, that the defendant must maintain from the locations. (Art. 17.46, C.C.P.)
- b. Magistrate may, at the detention hearing, issue an order for emergency protection on his or her own motion, or the motion of the victim, guardian of the victim, peace officer, or prosecuting attorney. The order may prohibit the arrestee from committing: family violence or a stalking related act; communicating directly with a member of the family or household in a threatening or harassing manner; or a threat through any person to a member of the family or household; or going near the residence, child care facility, or school where the child protected under the order resides or attends. Specific locations and distances must be included in the order unless the magistrate determines for the safety of the person or persons protected by the order that specific descriptions of the location should be omitted. (Art. 17.292, C.C.P.)
8. Arrest for family violence. (Art. 17.292, C.C.P.) Dating violence included in family violence. "Dating relationship" is a continuing relationship of a romantic or intimate nature. Casual acquaintanceship and ordinary fraternization are excluded. (Sec. 71.0021, F.C.) Section 71.004, F.C., amended to include dating violence into definition of family violence.
- a. A magistrate may, at the detention hearing, issue an order for emergency protection on his or her own motion, or the motion of the victim, guardian of the victim, peace officer, or prosecuting attorney.
- b. A magistrate must issue an order for emergency protection if the arrest is for an offense that also involves serious bodily injury to the victim, or the use or exhibition of a deadly weapon during the commission of an assault. (Art. 17.292(b), C.C.P.)
- c. An emergency protection order remains in effect up to the 61<sup>st</sup> day, but not less than 31 days after the date of issuance. (Art. 17.292(i), C.C.P.)

d. The order:

- May prohibit the arrestee from committing: family violence or a stalking related act;
- May prohibit communicating directly with a member of the family or household in a threatening or harassing manner; or
- May prohibit a threat through any person to a member of the family or household; or
- May prohibit going near the residence, child care facility, or school where the child protected under the order resides or attends; or
- May suspend a license to carry a concealed handgun (Art. 17.292(l), C.C.P.)
  - A magistrate or magistrate's clerk shall immediately send a copy of the order suspending the concealed handgun license to the Department of Public Safety (DPS demands the surrender of the suspended license from the license holder.) (Art. 17.293, C.C.P.);
- Must specifically describe prohibited locations and minimum distances, if any, that the party must maintain, unless the magistrate determines for the safety of the person or persons protected by the order that specific description of the locations should be omitted. (Art. 17.292, C.C.P.)

e. A magistrate issuing an order for emergency protection shall send a copy of the order to the chief of police in the municipality where the member of the family or household or individual protected by the order resides, if the person resides in a municipality, or to the sheriff of the county where the person resides, if the person does not reside in a municipality. (Art. 17.292(g), C.C.P.)

f. If the victim of the offense is not present when the order is issued, the magistrate issuing the order shall order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued by calling the victim's residence and place of employment. (Art. 17.292(g), C.C.P.)

g. The clerk of the court shall send a copy of the order to the victim. (Art. 17.292(g), C.C.P.)

**I. Proceedings when Bail is Granted (Art. 17.25, C.C.P.)**

After a full examination of the testimony, the magistrate shall proceed to make an order that the accused execute a bail bond. (Art. 17.25, C.C.P.)

**J. Setting Bail by Telephone**

A judge or magistrate lacks the authority to set bail by telephone. (A.G. Op. DM-57 [1991])

**K. Setting Bail by Closed Circuit Television**

A closed circuit television system must provide for two-way communication of image and sound between the arrested person and the magistrate and a recording made that shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day if the offense charged is a felony. (Art. 15.17, C.C.P.)

**L. Magistrate's Discretion in Setting Bail**

Although magistrates have broad discretion in setting the amount and conditions of bail, they do not have authority to require a cash or surety bond to the exclusion of the other. [*Ex parte Deaton*, 582 S.W.2d 151 (Tex.Crim.App. 1979); *Ex parte Rodriques*, 583 S.W.2d 792 (Tex.Crim.App. 1979)]

When a municipal judge acts as a magistrate in setting bonds, another judge acting in a magistrate's capacity lacks authority to change status or amount of bonds. [*Ex parte Clear*, 573 S.W. 2d 224 (Tex.Cr.App. 1987; *Guerra v. Garza*, 987 S.W. 2d 593 (Tex.Crim.App. 1999)]

**M. Differential Bail Amount**

The court must accept a bond of any kind when it is presented in proper form; magistrates may not set a "differential bail amount" depending upon whether a cash or surety bond is used. [*Ex parte Deaton*, 582 S.W.2d 151 (Tex.Crim.App. 1979); *Ex parte Rodriques*, 583 S.W.2d 792 (Tex.Crim.App. 1979); A.G. Op. JM-363]

**N. Reasonable Time Given to Procure Bail (Art. 17.26, C.C.P.)**

1. Procedure when defendant ready to give bail. (Art. 17.28, C.C.P.)
2. Procedure after accused posted bail. (Arts. 17.29 and 17.291, C.C.P.)
  - a. After accused has posted bond, accused is to be released. (Art. 17.29, C.C.P.)
  - b. In family violence cases. (Art. 17.291, C.C.P.)
    - i. Art. 17.29 does not apply when a person has been arrested or held without a warrant in the prevention of family violence if there is probable cause to believe the violence will continue if the person is immediately released. The head of the agency arresting or holding such a person may hold the person for a period of not

more than four hours after bond has been posted. This detention period may be extended for an additional period not to exceed 48 hours, but only if authorized in writing directed to the person having custody of the detained person by a magistrate who concludes:

- the violence should continue if the person is released; and
  - if the additional period exceeds 24 hours, probable cause exists to believe that the person committed the instant offense and that, during the 10-year period preceding the date of the instant offense, the person has been arrested:
    - on more than one occasion for an offense involving family violence; or
    - for any other offense, if a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during commission of the offense or during immediate flight after commission of the offense.
- ii. Before releasing on bail a person arrested or held without a warrant in the prevention of family violence, the agency holding the person shall make a reasonable attempt to give personal notice of the imminent release to the victim of the alleged offense or to another person designated by the victim to receive the notice. (Art. 17.29, C.C.P.)
- iii. If the victim of the offense is not present when the order is issued, the magistrate issuing the order shall order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued by calling the victim's residence and place of employment. The clerk of the court shall send a copy of the order to the victim. (Sec. 17.292, C.C.P.)

**O. Records of Bail Required to Be Kept (Art. 17.39, C.C.P.)**

**P. Bonds and Traffic Case (A.G. Op. Nos. JM-363, JM-701)**

**Q. Bond Refunds**

Bond refunds - Bonds are to be refunded when conditions of bond complied with. (A.G. Op. No. C-740), (*De Leon v. Pennington*, 759 S.W.2d 201, 202 [Tex. App. –San Antonio, 1988] no writ) Cash bonds may not be converted to fine.



A person other than the defendant may make a cash bail bond deposit with the court officer to secure the defendant's release from custody pursuant to Article 17.02 of the Code of Criminal Procedure. The receipt for a cash deposit should be issued in the name of the defendant. While the court officer is not required to notify the third party depositor that the funds will be returned to the defendant, no statutory prohibition precludes such notification. If the defendant complies with the conditions of the bond, and upon court order, the bond funds must be returned to the defendant. The court officer may not withhold a cash bail bond refund until fines assessed against the defendant are paid. (A.G. Op. No. JC-0024, March, 1999)

## **BOND FORFEITURES**

### **A. Defendant's Failure to Appear**

1. When a defendant fails to appear in court, bail is forfeited. (Art. 22.01, C.C.P.)
2. An action by the State to forfeit a bail bond under this chapter must be brought not later than the fourth anniversary of the date the principal fails to appear in court. (Art. 22.18, C.C.P.)
3. Where a forfeiture of bail is declared, a *capias* shall be immediately issued for the arrest of the defendant but in no case later than 10 business days after the issuance of the order of forfeiture. (Art. 23.05, C.C.P.) This *capias* may be executed by a peace officer or by a private investigator licensed under the Private Investigators and Private Security Agencies Act (Article 4413 (29bb), Vernon's Texas Civil Statutes) (Art. 23.05, C.C.P.)

### **B. Bond Forfeiture Procedures**

1. Defendant's name shall be distinctly called at courthouse door (Art. 22.02, C.C.P.); after clerk of bailiff makes the call, whoever made call should prepare a certificate indicating the call was made (file with bond forfeiture case).
2. When defendant fails to appear, the prosecutor should make a motion for bond forfeiture; when the court grants the motion, a judgment *nisi* is entered that the State of Texas recover bond amount. (Art. 22.02, C.C.P.)
3. After a forfeiture is declared, the clerk shall docket the case upon the *scire facias* or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his or her sureties, if any, as defendants. (Art. 22.10, C.C.P.)
4. Upon entry of judgment *nisi*, citation to sureties shall be issued to sureties notifying them of bond forfeiture proceedings. (Art. 22.03, C.C.P.)

a. Requisites of citation (Art. 22.04, C.C.P.)(Tex. R. Civ. Proc. 99)  
Citation shall:

- Be styled "The State of Texas";
- Be signed by the clerk and under court seal;
- Contain name and location of the court;
- Show date of filing of the petition (judgment *nisi*);
- Show date of issuance of citation;
- Show file number;
- Show names of parties;
- Be directed to the defendant(s) (sureties);
- Show name and address of attorney for plaintiff; otherwise address of plaintiff;
- Contains time within which the defendant(s) (sureties) is required to file a written answer with the clerk who issued citation;
- Contain the address of the clerk (court);
- Contain the time within which the defendant is required to file a written answer with the clerk who issued the citation;
- Notify the defendant(s) (sureties) in case of failure to file an answer, judgment by default may be rendered for relief demanded in the petition;
- Direct the defendant(s) (sureties) to file a written answer on or before 10:00 a.m. on the Monday next after the expiration of 20 days after the date of service; and
- The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you."

b. Sureties entitled to notice as in civil actions (Art. 22.05, C.C.P.) (Tex. R. Civ. P. 106, 109, 114, 116, 117); method of service is:

- Delivering to the defendant(s) (sureties), in person, a true copy of the citation with the date of delivery endorsed on the citation; a copy of the judgment *nisi* is required to be attached to citation; or
- Mailing to the defendant(s) (sureties) by registered or certified mail, return receipt requested addressee only, a true copy of the citation with a copy of the judgment *nisi* attached.
- If service has been unsuccessful by either of the abovementioned methods, the prosecutor may make a motion supported by an affidavit stating the location of the defendant's (sureties) usual place of business or usual place or abode or other place where

the defendant can probably be found and stating specifically the facts showing that service has been attempted by the methods mentioned above; the court may then authorize service by:

- Leaving a true copy of the citation, with a copy of the judgment *nisi* attached with anyone over 16 years of age at the location specified in the affidavit; or
  - In any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant(s) (sureties) notice of the suit.
- Service by publication: Application must be made by the city attorney by affidavit. The affidavit must state that the residence of defendant is unknown or that the defendant is a transient person and after due diligence the defendant cannot be located.
  - Where there are two or more defendants, the citation may be directed to all of them by name.
  - The clerk shall have the citation published once each week for four consecutive weeks, the first publication to be at least 28 days before the return day of the citation; the clerk shall endorse the citation and show how and when the citation was executed, specifying the dates of publication; a copy of the citation shall be attached to the citation [If the defendant fails to appear, the court is required to appoint an attorney (Tex. R. Civ. P. 244)].
- c. Not necessary to notify defendant (defendant in criminal case) unless defendant has provided an address on the bond (If defendant provides address, notification—copy of citation with judgment *nisi* attached—is sent regular mail.). (Art. 22.05, C.C.P.)
  - d. A nonresident surety, a transient surety, or where surety's address unknown, citation can be served by publication upon application in writing to the clerk. (Art. 22.06, C.C.P.)
  - e. If surety dead at time of forfeiture, forfeiture valid. (Art. 22.09, C.C.P.)
5. Bond forfeiture case docketed on *scire facias* docket. (Art. 22.10, C.C.P.)
  6. Sureties may answer in writing. (Art. 22.11, C.C.P.)
  7. After trial on issues, judgment is final. (Art. 22.14, C.C.P.)
  8. If sureties fail to answer, judgment is by default (Art 22.15, C.C.P.); default judgment must be on file with the clerk of the court for 10 days, exclusive of the day of filing and the day of judgment before it shall be granted. (Tex. R. Civ. Proc. 107)
  9. A surety is not considered in default until the 11<sup>th</sup> day after final judgment is entered. (Sec. 1704.212, Occupations Code) (SB 119; eff. 9/1/01)

**C. Powers of the Court (Art. 22.125, C.C.P.)**

The court may:

- exonerate the defendant and his or her sureties, if any, from liability on the forfeiture;
- remit the amount of the forfeiture;
- set aside the forfeiture only as expressly provided by Chapter 22, C.C.P.; or
- the court may approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant or the defendant's sureties, if any. (Art. 22.125, C.C.P.)

**D. Cash Bond Forfeiture**

1. Forfeiture of Cash Bond (Art. 45.044, C.C.P.) - A judge may, if defendant posts cash bond, enter a judgment of conviction and forfeit cash bond to satisfy fine and costs of defendant if:
  - Defendant has entered a written and signed plea of nolo contendere and a waiver of jury trial; and
  - Defendant fails to appear according to the terms of the defendant's release.
2. Judge required to immediately notify defendant of conviction and forfeiture and the right to apply for a new trial within 10 days from the judgment.
3. If defendant applies for new trial, court is required to permit the defendant to withdraw the previously entered plea of nolo contendere and waiver of jury trial.

## **TRIAL PROCESS**

**A. Pre-trial (Art. 28.01, C.C.P.)**

1. Court may set any case for pre-trial. (Art. 28.01, Sec. 1, C.C.P.)
2. Pre-trial shall be to determine any of the following matters:
  - Arraignment of the defendant. (Art. 28.01, Sec. 1(1), C.C.P.) (Art. 26.011, C.C.P., prohibits the clerk, and thereby presumptively the court, from requiring the presence of the defendant in order to accept a waiver of arraignment from an attorney representing the defendant.);
  - Pleadings of the defendant. (Art. 28.01, Sec. 1(2), C.C.P.);
  - Special pleas, if any. (Art. 28.01, Sec. 1(3), C.C.P.);

- Exceptions to the form or substance of the complaint. (Art. 28.01, Sec. 1(4), C.C.P.) If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time. (Art. 45.019(f), C.C.P.);
  - Motions for continuance; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial. (Art. 28.01, Sec. 1(5), C.C.P.);
  - Motions to suppress evidence. (Art. 28.01, Sec. 1(6), C.C.P.);
  - Discovery. (Art. 28.01, Sec. 1(7), C.C.P.);
  - Entrapment. (Art. 28.01, Sec. 1(8), C.C.P.);
  - Motion for appointment of interpreter. (Art. 28.01, Sec. 1(9), C.C.P.):
    - If a defendant or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him or her. (Art. 38.30, C.C.P.);
    - If a defendant or a witness is deaf, the court shall appoint a qualified interpreter to interpret. An interpreter is entitled to a reasonable fee determined by the court after considering the recommendations of the Texas Commission for the Deaf and Hard of Hearing. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case shall be paid at the same rate applicable to state employees. (Art. 38.31, C.C.P.)
    - For information on interpreters, see chapter Chpt. 57, G.C.
3. Matters not raised or filed seven days before the hearing will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown. (Art. 28.01, Sec. 2, C.C.P.)
  4. Defendant is to have sufficient notice from the court of the date of the hearing to allow the defendant not less than 10 days in which to raise or file preliminary matters. (Art. 28.01, Sec. 2, C.C.P.)
  5. Notice may given by (Art. 28.01, Sec. 3, C.C.P.):
    - announcement in open court in the presence of the defendant or his or her attorney of record;
    - personal service upon the defendant or his or her attorney of record; or
    - mail to either the defendant or his attorney of record deposited by the clerk in the mail at least six days prior to the date set for hearing.

6. Order of argument. (Art. 28.02, C.C.P.)

**B. Speedy Public Trial**

Trial to be a speedy public trial. (Arts. 1.05 and 1.24, C.C.P.)

**C. Trial not Bifurcated**

Trial not bifurcated. [Art. 37.07, C.C.P.; *Brown v. State*, 507 S.W.2d 235 (Tex. Crim. App. 1974)]

**D. Continuances (Chapter 29, C.C.P.)**

1. By operation of law (Art. 29.01, C.C.P.):
  - The individual defendant has not been arrested;
  - A defendant corporation or association has not been served with summons; or
  - There is not sufficient time for trial at that term of court.
2. For religious holy days - A defendant, defense attorney, prosecutor, or juror may request a continuance because of a religious holy day (Arts. 29.011 and 29.012, C.C.P.);
3. By agreement of both parties in open court. (Art. 29.02, C.C.P.);
4. For sufficient cause set forth in a written motion. (Art. 29.03, C.C.P.);
5. If counsel for the State is not present, the judge may continue the case. (Art. 45.031(1), C.C.P.)
6. A legislative continuance applies to members of the Legislature and members-elect. (Sec. 30.003(b),(c), and (c-1), Civil Practice and Remedies Code.

**E. Subpoenas**

1. Subpoenas issued to secure witnesses appearance at trial. (Art. 24.01, C.C.P.)
2. The justices of the peace and municipal courts shall maintain a record of the number and style of each criminal action before the court; the name of each witness subpoenaed, attached, or recognized to testify in the action; and whether the witness was a witness for the State or for the defendant. (Art. 102.002, C.C.P.)
3. A defendant is liable on conviction for the witness fees for witnesses in the defendant's case. If a defendant convicted of a misdemeanor does not pay the defendant's fines and costs, the county or municipality, as appropriate, is liable for the fees for the witnesses in the defendant's case.

(Art. 102.002, C.C.P.) (Note: The fees were repealed by SB 577 eff. 9/1/99)

4. Both defense and prosecution entitled to subpoena witnesses. (Tex. Const. Art. I, Sec. 10) (Art. 1.05, C.C.P.)
5. No discretion in issuing subpoena. (*Edmondson v. State*, 43 Tex. 230 [1875])
6. Who may serve subpoenas: a peace officer, a person who is at least 18 years old and, at the time the subpoena is issued, not a participant in the proceeding for which the appearance is sought. (Art. 24.01, C.C.P.)
7. A court (judge) or clerk may issue subpoena. (Art. 24.01(d), C.C.P.)
8. No court seal required. (Arts. 24.01, C.C.P.)
9. *Subpoena duces tecum* defined: a subpoena requiring a witness to bring with him or her any instrument of writing or other thing desired as evidence. (Art. 24.02, C.C.P.)
10. Subpoenas for child witnesses: if a witness is younger than 18, the court may issue a subpoena directing a person having custody, care, or control of the child to produce the child in court. (Art. 24.011, C.C.P.)
11. Application for subpoena. (Art. 24.03, C.C.P.)
  - Felony cases - Application for subpoena required to be in writing or by electronic means. (Art. 24.03(a), C.C.P.)
  - Misdemeanor municipal courts cases – No provisions in statute requiring application to be in writing.
  - Information required to serve subpoena – Name of witness desired and location or address of witness.
12. Service and return of subpoena – The officer may (Arts. 24.04, 24.17, C.C.P.):
  - read the subpoena in the hearing of the witness;
  - deliver a copy of the subpoena to the witness;
  - electronically transmit a copy of the subpoena, acknowledgment of receipt requested, to the last known electronic address of the witness (Art. 24.04, C.C.P.); or
  - mail a copy of the subpoena by certified mail, return receipt requested to the last known address of the witness unless the applicant for the subpoena requests in writing that the subpoena not be served by certified mail; or the proceeding for which the witness is being subpoenaed is set to begin within seven business days after the date the subpoena would be mailed.
13. Enforcing the subpoena. (Arts. 24.05 - 24.10, C.C.P.)
14. Attachment for a witness. (Arts. 24.11, 24.12, 24.13, 24.14, C.C.P.)

15. Bail for witnesses. (Arts. 24.21 - 24.26, C.C.P.)
16. If defendant convicted, \$5.00 can be collected because peace officer summoned jury. (Art. 102.011(a)(7), C.C.P.)

**F. If Counsel for State Not Present (Art. 45.030, C.C.P.)**

1. The judge may postpone the trial to a date certain;
2. The judge may appoint an attorney pro tem as provided by Code of Criminal Procedure to represent the State (Note: See Art. 2.07(g), C.C.P., for appointing an attorney pro tem); or
3. The judge may proceed to trial. (Note: Only the prosecutor may announce ready for trial. If the prosecutor is not present, to announce ready and present evidence, there is no evidence against the defendant before the court. Thus, the court would find the defendant not guilty.)

**G. Jury Trial**

1. Complaint (Art. 45.018, C.C.P.):
  - A sworn complaint should already be on file;
  - If a ticket has been filed as the original complaint, a sworn complaint should be filed. (Art. 27.14(d), C.C.P.)
2. Case files - Court should establish a method for the prosecutor's office to check out case files to review and prepare State's case for trial.
3. Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought. (Art. 35.29, C.C.P.)
4. Summons the venire. (List of persons to be summoned as jurors from which six qualified persons shall be selected to serve as jurors in the case.) Judge required to issue a writ of venire. (Art. 45.027, C.C.P.)
  - a. Selection of prospective jurors - Municipal court jurors must be residents of the city in which they are called to serve. (Sec. 62.501, G.C.)
  - b. Juror exemptions. (Sec. 62.106, G.C.)
    - i. Exemptions:



- Over 70 years of age;
  - Has legal custody of a child younger than 10 years of age and jury service requires leaving the child without adequate supervision;
  - Is a student of public or private secondary school;
  - Is a person enrolled and in actual attendance at an institution of higher education;
  - Is an officer or an employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
  - Is summoned for service in a county with a population of at least 2,000,000, unless that county uses a jury plan under Section 62.011, G.C., and the period authorized under Section 62.011(b)(6), G.C., exceed two years, and he or she has served as a petit juror in the county during the 24-month period preceding the date he or she is to appear for jury service;
  - A person is exempt who is a primary caretaker of an invalid unable to care for himself/herself; or
  - Is summoned for service in a county with a population of at least 250,000 and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service. (This does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror.) (Section 62.106(8) and (b), G.C.)
- ii. Claiming exemption (Sec. 62.107, G.C.)(Art. 35.04, C.C.P.) – A person can claim, without appearing; file a sworn statement of the ground of the exemption with the court clerk before date supposed to appear.
- iii. Permanent exemption (Sec. 62.107(c), G.C.) – Any person over 70 years of age may file a statement with court clerk and claim a permanent exemption; clerk shall deliver a copy of statement to county tax assessor-collector.
- c. Clerk required to provide a jury handbook to each juror who is required to read it before jury service begins (Chpt. 23, Subchpt. C, Sec. 23.202, G.C.)
- d. The court is required to appoint a qualified interpreter for deaf or hearing-impaired persons during a *voir dire*, trial, and jury deliberations. Further, the interpreter is entitled to a fee determined by the court in consultation with the Texas Commission for the Deaf and Hearing-Impaired. If the interpreter is required to travel, all actual

expenses of travel, lodging, and meals incurred must be paid at the same rate as State reimbursement. In a municipal court proceeding, a deaf or hearing-impaired juror may request an auxiliary aid or service. The city shall honor the request unless the city can demonstrate that another effective means of communication exists. The city shall pay the costs unless the auxiliary aid or service will result in a fundamental alteration of the municipal court proceeding or an undue financial or administrative burden. (Sec. 62.1041, G.C.) (Note: *For guidance, contact the Texas Commission for the Deaf and Hearing-Impaired at (512) 451-8494 in Austin.*) All interpreters for the deaf and hard of hearing must be certified. The Commission for the Deaf and Hard of Hearing and the Texas Department of Licensing and Regulation develop applications, exams, certification, and monitoring procedures.

- e. When a prospective juror fails to appear for jury duty, the prospective juror may be fined up to \$100 for contempt. (Art. 45.027, C.C.P.)
  - f. Jury fees - A defendant in a justice or municipal court who requests a trial by jury and who withdraws the request not earlier than 24 hours before the time of trial shall pay a jury fee of \$3 if the defendant is convicted of the offense or final disposition of the defendant's case is deferred. (Art. 102.004, C.C.P.)
  - g. Jury compensation. (Sec. 61.001, G.C.) (Municipal courts are not required to pay jurors.)
5. Jury Trial Proceedings.
- a. If counsel for State not present, the judge may (Art. 45.030, C.C.P.):
    - postpone the trial to a date certain;
    - appoint an attorney pro tem as provided by C.C.P. to represent the State (Note: See Art. 2.07(g), C.C.P., for appointing an attorney pro tem); or
    - proceed to trial. (Note: Only the prosecutor may announce ready for trial. If the prosecutor is not present, to announce ready and present evidence, there is no evidence against the defendant before the court. Thus, the court would find the defendant not guilty.)
  - b. If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time. (Art. 45.019(f), C.C.P.)
  - c. Call the venire (jury panel). (Art. 35.20, C.C.P.)
  - d. Challenge the array. (Arts. 35.06, 35.07, C.C.P.)

- i. When challenge is sustained. (Art. 35.08, C.C.P.)
  - ii. List of new venire. (Art. 35.09, C.C.P.)
- e. Shuffle the jury - The clerk shall randomly select the jurors by a computer or other process of random selection and shall write or print the names in the order selected on the jury list. The clerk shall deliver a copy of the list to both the prosecutor and the defendant or the defendant's attorney. (Art. 35.11, C.C.P.)
- f. Oath to jury panel. (Art. 35.02, C.C.P.)
- g. Juror excuses and claiming exemptions. (Arts. 35.03, 35.04, C.C.P.)
- h. Court to try qualifications. (Arts. 35.10, 35.12, C.C.P.)
- i. Examine jurors (voir dire) and challenge for cause. (Arts. 35.16 - 35.19, C.C.P.)
- j. Peremptory challenges. (Art. 45.029, C.C.P.)
- k. Jurors.
- i. If from challenges or any other cause, a sufficient number of jurors are not in attendance, the judge shall order the proper officer to summon a sufficient number of qualified persons to form the jury (commonly called a pick-up jury). (Art. 45.028, C.C.P.)
  - ii. Six jurors. (Art. 45.027, C.C.P.)
  - iii. Oath to jury. (Art. 45.030, C.C.P.)  
The oath is in accordance with Chapter 35, C.C.P. (Art. 45.030, C.C.P.) See Art. 35.22, C.C.P., for oath.
- l. Arraignment.
- i. Identify defendant. (Art. 26.02, C.C.P.)
  - ii. Defendant's plea. (Arts. 26.02 and 45.023, C.C.P.)
    - Pleading may be oral or in writing as the court may direct. (Art. 45.021, C.C.P.)
    - If defendant refuses to plea, the judge shall enter a plea of not guilty. (Art. 45.024, C.C.P.)
  - iii. The clerk is prohibited, and thereby presumptively the court, from requiring the presence of the defendant in order to accept a waiver of arraignment from an attorney representing the defendant. (Art. 26.011, C.C.P.)
- m. Order of trial. (Art. 36.01, C.C.P.)
- n. Testimony. (Arts. 36.02 - 36.06, C.C.P.)
- o. Exclusion of witness - Motion to Invoke Rule. (Rule 614, Texas Rules of Evidence) Article 36.06, C.C.P., which exempts victims, family members of murder victims, and guardians of victims from "The Rule"

provides for the exclusion of witnesses from the courtroom during the testimony of other witnesses. It allows exclusion of victims only if the victim will testify and the court finds that the victim's presence would materially affect his or her testimony. The burden of proving this fact is on the party asking to exclude victims, family members of murder victims, and guardians of victims.

- p. Charge to the jury. (Art, 45.033, C.C.P.) - The judge shall charge the jury. The charge may be made orally or in writing, except that the charge shall be made in writing if required by law. (Art. 45.033, C.C.P.)
- q. Order of argument. (Art. 45.020, C.C.P.) - Not more than one counsel shall conduct either the prosecution or defense. State's counsel may open and conclude the argument.
- r. Directed verdict – If upon the trial of a case in justice or municipal court, the State fails to prove a *prima facie* case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of “not guilty.” (Art. 45.032, C.C.P.)
- s. Jury kept together until agree on verdict, or discharged, or the court recesses. (Art. 45.034, C.C.P.) Judges are required to provide a sequestered a jury reasonable time to vote on election day. The court may provide the juror with transportation to and from the polling place. (Sec. 276.009, Elec. Code)
- t. Verdict. (Art. 45.036 C.C.P.) – The judge shall see that the verdict is in proper form and shall render the proper judgment and sentence on the verdict.
- u. Jury poll. (Art. 37.05, C.C.P.)
- v. Judgment the judge may direct the defendant to pay. (Art. 45.041 C.C.P.):
  - the entire fine and costs when sentence is pronounced;
  - the entire fine and costs at some later date; or
  - a specified portion of the fine and costs as designated intervals;
  - if applicable, to make restitution to any victim of the offense in an amount not to exceed \$500; and
  - to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)
- w. The verdict and the judgment must be entered in docket. (Art. 45.017, C.C.P.)
- x. Jury compensation. (Sec. 61.001, G.C.) (Municipal courts are not required to pay jurors.)
- y. Fee.

- i. Jury fee. (Art. 102.004, C.C.P.) - A defendant in a justice or municipal court who requests a trial by jury shall pay a jury fee of \$3 if the defendant is convicted of the offense. (Art. 102.004, C.C.P.)
  - ii. If a peace officer summoned the jury, upon conviction, the defendant is required to pay five dollars for the services of a peace officer. (Art. 102.011(7), C.C.P.)
  - iii. If a peace officer served subpoenas, upon conviction, the defendant is required to pay five dollars for the services of a peace officer. (Art. 102.011(3), C.C.P.)
  - iv. Cost for Officer's Overtime when Testifying. (Art. 102.011(i), C.C.P.) Defendants are required to pay the costs of overtime paid to a peace officer for time spent testifying in the trial of the case or for traveling to or from testifying in the trial of the case.
- 6. New trial. (Arts. 45.037, 45.038, 45.039, 45.040, C.C.P.) Motion for new trial must be made within one day after the rendition of judgment and sentence and not afterward. Not later than the 10<sup>th</sup> day after the date that the judgment is entered, a judge may for good cause shown, grant the defendant a new trial, whenever the judge considers that justice has not been done in the trial of the case. If a motion for new trial is not granted before the 11<sup>th</sup> day after the date that the judgment is entered, the motion shall be considered denied. Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the judge shall proceed, as soon as practicable, to try the case again. In no case shall the State be entitled to a new trial.
- 7. Mistrial - A jury shall be discharged if it fails to agree to a verdict after being kept together a reasonable time. If a jury is discharged because it fails to agree to a verdict, the judge may impanel another jury as soon as practicable to try such cause. (Art. 45.035, C.C.P.)
- 8. Appeal, if any. (Arts. 45.042, 45.0425, 45.0426, 45.043, C.C.P.)
- 9. Failure to appear for jury trial – A justice or municipal court may order a party who demands a jury trial in a justice or municipal court and who fails to appear for the trial to pay for the cost incurred for impaneling the jury. It appears from this particular section that a justice or municipal court could require a defendant or the State (*i.e.*, the city prosecutor) to pay the cost incurred for impaneling the jury. In addition, the justice or municipal court may release a party from the obligation to pay costs under this article for “good cause.” The statute does not address whether or not a court should conduct some type of hearing to determine whether or not “good cause” is present. However, it would be prudent to have some type of hearing to determine whether or not there is “good cause” before releasing a particular party from the expenses provided for in this article. Also, this

article provides that an order issued by a municipal or justice court may be enforced as contempt as prescribed by Section 21.002(c), G.C.

#### H. Non-jury Trial (Art. 45.025, C.C.P.)

1. Right to a jury trial. (Art. 1.05, C.C.P.)
2. Accused may waive a trial by jury in writing. If the defendant waives a trial by jury, the judge shall hear and determine the cause without a jury. (Art. 45.025, C.C.P.)
3. A complaint must be on file with the court unless the defense and prosecution have agreed to go to trial on the citation and filed the agreement with the court. (Art. 27.14(d), C.C.P.) If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument (complaint) before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time. (Art. 45.019(f), C.C.P.)
4. Order of trial. (Art. 36.01, C.C.P.)
5. Testimony. (Arts. 36.02 - 36.06, C.C.P.)
6. Exclusion of witness - Motion to invoke Rule. (Rule 614, Texas Rules of Evidence)
7. Directed verdict – If upon the trial of a case in justice or municipal court, the State fails to prove a *prima facie* case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of “not guilty.” (Art. 45.032, C.C.P.)
8. Order of argument. (Art. 45.45.020(b), C.C.P.)
9. Judgment – The judge may direct the defendant to pay. (Art. 45.041 C.C.P.):

- the entire fine and costs when sentence is pronounced;
- the entire fine and costs at some later date; or
- a specified portion of the fine and costs as designated intervals.

The Judge may also:

- if applicable, require restitution to any victim of the offense in an amount not to exceed \$500; and
  - to satisfy other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)
10. Judgment entered in docket. (Art. 45.017, C.C.P.)
  11. Cost for officer’s overtime when testifying. (Art. 102.011(i), C.C.P.)  
Defendants are required to pay the costs of overtime paid to a peace

officer for time spent testifying in the trial of the case or for traveling to or from testifying in the trial of the case.

12. New trial – (Arts. 45.037, 45.038, 45.039, 45.040, C.C.P.) Motion for new trial must be made within one day after the rendition of judgment and sentence and not afterward. Not later than the 10<sup>th</sup> day after the date that the judgment is entered, a judge may for good cause shown, grant the defendant a new trial, whenever the judge considers that justice has not been done in the trial of the case. If a motion for new trial is not granted before the 11<sup>th</sup> day after the date that the judgment is entered, the motion shall be considered denied. Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the judge shall proceed, as soon as practicable, to try the case again. In no case shall the State be entitled to a new trial.
13. Appeal, if any. (Arts. 45.042, 45.0425, 45.0426, 45.043, C.C.P.)

## **NON-CONTESTED PROCEEDINGS**

### **A. Appearance in Person in Open Court (Art. 27.14(a), C.C.P.)**

1. Adult defendants have right to appear by counsel. (Art. 45.020, C.C.P.); Minors (under age 17) must appear in open court in person with a parent or guardian. (Art. 45.0215, C.C.P.)
2. All pleading of the defendant may be oral or in writing as the court may direct. (Art. 45.021, C.C.P.)
3. Defendant's plea of guilty or nolo contendere. (Arts 27.14(a) and 45.023, C.C.P.)
4. Written waiver of jury trial required. (Art. 45.025, C.C.P.)
5. Presentation of evidence, if any.
6. Judgment – The judge may direct the defendant to pay. (Art. 45.041 C.C.P.):
  - the entire fine and costs when sentence is pronounced;
  - the entire fine and costs at some later date; or
  - a specified portion of the fine and costs as designated intervals.

The Judge may also:

- if applicable, to make restitution to any victim of the offense in an amount not to exceed \$500; and
  - to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)
7. Judgment entered on docket. (Art. 45.017, C.C.P.)

8. Appeal, if any. (Arts. 45.042, 45.0425, 45.0426, 45.043, C.C.P.)

**B. Delivery of Plea to the Court (Adult Defendants) (Art. 27.14(b), C.C.P.)**

1. Plea of guilty or nolo contendere and written waiver of jury trial.
2. Clerk transmits plea and waiver to judge to accept.
3. Judgment – The judge may direct the defendant to pay. (Art. 45.041, C.C.P.):
  - the entire fine and costs when sentence is pronounced;
  - the entire fine and costs at some later date; or
  - a specified portion of the fine and costs as designated intervals.

The Judge may also:

- if applicable, require restitution to any victim of the offense in an amount not to exceed \$500; and
  - to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)
4. Judgment entered on docket. (Art. 45.017, C.C.P.)
  5. Court required to notify defendant of amount of fine and appeal bond the court will approve; notification may be in person. If notice is mailed, it must be certified and return receipt is required. (Art. 27.14(b), C.C.P.)
  6. Defendant has up to 31 days after receiving the notice to either pay the fine or give the court an appeal bond in the amount stated in the notice. (Art. 27.14(b), C.C.P.)
  7. Defendant may appeal. (Arts. 27.14(b) and 45.042, 45.0425, 45.0426, 45.043, C.C.P.)

**C. Appearance by Mail (Art. 27.14(b), C.C.P.)**

1. Plea and written waiver of jury trial required.
2. Court required to notify the defendant by certified mail return receipt requested of amount of fine and appeal bond.
3. Defendant has up to 31 days to pay or appeal from the time he or she received the certified notice from the court.
4. Judgment – the judge may direct the defendant to pay (Art. 45.041, C.C.P.):
  - the entire fine and costs when sentence is pronounced;
  - the entire fine and costs at some later date; or
  - a specified portion of the fine and costs as designated intervals.



The Judge may also:

- if applicable, require restitution to any victim of the offense in an amount not to exceed \$500; and
  - to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)
5. Judgment entered in docket. (Art. 45.017, C.C.P.)
  6. Defendant may appeal. (Arts. 27.14(b) and 45.042, 45.0425, 45.0426, 45.043, C.C.P.)

**D. Payment of Fine (Art. 27.14(c), C.C.P.)**

1. Payment of the fine constitutes a plea of no contest and a written waiver of a jury trial. The Judge enters a finding of guilty.
2. Court accepts fine payment.
3. Judge renders judgment. (Art. 45.041, C.C.P.)
4. Judgment entered in docket. (Art. 45.017, C.C.P.)

**E. Out-of-County Fine-Only Offenses**

A magistrate may take a written plea of guilty or nolo contendere, assess the fine, determine costs, give jail credit, accept payment, or determine indigence, and discharge the defendant where appropriate. The magistrate accepting a plea must forward the plea, order of the court, and any fine and costs collected to the original court within 10 business days. (Art. 15.18, C.C.P.)

## **SENTENCING AND PUNISHMENT**

**A. Fine and Costs (Art. 4.14, C.C.P.) (Sec. 12.23, P.C.)**

**B. Payment of Fine and Costs (Art. 45.041, C.C.P.)**

1. Judgment – The judge may direct the defendant to pay (Art. 45.041 C.C.P.):
  - the entire fine and costs when sentence is pronounced;
  - the entire fine and costs at some later date [If any portion of fine and costs paid after 31<sup>st</sup> day after judgment, court must collect time payment fee of \$25 (Sec. 51.921, G.C.)];
  - a specified portion of the fine and costs as designated intervals; [If any portion of fine and costs paid after 31<sup>st</sup> day after judgment, court must collect time payment fee of \$25 (Sec. 51.921, G.C.)];

- if applicable, to make restitution to any victim of the offense in an amount not to exceed \$500; and
  - to satisfy any other sanction authorized by law. (Art. 45.041(b)(2) and (3), C.C.P.)
2. Jail time credit. (Arts. 45.041, 45.048 and 42.03, C.C.P.) In all criminal cases, the judge of the court in which a defendant is convicted shall give the defendant credit on his or her sentence for the time that the defendant has spent in jail from the time of his or her arrest and confinement until his or her sentence by the trial court. (Art. 42.03, Sec. 2(a), C.C.P.) Jail time credit is at the rate of not less than \$100 for a period of time specified in the judgment. The period of time shall not be less than eight hours nor more than 24 hours. (Art. 45.048, C.C.P.) On January 1, 2004, jail credit becomes a minimum rate of not less than \$50 for the period of time specified in the judgment. (Art. 45.048, C.C.P.)
  3. Payment by credit card, electronic means, or payment through the Internet. (Chpt. 132, L.G.C.) *Credit card* means a card, plate, or similar device used to make purchases on credit or to borrow money; *payment by electronic means* is defined as payment by telephone or computer but does not include payment in person or by mail. A municipality may provide collection of payment for fines, fees, court costs, or other charges through the Internet. The municipality may charge a reasonable fee. The municipality may contract with a vendor to perform the service.
    - a. The governing body of a municipality may authorize a municipal official who collects fees, fines, court costs, or other charges: (1) accept payment by credit card of a fee, fine, court costs, or other charge; (2) collect a fee for processing the payment by credit card or electronic means; or (3) may authorize the acceptance of payment by credit card without requiring collection of a fee.
    - b. Sec. 132.003, L.G.C., Processing Fee - The governing body of a municipality shall set the processing fee in an amount that is reasonably related to the expense incurred by the municipal official in processing the payment by credit card. However, the governing body may not set the processing fee in an amount that exceed five percent of the amount of the fee, fine, court cost, or other charge being paid.
    - c. Sec. 132.004, L.G.C., Service Charge - If, for any reason, a payment by credit card is not honored by the credit card company on which the funds are drawn, the county or municipality may collect a service charge from the person who owes the fee, fine, court costs, or other charge. The service charge is in addition to the original fee, fine, court cost, or other charge and is for the collection of that original amount. The amount of the service charge is the same amount as the fee charged for the collection of a check drawn on an account with insufficient funds.

4. Community Service (Arts. 43.09(m) and 45.049, C.C.P.)
  - a. Fines and costs imposed by municipal courts, regardless of whether the court is a court of record, may be discharged by performing community service and a community supervision and corrections department or a court-related services office may provide the administrative duties and other services necessary for the placement in programs. (Art. 43.09(m), C.C.P.)
  - b. 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. (Art. 45.049, C.C.P.)
  - c. Defendant may discharge an obligation to perform community service by paying at any time the fine and costs assessed. (Art. 45.049, C.C.P.)
  - d. Judge is required to specify in an order requiring community service the number of hours the defendant is required to work. (Art. 45.049(b), C.C.P.)
  - e. The community service work must be for a governmental entity or a nonprofit organization that provides services to the general public that enhances social welfare and the general well-being of the community.
  - f. The governmental entity or nonprofit organization that accepts a defendant order 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.
  - g. Judge may not order more than 16 hours per week of community service unless the judge determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant's dependents.
  - h. A defendant is considered to have discharged \$100 of fines or costs for each eight hours of community service performed. (Art. 45.049(e), C.C.P.) On January 1, 2004, community service credit for every eight hours of service performed discharges not less than \$50 of fine and costs.
  - i. Municipal judge, officer, or employee of city is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant if the act or failure to act was:
    - performed pursuant to court order; and
    - not intentional, willfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

## C. Minors

1. Alcoholic Beverage Code Offenses (Chpt. 106, A.B.C.); minors – persons under the age of 21.
  - a. Offenses: Purchase of Alcohol by a Minor Attempt to Purchase Alcohol by a Minor, Consumption of Alcohol by a Minor, Driving under the Influence of Alcohol by a Minor, Misrepresentation of Age by a Minor, or Possession of Alcohol by a Minor.
  - b. Alcohol Awareness Course.
    - i. When a court convicts a minor who has not been previously convicted of one of the following offenses: Purchase of Alcohol by a Minor Attempt to Purchase Alcohol by a Minor, Consumption of Alcohol by a Minor, Driving under the Influence of Alcohol by a Minor, Misrepresentation of Age by a Minor, or Possession of Alcohol by a Minor, the court is required to make that defendant attend an alcohol awareness course. If the defendant has been previously convicted of one or more of the above listed offenses, the court may require the defendant to attend an alcohol awareness course. (Sec. 106.115(a), A.B.C)
    - ii. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the course with the defendant. (Sec. 106.115(a), A.B.C.)
    - iii. When requested, an alcohol awareness course may be taught in languages other than English.
    - iv. The court shall require the defendant to present to the court, within 90 days of the date of final conviction, evidence in the form prescribed by the court that the defendant has satisfactorily completed the course.
    - v. If the defendant presents the required evidence within the prescribed period, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.
    - vi. If the defendant does not present the required evidence within the prescribed period, the court:
      - Shall order the Department of Public Safety to suspend the defendant's driver's license or permit for a period not to exceed six months or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; and
      - May order the defendant or the parent, managing conservator, or guardian of the defendant to do any act or refrain from doing any act if the court determines that doing the act or refraining from doing the act will increase the

likelihood that the defendant will present evidence to the court that the defendant has satisfactorily completed an alcohol awareness program or performed the required hours of community service. (Sec. 106.115 (d)(2), A.B.C.)

- vii. When a defendant fails to present the court with required evidence of alcohol awareness course completion, the court may upon good cause shown extend the period by not more than 90 days. (Sec. 106.115(c), A.B.C.)
- c. The court is required to order community service upon conviction of or when a minor is placed on deferred disposition for the offenses of *purchase, attempt to purchase, consumption, possession of alcohol by a minor, and misrepresentation of age by a minor*. If a minor has not been previously convicted, the minor must perform between eight and 12 hours community service. If the minor has been previously convicted, the minor must perform between 20 and 40 hours community service. Community service must be related to the education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes. (Sec. 106.071(d), A.B.C.)
- d. Upon conviction of the following offenses: *purchase, attempt to purchase, consumption, possession of alcohol by a minor, and misrepresentation of age by a minor*, the court is required to order the Department of Public Safety to suspend or deny issuance of the minor's driver's license. For the first conviction, the suspension is for 30 days. For the second conviction, the suspension is for 60 days; for the third or subsequent convictions, the suspension is for 180 days. (Art. 106.071(d)(2), A.B.C.)
- e. Fine for fine-only Alcoholic Beverage Code Offenses – Class C misdemeanor. (\$500 maximum fine) (Sec. 106.071(b), A.B.C.) See Sec. 106.041, A.B.C., for fine for DUI – Class C misdemeanor.
- f. If a person is a minor over the age of 17 who has been previously convicted at least twice of one of the following offenses: *purchase, attempt to purchase, consumption, possession of alcohol by a minor, misrepresentation of age by a minor, or driving under the influence of alcohol by minor*, the punishment is a fine of not less than \$250 or more than \$2000 and/or confinement in jail for a term not to exceed 180 days. Municipal court does not have jurisdiction over this defendant. (Art. 106.071, A.B.C.)

- g. Driving Under the Influence of Alcohol by Minor; Class C misdemeanor – Maximum fine is \$500. (Sec. 106.041, A.B.C.)
    - i. Upon conviction, the court is required to order the defendant to perform between 20 and 40 hours of community service if the minor has not been previously convicted of this offense. If the minor has been previously convicted, the minor must perform between 40 and 60 hours of community service. The community service must be related to education about or prevention of misuse of alcohol. (Sec. 106.041(d), A.B.C.)
    - ii. When a minor has been previously convicted at least twice of the offense of DUI, the penalty for DUI is a fine of not less than \$500 or more than \$2000 and/or confinement in jail for a term not to exceed 180 days. (Note: Municipal court does not have jurisdiction over these offenses.) (Sec. 106.041(c), A.B.C.)
    - iii. A minor who commits an offense under this section and who has been previously convicted twice or more of this offense is not eligible for deferred disposition. (Sec. 106.041(f), A.B.C.)
  - h. A minor who has been previously convicted twice or more of any Alcoholic Beverage Code offense is not eligible for deferred disposition.
  - i. Any person convicted of not more than one violation of the Alcoholic Beverage Code while a minor, on attaining the age of 21 years, may apply to the court in which he or she was convicted to have the conviction expunged. (Sec. 106.12, A.B.C.)
2. Tobacco Offenses (Subchapter N, H.S.C.)
- a. Tobacco offenses by minors (younger than 18 years of age): possession, purchase, consumption, receipt of cigarettes or tobacco products by minors, or falsely representing himself or herself to be 18 years of age by displaying fraudulent proof of age to obtain possession of, purchase or receive a cigarette or tobacco product. (Sec. 161.252, H.S.C.)
  - b. It is an exception if the minor is in the presence of an adult parent, guardian, or spouse, or an employer of the minor whose possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee. (Sec. 161.252(b), H.S.C.)
  - c. Upon conviction, the court is required to suspend execution of the fine and shall required the minor to attend a tobacco awareness program approved by the Health and Human Services Commission. (Sec. 161.253(a), H.S.C.)
    - i. The defendant must show satisfactory completion of the course not later than the 90<sup>th</sup> day after the date of conviction. (Sec. 161.253(e), H.S.C.)

- ii. If the defendant does not provide evidence of successful completion of a tobacco awareness course, the court shall order the Department of Public Safety to suspend or deny issuance of driver's license or permit for a period not to exceed 180 days after the date of the order. (Sec. 161.254, H.S.C.)
  - iii. The court on receipt of the evidence of successful completion of the tobacco awareness course must discharge the defendant and dismiss the complaint. (If a defendant is subsequently convicted of a tobacco offense, the first offense that was dismissed is considered to be a conviction.) If the defendant has been previously convicted of a tobacco offense, the court may reduce the fine imposed to not less than half the fine previously imposed by the court. (Sec. 161.253(f) and (g), H.S.C.)
- d. A minor convicted of a tobacco offense may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily completed the tobacco awareness program or tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offenses to be expunged from the individual's record and the conviction may not be shown or made known for any purpose. (Sec. 161.255, H.S.C.)
- e. Title 3 of the Family Code does not apply to a proceeding under this subchapter. (Sec. 161.257, H.S.C.)

**D. Juveniles – Sealing Records (Chpt. 58, C.C.P., and Sec. 58.003, F.C.)**

Chapter 58, C.C.P., which required the criminal courts to seal juvenile non-traffic records in the same manner as the juvenile court under Sec. 58.003, F.C., was repealed by the 77<sup>th</sup> Legislature. Non-traffic offenses committed by juveniles before September 1, 2001 may still be sealed under Section 58.003, F.C. See that section in the Family Code for procedures.

**E. Default in Payments**

1. Judge may issue a *capias pro fine* to have the defendant brought before the court when a defendant fails to satisfy the judgment according to its terms. (Art. 45.045, C.C.P.) The requisites are:
  - It shall state the amount of the judgment and sentence;
  - It shall command the appropriate officer to bring the defendant before the court; or
  - Place the defendant in jail until he or she can be brought before the court.

1. When *capias pro fine* may be issued - If a defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according to its terms.
2. The court in which the case was tried has the authority to issue the *capias*.
3. When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge determines that the defendant intentionally failed to make a good faith effort to discharge the judgment, or the defendant is not indigent. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. (Art. 45.046, C.C.P.)
4. If after a judgment and sentence is entered the defendant defaults in payment of a fine, the justice or judge may order the fine and costs collected by execution against the defendant's property in the same manner as a judgment in a civil suit. (Art. 45.047, C.C.P.)
5. The court has the duty to inquire into reasons for non-payment to avoid jailing indigents who are unable to pay. [*Doe v. Angelina County*, 733 F.Supp. 245(E.D. Tex. 1990)]
6. A defendant placed in jail on account of failure to pay the fine and costs *shall* be discharged on habeas corpus by showing that the defendant:
  - Is too poor to pay the fine and costs; or
  - Has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than \$100 for a period of time specified in the judgment. The period of time shall not be less than eight hours or more than 24 hours. (Art. 45.048, C.C.P.) On January 1, 2004, jail credit will become not less than \$50 for every period of time specified in the judgment.
7. After a defendant defaults in payment of fine and/or costs, if the court determines that the defendant is indigent and that performing community service would cause an undue hardship, the court may waive the fine and costs. (Art. 43.091, C.C.P.) (Indigent means an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines.) (Sec. 133.002, Tax Code)
8. Juveniles
  - a. Failure to pay fine; contempt: juveniles (Art. 45.050, C.C.P.)
    - i. A child means a person who is at least 10 years of age and younger than 17 years of age and charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.12, C.C.P. (Art. 45.058, C.C.P.)



- ii. The court may not order confinement of a child for failure to pay all or any part of a fine or costs or for contempt of another order.
  - iii. If a child fails to obey an order of the court under circumstances that would constitute contempt of court, the court can refer the child to the juvenile court for delinquent conduct for contempt of the court order; or the court may retain jurisdiction of the case and hold the child in contempt and impose a fine not to exceed \$500; or order the Department of Public Safety to suspend or deny issuance of the child's driver's license or permit.
- b. A *capias pro fine* may not be issued for an individual convicted for an offense committed before the individual's 17<sup>th</sup> 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 criminal record and history of the individual; 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 to compel the individual to discharge the judgment. (Article 45.045, C.C.P.)
- c. Special Programs for Non-traffic Offenses (Art. 45.057, C.C.P.)
- i. On a finding that a child committed a fine-only offense, the court has the jurisdiction to enter an order requiring that the child 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 a rehabilitation, counseling, self-esteem, and leadership, work and job skill training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity, training, parental responsibility, community service, restitution, advocacy, or mentoring program.
  - ii. If the court finds that the parent, managing conservator, or guardian, by act or omission, contributed to, caused, or encouraged the child's conduct, the court can require that the parent, managing conservator, guardian 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, including attend a parenting class or parental responsibility program; and attend the child's school classes or functions.

- iii. The court may order the parent, managing conservator, or guardian of a child required to attend a special program to pay an amount not greater than \$100 to pay for the costs of the program.
  - d. Failure to Attend School Proceedings (Art. 45.054, C.C.P.)
    - i. On a finding that an individual committed the offense of failure to attend school, the court may require the individual to:
      - attend school without unexcused absences;
      - attend a preparatory class for a GED examination if the court determines that the individual is too old to do well in a formal classroom environment, or if the individual is at least 16 years of age, take the GED examination;
      - attend an alcohol and drug abuse program, a rehabilitation program, a counseling program (including self-improvement counseling, a work and job skills training program, a program that provides training in parenting (including parenting responsibility), a program that provides training in violence avoidance, a program that provides sensitivity training, and a program that provides training in advocacy and mentoring;
      - reasonable community service; and
      - participate in a tutorial program.
    - ii. The court may require the individual and the individual's parents to attend a class for students at risk of dropping out of school.
9. Contracts with DPS for denial of renewal of license for Failure to Appear. (Chpt. 706, T.C.)
- a. A city may contract with the Department of Public Safety to provide information necessary for the Department to deny renewal of the driver's license of a person who has failed to appear for a complaint or citation, or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner order by the court in a matter involving fine-only offenses that municipal court has jurisdiction to hear. (Sec. 706.002(a), T.C.)
  - b. If a city has contracted with the Department under this statute, a peace officer who is authorized to issue citations in the jurisdiction of the city shall issue a written warning to each person to whom the officer issues a citation for a violation of a traffic law. The warning is in addition to any other warning required by law. The warning must state in substance that if the person fails to appear in court as provided by law for the prosecution of the offense, or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner order by the court, the person may be denied renewal of the person's

driver's license. The written warning may be printed on the same instrument as the citation.

- c. Administrative Fee – \$30 paid by the defendant; \$20 of this fee is remitted the State; the city retains \$10. Upon payment of the fee and when one of the following occurs, the court must notify DPS to remove the cause for denial of license renewal:
    - Perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
    - Dismissal of the charge for which the warrant of arrest was issued or judgment arose;
    - Posting of a bond or the giving of other security to reinstate the charge for which the warrant was issued;
    - Payment or discharge of the fine and cost owed on an outstanding judgment of the court; or
    - Other suitable arrangement to pay the fine and cost within the court's discretion.
  - d. A person who is acquitted of the charge on which the person failed to appear; or the submission was sent to DPS in error; or the records have been destroyed in accordance with the political subdivision's records retention policy does not have to pay the administrative fee and DPS cannot continue to deny driver's license renewal.
10. Contract with private attorney or a private or public vendor (Art. 103.0031, C.C.P.)
- a. The city may contract with a private attorney or a private or public vendor for collection services for:
    - Debts owed (cases with judgments);
    - Forfeited bonds (Bonds filed by commercial bail bondsmen may not be included in a contract for collection services. Only personal bonds and surety bonds not filed by a commercial bail bondsmen may be included in the collection contract.);
    - Fines and fees assessed by a hearings officer for administrative parking citations; and
    - Amounts in cases in which the accused failed to appear in compliance with a lawful summons; a lawful order of the court; or as specified in a citation, summons, or other notice for administrative parking.
  - b. The judgment and failure to appear must be at least 60 days old.
  - c. The defendant is liable for 30 percent collection fee. The fee does not apply if a case is dismissed or to any part of the fine or cost which a defendant discharged by jail credit or community service. If the defendant, however, makes any partial payment, the court must

calculate the amount of the collection fee due. The allocation to the Comptroller, the city, and the private attorney or vendor must be reduced proportionately.

- d. For cases that are not adjudicated, the amount of the collection fee is based upon the amount to be paid that is communicated to the accused as acceptable to the court under its standard policy for resolution of the case, if the accused voluntarily agrees to pay that amount. If a defendant does not agree to that amount, the 30 percent is based upon the amount ordered paid by the court after plea or trial. Vendors and attorneys sending a communication to the accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case, must include a notice of the person's right to enter a plea or go to trial on any offense charged.
- e. Cities may enter into a contract to collect a debt incurred on an offense that was committed before June 18, 2003. The collection fee, however, does not apply to the debt and cannot be collected from a defendant. Therefore, on new contracts entered into after June 18, 2003, the 30 percent collection fee cannot be collected on debts incurred on offenses that were committed before that date. Arguably, under contracts entered into under the old law for uncollected debts, the collection fee could still be collected.

Cities may enter into a contract to collect an amount incurred as a result of the commission of a criminal or civil offense committed before, on, or after June 18, 2003. The collection fee, however, does not apply to an amount incurred on cases in which a defendant failed to appear if the offense was committed before June 18, 2003. Hence, for both types of cases, those in which debts are owed (judgments entered) and those in which suggested amounts are owed (defendants failed to appear) that occurred before June 18, 2003, a city may contract for collection services, but may not include in the contract the 30 percent collection fee.

## **F. Remediating Defects**

- 1. Expired Driver's License (Sec. 521.026, T.C.)
  - a. Judge's discretion to dismiss.
  - b. Defendant must remedy defect within 10 working days.
  - c. Judge may assess an administrative fee not to exceed \$10.
- 2. Invalid Inspection Certificate (Sec. 548.605, T.C.)
  - a. Judge shall dismiss the inspection certificate charge if the inspection certificate has not been expired for more than 60 days and shall assess a \$10 fee if the defendant obtains current inspection certificate

within 10 working days. "Working day" means any day other than a Saturday, a Sunday, or a holiday when county offices are closed. (Art. 45.003, C.C.P., also defines working day as a day that does not include Saturday, Sunday, or a legal holiday.)

- b. A judge may dismiss a charge of driving with an expired inspection certificate that has been expired for more than 60 days, but there is no provision to assess a fee.
3. Expired Motor Vehicle Registration. (Sec. 502.407(b), T.C.)
    - a. Judge's discretion to dismiss.
    - b. Defendant must remedy defect within 10 working days. Working day is defined as a day that does not include Saturday, Sunday, or a legal holiday. (Art. 45.003, C.C.P.)
    - c. Judge may assess an administrative fee not to exceed \$10.
    - d. Court required to determine that any delinquency due county tax collector/assessor for late registration is paid to the county tax collector/assessor before dismissing charge.

#### **G. Restitution**

1. A judge may direct a defendant to make restitution to any victim of the offense in an amount not to exceed \$500 as part of the municipal court judgment. (Art. 45.041(b)(2), C.C.P.)
2. A judge may, as a term of deferred disposition (Art. 45.051, C.C.P.), require restitution be made to a victim. The amount of the restitution may not exceed the amount of fine assessed, but not imposed. (Art. 45.051, C.C.P.)
3. The court may order restitution for the offense of *Issuance of Bad Check*. (Sec. 32.41(e), C.C.P.)

#### **H. Deferred Disposition (Art. 45.051, C.C.P.)**

1. Applies to fine-only misdemeanors, except:
  - Traffic offenses committed in construction or maintenance work zones;
  - The offenses of *Consumption of Alcohol by a Minor* (Secs. 106.04(d) and 106.071(i), A.B.C.); *Purchase of Alcohol by a Minor*, *Attempt to Purchase Alcohol by a Minor*, *Possession of Alcohol by a Minor*, *Misrepresentation of Age by a Minor* (Sec. 106.071(i), A.B.C.) when the defendant has two previous convictions under Section 106.071; and *Driving Under the Influence* (Sec. 106.041(f), A.B.C.) when the defendant has two previous convictions under Section 106.041; and

- Traffic offenses committed by a person with a commercial driver's license.
2. On a plea of guilty or nolo contendere or on a finding of guilt, and payment of court costs, the judge may defer further proceedings without entering an adjudication of guilt and place the defendant on probation. An appearance under Art. 45.051, C.C.P., terminates any liability on a bond.
  3. Time limit - Not to exceed 180 days.
  4. Satisfactory completion – Judge shall dismiss and note in docket that complaint is dismissed.
  5. Optional Special Expense Fee – Not to exceed the amount of fine may be collected at the end of the deferral period after the complaint is dismissed.
  6. Reporting to the Department of Public Safety:
    - Traffic cases: the court does not report the deferral to DPS, but if the defendant failed to complete the terms of the deferral and the court enters a final judgment and imposes the fine, the court would report the conviction. (Sec. 543.204, T.C.)
    - If the offense is an Alcoholic Beverage Code offense, the court is required to report to DPS the order of deferral. If the defendant fails to complete the terms of the deferral, the court would report a conviction. (Sec. 106.117(3), A.B.C.)
  7. Failure to comply with terms of probation.
    - a. Judge proceeds to adjudication of guilt;
    - b. Judge may impose fine;
    - c. Judge may reduce fine previously assessed;
    - d. If defendant not in custody, may issue capias pro fine;
    - e. If traffic case, report conviction to DPS;
    - f. Appeal - Defendant may appeal final conviction.
  8. Records relating to a complaint dismissed, may be expunged under Art. 55.01, C.C.P.

**I. Driving Safety Courses/Motorcycle Operator Course (Art. 45.0511, C.C.P.)**

1. Applies to a offenses involving the operation of a motor vehicle and is defined by Section 472.022, T.C. (Obeying Warning Signs); Subtitle C, T.C. (Rules of the Road); and Section 729.001(3), T.C. (Operation of a Motor Vehicle by a Minor).
2. Exceptions to the right to take a driving safety course:
  - Traffic offenses committed in a construction maintenance work zone. (Secs. 543.117 and 472.022, T.C.);

- A violation of Section 545.066, T.C. (Passing a stopped school bus loading or unloading children);
  - A violation of Section 550.022, T.C. (Accident involving damage to a vehicle and leaving the scene of the accident punishable as a Class B misdemeanor);
  - A violation of Section 550.023, T.C. (Failure to stop and give information and render aid punishable as a Class B misdemeanor);
  - A serious traffic violation;
  - Speeding 25 mph or more over the limit; and
  - A person with a commercial driver's license who commits any traffic offense even in his or her personal vehicle.
3. The defendant elects to take a driving safety course and enters a plea of guilty or no contest in person or in writing on or before the answer date on the notice to appear.
  4. Court costs are required to be paid when the driving safety course or motorcycle operator training course is granted.
  5. The court enters judgment on the person's plea of no contest or guilty at the time the plea is made but defers imposition of the judgment for **90 days**.
  6. If the defendant presents all the required evidence, the court shall remove the judgment and dismiss the charge and report the date of completion to the Department of Public Safety.
  7. If a defendant fails to furnish all the required evidence, the court shall notify the person in writing, mailed to the address appearing on the notice to appear, of that failure and require the person to appear at the time and place stated in the notice to show cause why the evidence was not timely submitted to the court. On a person's showing of good cause for failure to furnish evidence to the court, the court may allow an extension of time for the person to present a uniform certificate of course completion. If person fails to appear at the show cause hearing, a *capias pro fine* may be issued for the charged for which the defendant requested to take a driving safety course.

**J. Deferral – Chemically Dependent Person (Art. 45.053, C.C.P.)**

1. State court costs are required to be collected.
2. After plea of guilty or *nolo contendere* or a finding of guilty on an offense resulting from or is related to the defendant's chemical dependency and if an application for court ordered treatment is filed in accordance with Chapter 462, H.S.C., the court may defer further proceedings for 90 days without entering an adjudication of guilt.

3. Satisfactory evidence presented at the end of the deferral period - evidence that defendant was committed for and completed court-ordered treatment in accordance with Chapter 462, H.S.C.
4. If satisfactory evidence presented, judge shall dismiss.
5. If evidence not satisfactory, the court may impose fine assessed or impose a lesser fine.
6. Docket entries should reflect:
  - a. The date the judge ordered the sentence to be suspended and the disposition deferred;
  - b. The deferral period;
  - c. The court costs paid;
  - d. The fine assessed (although not yet imposed);
  - e. Whether there was a plea of guilty or nolo contendere, or whether there was a finding of guilt after a trial; and
  - f. Final disposition of the case.
7. No expense fee may be collected.
8. Records relating to a complaint dismissed, may be expunged under Art. 55.01, C.C.P.

**K. Teen Court (Art. 45.052, C.C.P.)**

1. Eligibility:
  - a. Under 18; or
  - b. Enrolled full-time in school leading to a high school diploma;
  - c. Pleads guilty or no contest in open court with his or her parent, guardian, or managing conservator present;
  - d. Requests teen court program;
  - e. Has not successfully completed a teen court program within two years preceding the date of the offense charged; and
  - f. Defendant is charged with an offense that the court has jurisdiction of under Article 4.14, C.C.P. (Art. 45.052, C.C.P.)
2. Time limit – The court may defer proceedings for not more than 180 days. The defendant shall complete the teen court program not later than the 90<sup>th</sup> day after the date the teen court hearing to determine punishment is held or the last day of the deferral period whichever date is earlier. (Art. 45.052(a) and (c), C.C.P.) (HB 822; eff. 9/1/01)



3. Fee:
  - a. A non-refundable administrative fee of up to \$10 may be assessed. (Art. 45.052(e), C.C.P.)
  - b. A non-refundable fee of \$10 may be assessed to cover the costs of the teen court performing its duties. Fee paid to the teen court. (Art. 45.052(g), C.C.P.)
  - c. Court may exempt defendant from paying fees. (Art. 45.052(h), C.C.P.)
4. Court Costs:
  - a. Court costs are required to be paid when defendant requests teen court. (Note: exception arrest fee is not collected); (Information found in each separate court cost statute.)
  - b. Court may exempt defendant from paying court costs. (Art. 45.052(h), C.C.P.)
5. Transfer - Case may be transferred to a court in another county as long as the court to which the case is transferred consents to the transfer and the case is one that falls within the court's jurisdiction. (Art. 45.052(f), C.C.P.)
6. Completion:
  - a. Court must dismiss the charge.
  - b. If charge is traffic violation, court reports to DPS completion and completion date of the teen court program.

## **APPEALS (Arts. 45.042, 45.0425, 45.0426, 45.043, 44.281, C.C.P.)**

### **A. Right to Appeal (Art. 44.02, C.C.P.)**

### **B. Appeal to County Court**

Appeals heard in county court except in cases where the county court has not jurisdiction, in which counties such appeals shall be heard by the proper court. (Art. 45.042, C.C.P.)

### **C. Appeal Bonds (Art. 45.0425, C.C.P.)**

1. Appeal bond may be surety, cash, or personal bond.
  - Cash bail bond - Signed by the defendant and accompanied by money order or cashier's check made payable to appellate court for the amount of bail. Court cannot require cash, but defendant may post this type of bond.
  - Surety bail bond - Signed by defendant and at least one surety.

- Personal bond - Signed by defendant (bond is discretionary with the court).
2. Amount of bond - If the court takes bail, the bond is not less than two times the amount of fine and court costs, but in any case not less than \$50.
  3. When an appeal is by filing a bond within the time prescribed by law in such cases, and the court to which appeal is taken determines that such bond is defective in form or substance, such appellate court may allow the appellant to amend such bond by filing a new bond, on such terms as the court may prescribe. (Art. 44.15, C.C.P.)

**D. Filing Appeal Bonds Perfects Appeal (Art. 45.0426, C.C.P.)**

When an appeal bond is filed not later than 10 days from the date of judgment, the appeal is perfected. If the appeal bond is not timely filed, the appellate court does not have jurisdiction over the appeal and shall remand the case to the justice or municipal court for execution of sentence. No appeal shall be dismissed because the defendant failed to give notice of appeal in open court. An appeal by the defendant or the State may not be dismissed on the account of any defect in the transcript. (Remember Mailbox Rule - Art. 45.013, C.C.P.)

**E. Time Limit for Giving Appeal Bond (Art. 45.0426 and 27.14(b), C.C.P.)**

Appeal bond is to be filed within 10 days if defendant appears in person in court; before the 31<sup>st</sup> day after receiving notice by certified mail or in person if defendant appeared by mail or delivered plea to court. [*Whisitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986)] (Remember Mailbox Rule - Art. 45.013, C.C.P.)

**F. Preparation of Bond**

Court does not prepare bond; usually prepared by defendant's attorney or commercial bail bondsman.

**G. Trial in Appellate Court (Art. 45.042, C.C.P.)**

1. From courts of non-record, trial is de novo.
2. From courts of records, appeal in appellate court is on transcript.

**H. Original Papers Sent Up (Art. 44.18, C.C.P.)**

All original papers with the appeal bond are sent with the transcript and shall be delivered without delay to the appellate court.

**I. Effect of Appeal (Art. 45.043, C.C.P.)**

All further proceedings in municipal court cease.

**J. Disposition of Fines and Costs when Misdemeanor Affirmed (Art. 44.281, C.C.P.)**

In misdemeanor cases affirmed on appeal from a municipal court, 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. This applies to courts of records. There is no provision for the county court to return a collected fine on a conviction for a case appealed from a non-record municipal court.

**K. Effect of Payment of Fine**

If defendant pays fine, he or she loses right to appeal. [*Fouke v. State*, 529 S.W.2d 772 (Tex. Crim. App. 1975), cert. denied, 425 U.S. 974 (1976)] Under circumstances in which a plea or payment of fine and costs are induced involuntarily and under duress, the circumstances of duress constitutes nonwaiver of right to appeal. [*Hogan v. Turland*, 430 S.W. 2d 720 (Tex. Civ. App. – Austin 1968)]

**L. Writ of Procedendo**

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 defendant not in custody, court may issue a *capias pro fine*.

**M. Withdrawal of Appeal**

In non-record courts there is no way to withdraw or dismiss an appeal; in record courts, defendant or his or her attorney is required to file a motion to withdraw appeal.

## **REPORTS**

**A. Reports to Juvenile Court (Sec. 51.08(c), F.C.)**

A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or public intoxication or a violation of a penal ordinance of a political subdivision other than a traffic offense shall notify the juvenile court of the county in which the court is located of the pending complaint and shall furnish to the juvenile court a copy of the final dispositions of any matter for which the court does not waive its original jurisdiction.

## **B. Reports to the Department of Public Safety**

1. Notice of final convictions of traffic offenses reported to DPS. (Sec. 543.203, T.C.)
  - a. Reporting required.
  - b. Final conviction - Conviction becomes final when the time has expired for an appeal.
  - c. Information reported:
    - Name and address of the defendant;
    - Defendant's driver's license number, if any, and type (Although the statute still mentions the types of operator's commercial operator's or chauffeur's licenses, DPS began a classified system of licensing some years ago. Texas now issues Class A, Class B, Class C, and Class M licenses. Also, under the Commercial Driver's License Act, the Department of Public Safety issued commercial driver learner's permit, Class A-CDL, Class B-CDL and Class C-CDL);
    - Race or ethnicity (Caucasian, African, Hispanic, Asian, or Native American) (Sec. 543.202(a) and (b)(1), T.C.);
    - If the driver's license is a commercial driver license, include the social security number, if available;
    - Registration number of vehicle involved;
    - Whether the vehicle was a commercial motor vehicle, and if it was, whether it was involved in the transporting of hazardous materials;
    - Date and nature of offense, including whether the offense was a serious traffic offense as defined in Sec. 522.003(25) T.C. (Serious traffic offenses arise from the driving of a commercial motor vehicle for excessive speeding over 15 mph or more; reckless driving; violations of state and local traffic laws other than parking, weight or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely);
    - Whether a search of the vehicle was conducted and whether consent for the search was obtained (Sec. 543.202(b)(6), T.C.);
    - Date of hearing;
    - Plea;
    - Judgment or whether bail was forfeited (final forfeiture); and
    - Amount of fine or forfeiture.
  - d. Every magistrate or clerk of the court is required to report convictions or forfeiture of bail.

- e. Reporting required within 30 days of final conviction (conviction final after appeal time has passed; court must report defendants on time payment after the appeal time has passed and do not wait for the final payment before reporting).
  - f. Failure to report may constitute misconduct in office and may be grounds for removal.
  - g. Offenses required to be reported - all traffic law convictions.
2. Report date course completed. (Art. 45.0511(l)(2), C.C.P.)
  3. Convictions under Sec. 521.453, T.C.
    - a. Section 521.453, T.C., provides that it is unlawful to commit the following offenses:
      - Selling, manufacturing, or distributing any document that is deceptively similar to a personal identification certificate or a driver's license, unless the document displays diagonally printed clearly and indelibly on both front and back "NOT A GOVERNMENT DOCUMENT" in solid red capital letters at least one-fourth of an inch in height; and
      - Possessing any document that is deceptively similar to a personal identification certificate or a driver's license, unless the document displays diagonally printed clearly and indelibly on both front and back "NOT A GOVERNMENT DOCUMENT" in solid red capital letters at least one-fourth of an inch in height.
    - b. Sec. 521.341, T.C., provides that a license is automatically suspended on final conviction.
    - c. Sec. 521.347 says that the court in which the conviction is made shall require the surrender to the court of all drivers' licenses held by the person convicted. The clerk may, not later than the 10th day after the licenses are surrendered, forward the licenses together with a record of the conviction to DPS.
    - d. Court sets period of suspension of not less than 90 days or more than one year (Sec. 521.346, T.C.).
    - e. These convictions are automatic; court has no discretion except in setting the period of suspension.
  4. Reporting cases to DPS when deferred disposition granted under Art. 45.051, C.C.P.
    - a. Court does not report deferred traffic cases to the Department of Public Safety unless the judge subsequently proceeds with an adjudication of guilt when the defendant fails to comply (Sec. 543.204, T.C.) Court is required to report Alcoholic Beverage Code offenses granted deferred adjudication. (Sec. 106.117, A.B.C.)

- b. If non-compliance and defendant is subsequently convicted, report conviction no later than the 30<sup>th</sup> day after the date judge adjudicated guilt.
  - c. Report to DPS, Alcoholic Beverage Code convictions that are granted deferred adjudication – An order of deferred adjudication for all Alcoholic Beverage Code offenses is required to be reported to DPS. (Sec. 106.117, A.B.C.)
- 5. Alcoholic Beverage Code Offenses.
  - a. Court required to report Alcoholic Beverage Code convictions to DPS. (Sec. 106.117, A.B.C.)
  - b. Court required to report to DPS the acquittal of the offense of driving under the influence of alcohol by minor. (Sec. 106.117, A.B.C.)
  - c. Court required to order DPS to suspend driver's license. (Use DIC-15 form to report order of suspension.)
  - d. Court required to report order of deferral.
- 6. Reporting juveniles failure to appear and failure to pay.
  - a. A court shall report to DPS when a juvenile defendant charged with a traffic offense fails to appear, and when the court has a final disposition of the case, the court shall report the disposition to DPS. (Sec. 729.003, T.C.)
  - b. A court shall report to DPS, the failure of a juvenile defendant charged with a traffic offense to pay a traffic fine, and when the court has a final disposition on the case, the court shall report the disposition to DPS. (Art. 45.060, C.C.P.) (DIC-81 form)
  - c. DPS will not issue a driver's license to any juvenile defendant charged with a traffic offense who fails to appear or defaults in payment of fine unless the court has filed an additional report on final disposition of the case. (Secs. 521.201(7), and 521.3451, T.C.)
  - d. DPS will suspend the driver's license of any juvenile defendant charged with a traffic offense who fails to appear unless the court has filed an additional report on final disposition of the case. (Sec. 521.294(5), T.C.)
  - e. A justice or municipal court may file a report with the Department of Public Safety to suspend a driver's license for a failure to appear or default of a payment of a fine for a misdemeanor punishable by a fine only within the preceding two years. (Sec. 521.294(6), T.C.)
- 7. Reporting appeals.
  - a. If defendant appeals after conviction, conviction is not final and is not reported to DPS. (Art. 45.48, C.C.P.)

- b. If convicted in county courts, that court is responsible to report final conviction to DPS.

**C. Report to the Texas Alcoholic Beverage Commission**

Court is required to report upon request convictions to the Texas Alcoholic Beverage Commissions on a form provided by the Commission. (Sec. 106.116, A.B.C.)

**D. Reports to Office of Court Administration**

1. Monthly reports on court activity are authorized by Sec. 71.035, G.C.
2. All courts except for the Supreme Court and the Court of Criminal Appeals submit monthly reports.
3. Time requirement - reports must be mailed to Texas Judicial Council no later than 20 days following the end of the month reported.
4. City secretary required to notify Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge and clerk of municipal court within 30 days after date of person's election or appointment. (Sec. 22.073(c), L.G.C.)
5. Reporting form supplied by Texas Judicial Council.
6. Municipal judge is required to submit report; collecting the data is an administrative duty usually delegated to the court clerk.
7. Each section of the report required to be completed; any blank left in the report is interpreted as zero activity.

**E. Quarterly Reports to State Comptroller of Public Accounts**

1. Cities cannot provide for any court costs. (Art. 45.203(d), C.C.P.)
2. Judicial and Court Personnel Training. (Sec. 56.001, G.C.)
  - a. Amount to Charge - \$2 per case.
  - b. Collected on all criminal offenses except parking and pedestrian offenses.
  - c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
  - d. Reported by the last day of the month following each calendar quarter.
  - e. Amount remitted to State - 90% if reported and remitted timely; 100% if not reported and remitted timely.
3. Compensation to Victims of Crime Fund. (Art. 56.55(a), C.C.P.)

- a. Amount to charge for municipal ordinance violations - \$35 per case if offense is a city ordinance violation punishable by a fine of more than \$200; \$15 per case if city ordinance violation punishable by a fine of \$200 or less.
  - b. Amount to charge for state law violation - \$15 per case if offense is a state law violation punishable by a fine of not more than \$500. \$35 per case if the offense is punishable by more than \$500.
  - c. Collected on all criminal offenses except parking and pedestrian offenses.
  - d. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
  - e. Reported the last day of the month following each calendar quarter.
  - f. Amount remitted to State - 90% is reported and remitted timely; 100% if not reported and remitted timely.
4. Fugitive Arrest. (Art. 102.019, C.C.P.)
- a. Amount collected - \$5.
  - b. Collected on all criminal convictions except parking and pedestrian offenses.
  - c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
  - d. Reported the last day of the first month following each calendar quarter.
  - e. Amount remitted to State - 90% is reported and remitted timely; 100% if not reported and remitted timely.
5. Juvenile Crime and Delinquency. (Art. 102.075(m), C.C.P.)
- a. Amount collected \$0.50.
  - b. Collected on all criminal convictions except parking and pedestrian offenses.
  - c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
  - d. Reported the last day of the first month following each calendar quarter.
  - e. Amount remitted to State – 90%.
6. Consolidate Court Costs (Art. 102.075, C.C.P.)



- a. Amount collected for city ordinance offenses: if the maximum possible amount of fine is \$500 or less, the amount is \$17; if the maximum possible amount of fine is more than \$500, the amount is \$40.
  - b. Amount collected for state law offenses - \$17.
  - c. Collected on all criminal offenses except parking and pedestrian offenses.
  - d. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
  - e. Reported by the last day of the month following each calendar quarter.
  - f. Amount remitted to State – 90% if reported and remitted timely; 100% if not reported and remitted timely.
7. Correctional Management Institute of Texas and Criminal Justice Center Fund (CMI) (Art. 102.075(n), C.C.P.)
- a. Amount collected - \$0.50.
  - b. Collected on all criminal offenses except parking and pedestrian offenses.
  - c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
  - d. Reported by the last day of the month following each calendar quarter.
  - e. Amount remitted to State – 90% if reported and remitted timely; 100% if not reported and remitted timely.
8. State Traffic Fee (Section 542.4031, T.C.)
- a. Amount collected - \$30.
  - b. Collected on Title 7, Subtitle C, Rules of the Road, T.C. offenses only.
  - c. Collected on Subtitle C cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P.
  - d. Reported by the last day of the month following each calendar quarter.
  - e. Amount remitted to State – 95% if reported and remitted timely; 100% if not reported and remitted timely.
9. **Consolidate Fee**
- a. All the above costs except the State Traffic Fee

- b. Amount collected - \$40.
  - c. Collected on all convictions except parking and pedestrian offenses. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
  - d. Reported by the last day of the month following each calendar quarter.
  - e. Amount remitted to State – 90% if reported and remitted timely; 100% if not reported and remitted timely.
10. Traffic Fund - Other court costs deposited in city treasury. (Sec. 542.403, T.C.)
- a. Amount collected - \$3.
  - b. Collected on all convictions under the Subtitle C, T.C.; Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
  - c. Money deposited in city treasury.
11. Child Safety Fund - School Crossing Guard Program. [Art. 102.014(c), C.C.P.]
- a. Cities over 850,000 population shall collect \$2 to \$5 on each city ordinance parking conviction (mandatory collection); Cities under 850,000 population may collect up to \$5 on each city ordinance parking conviction (optional collection).
  - b. All municipalities must collect \$25 on Subtitle C, T.C. offenses that occur in a school crossing zone and for the offense of overtaking and passing a school bus. Collected if deferred disposition or driving safety course under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P.
  - c. Amount collected for convictions under Sec. 25.093, E.C. (Parent Contributing to Nonattendance) and Sec. 25.094, E.C. (Failure to Attend) - \$20. (Note: 78<sup>th</sup> Legislature changed title of “Parent Contributing to Truancy” to “Parent Contributing to Nonattendance”)
  - d. In cities with a population of over 850,000, these funds are deposited in municipal child safety fund to be used for a school crossing guard program; in cities less than 850,000 population, these funds are to be used for a school crossing guard program if they city operates one and, if not, the city may deposit it in an interest-bearing account or expend it for child safety, health or nutrition programs including child abuse and intervention and drug and alcohol abuse prevention.
12. Arrest Fee. (Art. 102.011, C.C.P.)
- a. Amount to Charge - \$5.

- b. Collected upon conviction for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance or penal law, or for making an arrest without a warrant.
  - c. Not collected when minors request a teen court program. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P., and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
  - d. Reported by the last day of the month following each calendar quarter.
  - e. Amount remitted to State - when service performed by a peace officer employed by the State, 20% (\$1) must be remitted to State; when the service is performed by a peace officer employed by the city, 100% of the fee is retained by the city.
13. Other Fees for services of a peace officer paid by defendant upon conviction. (Art. 102.011, C.C.P.)
- a. For summoning a witness - \$5.
  - b. For serving a writ not listed in Article 102.011 - \$35.
  - c. For taking and approving a bond and, if necessary, returning the bond to the courthouse - \$10.
  - d. For commitment or release - \$5.
  - e. For summoning a jury - \$5.
  - f. Mileage for performing a service listed in Article 102.011 - \$0.29 per mile.
  - g. All necessary and reasonable expenses for meals and lodging incurred by the officer in the performance of services under Article 102.011. Expenses must meet the requirements of Section 611.001, G.C. (Applies to conveying prisoner after conviction to county jail; conveying a prisoner arrested on a warrant or capias issued in another county to the court or jail of the county; and traveling to execute criminal process, to summon or attach a witness, and to execute process not otherwise described by Article 102.011, C.C.P.)
14. Time Payment Fee. (Section 133.103, L.G.C.)
- a. Amount collected - \$25.
  - b. Collected upon conviction when a defendant has been ordered to pay a fine, court costs, or restitution and seeks to pay on or after the 31<sup>st</sup> day after the date on which a judgment is entered assessing the fine, court costs, or restitution.
  - c. Each month treasury custodians are required to send 50% of the fee to the State. Ten percent is deposited into the general fund of the city to be used for improving the efficiency of the administration of justice. The other 40% must be deposited in the city general fund subject to regular appropriation by the governing body.

- d. Reported by the last day of the month following each calendar quarter starting 1/1/04).
15. Warrant Fee (Art. 102.011, C.C.P.)
- a. Amount to Charge for a warrant or a capias - \$50.
- i. Collected upon conviction when a peace officer serves or processes issued arrest warrant or capias.
- ii. Fee imposed for the services of the following:
- The law enforcement agency that executed the arrest warrant or capias, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or capias, the imposition of the fee on conviction; or
  - The law enforcement agency that processed the arrest warrant or capias, if the executing law enforcement agency failed to request the fee within 15 days.
- iii. Reported the last day of the month following each calendar quarter.
- iv. Amount remitted to the State - when service or processing is performed by a peace officer employed by the State, 20% (\$10) must be remitted to State; when the service or processing is performed by a peace officer employed by the city, 100% of the fee is retained by the city.
- b. Amount to charge for service of a summons (includes summons for a defendant or for the parents of a juvenile) - \$35.
16. Excess Fines (Sec. 542.402, T. C.)
- a. Applies to cities under 5,000 population.
- b. Applies only to traffic fines collected for offenses under Title 7, T.C. and special expenses that may be collected under Art. 45.051, C.C.P. when the defendants are placed on deferred disposition for those offenses.
- c. The amount to be sent to the State applies to fines collected during city fiscal years that begin on or after September 1, 1989.
- d. The city must report to the State when it reaches 20% of its budget. The city may keep all the traffic fines and Article 45.051 special expenses collected for offenses under Title 7, T.C. up to 30% of its total revenue in the preceding fiscal year. (Federal funds and bond sale proceeds do not count in figuring total revenue).
- e. After fines total 30% of the budget, the city must remit the fines and special expenses for offenses under Title 7, T.C. except for \$1.

17. Safety Belt and Passenger Safety Seat System Fines (Secs. 545.412 and 545.413, T.C.)

Each municipality at the end of its fiscal year shall send to the Comptroller an amount equal to 50 percent of the fines collected by the municipality for violations of offenses involving children under Secs. 545.412 and 545.413(b), T.C. (Offenses with a \$100 to \$200 fine)

18. Building Security Fee

- a. City required to create municipal court building security fund by ordinance.
- b. Amount to collect - \$3.
- c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
- d. Money may be used for the purchase of:
  - The purchase or repair of X-ray machines and conveying systems;
  - Handheld metal detectors;
  - Walkthrough metal detectors;
  - Identification cards and systems;
  - Electronic locking and surveillance equipment;
  - Bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
  - Signage;
  - Confiscated weapon inventory and tracking systems;
  - Locks chains or other security hardware;
  - Purchase or repair of bullet-proof glass;
  - Purchase of alarms or similar security devices; and
  - Continuing education on security issues for court personnel and security personnel.

19. Municipal Court Technology Fund (Art. 102.0172, C.C.P.)

- a. The city may by ordinance create the municipal court technology fund.
- b. The amount collected – A fee not to exceed \$4.
- c. Collected on cases disposed of under Arts. 45.051, and 45.0511, C.C.P.; and Arts. 45.052 and 45.053, C.C.P., and Sec. 161.253, H.S.C.
- d. Funds collected under this article may be used to only finance the purchase of technological enhancements and for maintenance of technological enhancements for a municipal court, including:

- Computer systems;
  - Computer networks;
  - Computer hardware;
  - Computer software;
  - Imaging systems;
  - Electronic kiosks;
  - Electronic ticket writers; and
  - Docket management systems.
- e. Fund administered by or under the direction of the governing body of the municipality.
20. Operating or loading overweight vehicle (Sec. 621.506, T.C.)
- a. A misdemeanor offense punishable by fine of not less than \$100 and not more than \$150. (Sec. 621.506(1), T.C.)
- b. Vehicle having a gross weight that is more than 5,000 but not more than 10,000 pounds heavier than the allowable gross weight, punishable by a fine of not less than \$300 or more than \$500. (Sec. 521.506(2), T.C.)
- c. Vehicle having a gross weight that is more than 10,000 pounds heavier than the vehicle's allowable gross weight, punishable by a fine of not less than \$500 or more than \$1,000. (Sec. 521.506(3), T.C.)
- d. On conviction before the first anniversary of the date of a previous conviction under this section, by a fine in an amount that is twice the amount specified by Subdivision (1), (2), or (3). (Sec. 521.506(4), T.C.)
- e. On conviction of a violation of an axle load limitation, the court may assess a fine less than the applicable minimum amount if the court finds that when the violation occurred:
- The vehicle was registered to carry the maximum gross weight authorized for that vehicle under Section 621.101, T.C.; and
  - The gross weight of the vehicle did not exceed that maximum gross weight. (Sec. 621.506(c), T.C.)
- f. The judge shall promptly report a conviction under this section. (Sec. 621.506(d), T.C.)
- g. A municipal court has jurisdiction over an offense under Section 621.506 for which the fine does not exceed \$500. (A justice of the peace has jurisdiction over the offenses in this section.) (Sec. 521.506(f), T.C.)
- h. A governmental entity that collects a fine under this section for an offense involving a vehicle having a gross weight that is more than 5,000 pounds heavier than the vehicle's allowable gross weight shall send an amount equal to 50 percent of the fine to the Comptroller

unless the offense occurred within 20 miles of an international border in which event the entire amount of the fine shall be deposited for the purposes of road maintenance in the municipal treasury, if the fine was imposed by a municipal court. (Sec. 621.506(g), T.C.)

**F. Distribution of Fine for Offense of Parent Contributing to Nonattendance**

A fine collected for the offense of Parent Contributing to Truancy (The 78<sup>th</sup> Legislature changed the name of “Parent Contributing to Truancy” to “Parent Contributing to Nonattendance.”) shall be deposited as follows:

- One-half shall be deposited to the credit of the operating fund of the school district in which the child attends school or of the juvenile justice alternative education program that the child has been ordered to attend, as applicable; and
- One-half shall be deposited to the credit of the general fund of the county if the complaint is filed in the county court or justice court or the general fund of the municipality if the complaint is filed in municipal court. (Sec. 25.093, E.C.)

**Abbreviations Defined**

A.B.C.	Alcoholic Beverage Code
A.G. Op.	Attorney General Opinion
A.G. LO.	Attorney General letter Opinion
C.C.P.	Code of Criminal Procedure
DPS	Department of Public Safety
E.C.	Education Code
Elec. Code	Election Code
F.C.	Family Code
G.C.	Government Code
H.S.C.	Health and Safety Code
L.G.C.	Local Government Code
O.C.	Occupations Code
P.C.	Penal Code
T.C.	Transportation Code
Tex. R. Civ. P.	Texas Rules of Civil Procedure
V.T.C.S.	Vernon’s Texas Civil Statutes





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# **BOND FORFEITURES**

**Presented by**

**Margaret Robbins  
Program Director  
TMCEC**

Participants will be able to:

- Explain process of the case which initiated the bond forfeiture;
- Explain how sureties are relieved of the liability of the bond;
- Explain how a forfeiture is initiated;
- Explain how a citation is issued and served; and
- Explain how forfeiture is finalized.



# Bond Forfeitures

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## INTRODUCTION

Municipal judges are empowered to admit persons to bail and to forfeit bail in the same manner as provided for county courts. Bail is the security given by the accused that he or she will appear and answer before the court where the accusation was brought against him or her. Bail includes a bail bond or a personal bond. When a defendant posts bond, he or she agrees as a condition of being released that he or she will appear in court at a later date or dates as required by the court.

The failure to perform the condition on the bond causes the court to declare forfeiture of the bail. Therefore, a defendant's failure to appear in court after posting bail and the judicial declaration of the forfeiture initiates the bond forfeiture procedures. In other words, a bond forfeiture is a lawsuit to recover from a defendant or sureties the amount of a bond because of the violation of the conditions of the bond. Generally, Chapter 22, C.C.P., governs bond forfeiture proceedings. The exception to using the bond forfeiture procedures in Chapter 22 is found in Article 45.044, C.C.P. This statute provides an additional method of forfeiting a cash bond. Both methods are discussed in this study guide.

Although bond forfeiture is considered a criminal case, the bond forfeiture proceedings are governed by the rules that govern civil law suits. This means that the court must consult the Texas Rules of Civil Procedure (R.Civ.P.) for preparation and service of the citation, time-lines regarding the bond forfeiture lawsuit, and other requirements. These rules may appear to be somewhat intimidating because municipal courts do not use them often except for bond forfeitures. The purpose of this guide is to provide a road map through the maze of rules by providing step-by-step procedures for processing bond forfeiture cases.

The clerk's role in processing bond forfeitures includes the following:

- creating the forfeiture file;
- entering the forfeiture on the civil docket (*scire facias* docket);
- issuing a citation when requested to do so;
- serving the citation when requested to do so;
- coordinating with the prosecutor the service of the citation if other methods of service fail;
- stamping the file date on answers to the forfeiture lawsuit;
- scheduling hearings on the case;
- issuing a writ of execution upon a bond forfeiture judgment directing the payment of the forfeiture; and
- managing the paperwork.

## PART 1 BAIL

Bail is the security given by an accused that he or she will appear and answer before the proper court the accusation brought against him or her, and includes a bail bond or a personal

bond. The purpose of bail is to guarantee the person's appearance in court. (Article 17.01, C.C.P.)

The Texas Constitution states in Article 1, Section 11 of the Bill of Rights that prisoners can be released on bail guaranteed by sufficient sureties except in cases punishable by the death penalty. The Texas Code of Criminal Procedure provides in Article 1.07 that all prisoners are bailable except those accused of crimes punishable by the death penalty when the evidence is clear and strong that the person will be convicted and sentenced to death. Therefore, persons charged with fine-only offenses are presumed to be entitled to reasonable bail based on the presumption of innocence.

## **A. Bail Bond**

A bail bond is a written agreement entered into by a defendant and sureties guaranteeing the appearance of the principal (defendant) before some court or magistrate to answer a criminal accusation. (Article 17.02, C.C.P.) Section 1704.001 of the Occupations Code (O.C.), defines a "bail bond" as a cash deposit or similar deposit, written undertaking, a bond, or other security given to guarantee the appearance of a defendant in a criminal case.

### **1. Bail Bond Surety**

Article 17.06, C.C.P., provides that whenever any person is required or authorized to give or execute any bail bond, the bond must be given or executed by the principal and any corporation authorized by law to act as a surety.

Article 17.10, C.C.P., provides that a person, for compensation, may not be a surety on a bail bond written in a county in which there is not county bail bond board unless the person within two years before the bail bond is given completes at least eight hours of continuing legal education in criminal law courses or bail bond law courses that are approved by the State Bar of Texas and offered by an accredited institution of higher education in Texas.

Section 1704.001, O.C., defines a "bail bond surety" as a person who executes a bail bond as a surety or cosurety for another person; or for compensation deposits cash to ensure the appearance in court of a person accused of a crime. Person is defined as an individual or corporation. In order for a person to act as a bail bond surety, the person must hold a license under Chapter 1704, O.C. There is one exception to being licensed which regards attorneys. An attorney licensed to practice law in the State of Texas may act as a surety for a person in a criminal case in which he or she represents the person without being licensed under Chapter 1704. The attorney, however, must have on file with the court a notice of appearance as counsel of record in the criminal case for which the bond was executed or surety provided. (Section 17.04.163(a)(2), O.C.)

Any corporation authorized by law to act as a surety must before executing a bail bond file in the office of the county clerk of the county in which the corporation is giving bonds a power of attorney designating and authorizing named agent(s) or attorney of the corporation to execute the bail bonds. It is the power of attorney that provides that the bonds are a valid and binding obligation on the corporation. (Article 17.07, C.C.P.) A copy of the power of attorney should be attached to each bond filed with the court. Article 22.04, C.C.P. requires that a copy of the power of attorney be attached to the citation when there is a bond forfeiture.

A judge or court employee may not recommend a particular bail bond surety to another person. If they do, they commit a Class B misdemeanor offense.

## **2. Bail Bond Board**

Every county with a population of 110,000 or more must have a bail bond board. (Section 1704.051, O.C.) The bail bond board must post in each court having criminal jurisdiction in the county a current list of each licensed bail bond surety and the licensed agent of the corporate surety in the county. (Section 1704.105(a), O.C.)

The bail bond board must provide to each local official responsible for the detention of prisoners in the county a current list of each licensed bail bond surety and agent of the bail bond surety in the county. A list of each licensed bail bond surety in the county may be displayed where prisoners are examined, processed, or confined. (Sections 1704.105(a) and (b), O.C.)

### **B. Cash Bond**

When a defendant presents the court with a bond, he or she may deposit cash in the amount of the bond with the custodian of the court in which the prosecution is pending in lieu of having sureties sign. When a defendant complies with the conditions of the bond, the court must order the bond returned to the defendant. (Article 17.02, C.C.P.)

### **C. Personal Bond**

A magistrate may, in his or her discretion, release a defendant on personal bond without sureties or other security. (Article 17.03, C.C.P.) Municipal judges are magistrates. (Article 2.09, C.C.P.)

## **PART 2 SURRENDER OF PRINCIPAL**

A surety may be released from the responsibility on a bond if, before a judgment *nisi* (the process that initiates the bond forfeiture lawsuit) is issued, he or she surrenders the principal into custody or produces an affidavit that the defendant is in custody. (Article 17.16, C.C.P.) When a surety does this, he or she no longer has liability on a bond.

### **A. Surety May Obtain Warrant**

Any surety desiring to surrender a principal (defendant) can file an affidavit of that intention and request the judge to issue a warrant or *capias* for the principal. (Article 17.19, C.C.P.) Article 17.19(a), C.C.P., and Section 1704.207 O.C., require the affidavit to state the:

- person's intention to surrender the principal;
- court and cause number of the case;
- name of the defendant;
- offense with which the defendant is charged;
- date of the bond;

- reason for the surrender; and
- notice of the person's intention to surrender the principal has been provided to the principal's attorney as provided by Rules 21a, R.Civ.P. (Rule 21a provides methods of service and allows service to be made by delivering a copy to the party to be served, or the party's duly authorized agent, or attorney of record. The service may be either in person, by agent, or by courier receipted delivery; by certified or registered mail; by telephonic document transfer to the recipient's current telecopier number; or by such other manner as the court in its discretion may direct.)

The judge issues either an arrest warrant or *capias* for the defendant if cause is shown for the surrender. If the required affidavit is filed, the court must issue the warrant. Article 17.19, C.C.P., provides that it is an affirmative defense if a court or magistrate refused to issue a warrant of arrest or *capias* for the principal and the principal fails to appear. It has been held that there is no authority for a trial judge to refuse the issuance of a warrant if the requisite affidavit to surrender is properly filed. [*McConathy v. State*, 545 S.W.2d 166 (Tex. Crim. App. 1977)] If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to any other magistrate in the county. If that magistrate finds cause for the surety to surrender the principal, the magistrate shall issue the warrant of arrest or *capias*. (Article 17.19(c), C.C.P.) A peace officer, a security officer, or a licensed private investigator can execute the warrant. (Article 17.19(e), C.C.P.)

If a clerk receives an affidavit of intent to surrender, the clerk should immediately transmit the affidavit to the judge. If the judge determines that there is sufficient cause to issue the warrant (or *capias*), the clerk should prepare a warrant (or *capias*) for the judge's signature. The clerk or judge should note on the docket the date the warrant is issued and to whom the warrant was given for execution. The filing of an affidavit of intent to surrender and the issuance of a warrant does not constitute a surrender as to discharge liability under the bond until the principal is taken into custody. [*Apodaca v. State*, 493 S.W.2d 859 (Tex. Crim. App. 1973)]

After the judge issues the warrant, the clerk should give a copy to the State and to the defendant's attorney, if the defendant has one. See the next section on contesting the surrender.

## **B. Contest of Surrender**

If the principal on the bond, an agent of the bail bond board of the county in which the bond was executed, or an attorney representing the State, determines that the reason for the surrender was without reasonable cause, the person may contest the surrender in the court that authorized the surrender. (Section 1704.207(b), O.C.) If the court finds that a contested surrender was without reasonable cause, the court may require the person who executed the bond to refund to the principal all or part of the fees paid for execution of the bond. The court shall identify the fees paid to induce the person to execute the bond regardless of whether the fees are described as fees for the execution of the bond. (Section 1704.207(c), O.C.)



### Checklist for Surrender of Principal

- Court receives an affidavit for surrender of principal.
  - Clerk date stamps the affidavit and immediately gives it to the judge and a copy to the State.
- The surety may relieve himself or herself of undertaking by surrendering the defendant into custody regardless of whether it is in the county or city where the prosecution is spending, some other county, federal custody, or custody in another State.
- If the judge determines there is sufficient cause to surrender, the clerk files the affidavit with the case and prepares a warrant of arrest or *capias* for the judge's signature.
- The judge issues the warrant or *capias*.
- The State, bail bond board, or the principal may contest the surrender if the State determines that the reason for the surrender was without reasonable cause.
  - If the court determines that the surety surrendered the defendant without reasonable cause, the court may require the person who executed the bond to refund to the principal all of part of the fees paid for execution of the bond.
- The clerk or judge should note on the record (docket) the date the warrant or *capias* was issued and to whom the warrant or *capias* was given for execution.
  - The warrant or *capias* is given to a peace officer, a security officer, or a licensed private investigator to be executed.

### PART 3 SURETY BOND FORFEITURE

When a defendant is bound by bail to appear and fails to appear, the court is required to declare a forfeiture of the bail. (Article 22.01, C.C.P.) An action by the State to forfeit the bond must be brought not later than the fourth anniversary of the date the principal fails to appear in court. (Article 22.18, C.C.P.)

#### A. Failure to Appear

##### 1. Calling Name outside of Courtroom

On scheduled appearance dates, the judge asks the defendants to acknowledge their presence when their name is called. When a defendant fails to answer, the judge must order that the name of the defendant be called distinctly at the courthouse door. (Article 22.02, C.C.P.) If the defendant does not appear within a reasonable time after the call, the prosecutor moves for forfeiture. [Note: In *Burns v. State*, 814 S.W.2d 768 (Tex.App.—Houston (14th Dist.) 1991, rev'd on other grounds, 801 S.W.2d 361 (1992)), the Court held that only substantial compliance with Article 22.02 is required and that calling the defendant's name in the hallway on the sixth floor of the courthouse meets this test.]

Usually, the judge directs either a clerk or bailiff to call the name outside the courtroom. If the defendant fails to appear or answer the call, the clerk or bailiff prepares and swears to a statement that he or she called the name outside the court and that the defendant failed to answer or to appear. This affidavit is filed with the bond forfeiture case and may be used as probable cause for filing failure to appear and a warrant for the defendant's arrest on the failure to appear.

### **Checklist for Day of Appearance on Criminal Charge**

- Criminal docket called (defendant fails to appear or answer).
- Judge directs that name be called outside of courtroom.
  - Clerk or bailiff calls defendant's name outside of courtroom.
  - Clerk or bailiff notifies judge whether defendant answered or appeared.
- If defendant fails to answer or appear, prosecutor moves for a forfeiture of the bond.
- Judge grants motion for forfeiture.
- Clerk or bailiff swears to an affidavit that name was called outside of courtroom.
- The affidavit is filed with the bond forfeiture case.

## **2. Failure to Appear Charge**

A person in custody released with or without bail on the condition that he or she subsequently appear in court commits the offense of failure to appear any time the court schedules the case and the person does not appear. (Section 38.10, P.C.) The prosecutor makes the decision whether or not to charge a defendant with the offense of failure to appear. The prosecutor, however, is not required to file the failure to appear charge.

If the prosecutor chooses to charge the failure to appear offense, the municipal court has jurisdiction over the charge. The punishment for this offense is a fine of up to \$500. This is a separate offense from the original offense. The failure to appear case is initiated by a sworn complaint that is filed with the court and entered on the criminal docket with a different docket number from the original underlying case. The failure to appear complaint is usually sworn to by the clerk or bailiff who called the defendant's name outside the courtroom.

A probable cause affidavit is required before the judge issues the warrant of arrest. The judge may consider that the sworn statement filed with the bond forfeiture case as probable cause or the judge may ask that another type of probable cause affidavit be prepared and sworn before issuing the warrant for the failure to appear.

### **Checklist for Failure to Appear Charge (Optional)**

- If prosecutor decides to file the charge, a complaint for the offense of failure to appear is sworn.
- Complaint filed with court.
- Complaint entered on criminal docket.
- Case file prepared.
- Probable cause affidavit prepared (or court may consider affidavit filed with bond forfeiture case).

- Warrant prepared.
- Judge reviews probable cause and signs warrant.
- Clerk gives warrant to police department to be served.

### 3. Issuance of *Capias*

When a court declares a bond forfeiture, the court must issue a *capias* for the defendant's arrest on the original underlying charge. (Article 23.05, C.C.P.) The *capias* must be issued immediately but not later than the 10<sup>th</sup> business day after the order of the forfeiture. (Article 23.05(c), C.C.P.) When the defendant is arrested on the *capias*, the court may require a cash bond to guarantee the defendant's appearance in court. (Article 23.05, C.C.P.)

Usually, the clerk prepares the *capias* for the judge's signature. After the judge issues the *capias*, the clerk should coordinate the service of the *capias* with the police department. A *capias* issued when a bond forfeiture is declared may be executed by a peace officer or by a private investigator licensed under the Chapter 1702 of the Occupations Code. (Article 23.05(b), C.C.P.) Section 1702.3867, O.C., provides rules that private investigators must follow when executing a *capias* or an arrest warrant on behalf of a bail bond surety. The statute requires the private investigator to immediately take a person that is arrested for a Class C misdemeanor to the municipal jail if the *capias* or warrant was issued by a magistrate for the municipality. If the *capias* or warrant was issued by a magistrate of a county for a Class C misdemeanor, the private investigator is to take the person arrested to the county jail. If the arrest is made in a county other than the county in which the *capias* or warrant was issued, the private investigator is to take the person to the county jail in which the arrest is made. (Section 1702.3867, O.C.)

#### Checklist for Issuance of *Capias*

- Clerk prepares *capias* (for original criminal charge filed).
- Judge signs and issues the *capias*.
- Clerk or judge notes issuance of *capias* on the record (criminal docket).
- Clerk gives *capias* to police department or to a private investigator licensed under the Chapter 1702 of the Occupations Code to serve.

### B. Initiating the Forfeiture

If a defendant does not appear within a reasonable amount of time after his or her name is called at the courthouse door, the court shall enter a judgment (judgment *nisi*) that the State recover the amount of the bond unless good cause is shown as to why the defendant did not appear (Article 22.02, C.C.P.) Although statutes do not define the words "reasonable amount of time," typically the court signs the judgment *nisi* at the end of the court session on the day that the forfeiture is declared. Some judges, however, consider the "Mailbox Rule" in Article 45.013, C.C.P., and wait 10 working days before signing the judgment *nisi*. The signing of a judgment *nisi* is a judicial decision.

Before filing the judgment *nisi*, the State needs to determine if the name of the bail bond company is merely an assumed or trade name and who the proper party is in the lawsuit. This information is given to the clerk for the clerk to prepare the judgment *nisi*. After the judge

signs it, the clerk records the entry of the judgment *nisi* on the court record of the original criminal case. The judgment *nisi* is the basis of the State's case for the forfeiture and becomes the State's petition. [*Cheatam v. State*, 13 Tex. Ct. App. 32 (1884); *Swaim v. State* 498 S.W.2d 988 (Tex. Crim. App. 1973)]

### **Checklist for Declaring the Forfeiture**

- After the defendant fails to appear, the court is required to enter a judgment (judgment *nisi*). The judgment *nisi* initiates the forfeiture.
- Clerk prepares judgment *nisi*.
- Judge signs judgment *nisi*.
- Judge or clerk enters judgment on the record (*scire facias* docket).

### **C. Scire Facias Docket**

Once a judgment *nisi* is entered, the case is set on the *scire facias* docket. (Article 22.10, C.C.P.) Although either the judge or the clerk may docket the case, usually the clerk performs this action. The *scire facias* docket is a special civil docket for bond forfeiture cases. The forfeiture is docketed in the name of the State of Texas, as plaintiff, and the principal and his or her sureties, if any, as defendants. In bond forfeiture cases, the sureties are defendants.

Rule 26, R.Civ.P., requires the docket to be a permanent record that shall include the number of the case, the names of the parties, the names of the attorneys, the nature of the action, the pleas, the motions, and the ruling of the court.

### **Checklist for Scire Facias Docket**

- Clerk or judge enters judgment *nisi* on *scire facias* docket.
  - A *scire facias* docket number is assigned.
  - The State of Texas is plaintiff.
  - Principal and sureties, if any, are defendants.
  - Names of the attorney are noted.
  - Nature of the action (bond forfeiture).
  - Any pleas, motions, and rulings of the court are noted on docket.
- Clerk prepares case file for bond forfeiture case.

### **D. Notification of Bond Forfeiture Lawsuit**

#### **1. Defendant/Principal**

It is not necessary to give notice of the bond forfeiture to the defendant/principal unless he or she has furnished an address on the bond. (Article 22.05, C.C.P.) If the court has an address, the notice is sent by regular mail. The court must attach a copy of the judgment *nisi* and a copy of the bond to the notice (citation).

Article 22.05, C.C.P., does not define what is meant by "notice" to the defendant/principal. However, under the Rules of Civil Procedure, proper notice is a citation. The court should

issue a citation, attach the judgment *nisi* to it, and serve it by regular mail. See the section below on citation.

Rule 21a, R.Civ. P., provides that if service is by (regular) mail, the court adds three days to the prescribed period in the notice. This means that the defendant's answer is due three days after the Monday next after 20 days from the date of mailing the notice. Rule 4, R.Civ.P., provides rules for counting time. It says that the court does not count the first day or weekends or holidays at the end of the period of time prescribed in the notice.

## **2. Sureties**

Sureties have a right to notice of the bond forfeiture lawsuit against them. The process that provides sureties notice is the citation.

### **a. Citation**

A citation is a notice to a person that he or she must appear to answer before a court. The purpose of the citation is to notify the defendant (surety) of the pending lawsuit filed against him or her. After the entry of the judgment *nisi*, a citation must be issued to notify the surety of the bond forfeiture. (Articles 22.03 and 22.04, C.C.P.) The citation requires the surety to appear and show cause why the judgment of forfeiture (judgment *nisi*) should not be made final. The citation must be in the form provided for citations in civil cases and a copy of the judgment *nisi* and a copy of the bond must be attached. (Article 22.04, C.C.P.)

### **(1) Issuance**

Rule 99, R.Civ.P., states that the clerk, when requested, shall immediately issue a citation. Also, upon request, the clerk must issue separate or additional citations. The clerk must deliver the citation(s) as directed by the requesting party. In municipal court, the requesting party is the prosecutor. The party requesting the citation is responsible for obtaining service of the citation.

### **(2) Requirements**

Rule 99, R.Civ.P., provides for the requirements of the citation, which must be in the following form:

- be styled "The State of Texas;"
- be signed by the clerk under seal of court;
- contain name and location of the court;
- show date of filing of the judgment *nisi*;
- show date of issuance of citation;
- show file number;
- show names of parties (principal and/or surety);
- be directed to the defendant (principal and/or surety);
- show the name and address of the city prosecutor; and
- contain the address of the clerk.

The citation shall direct the defendant to file a written answer on or before 10:00 a.m. on the next Monday after the expiration of 20 days after the date of service. The answer is the formal written statement made by a defendant setting forth the grounds of his or her defense.

The citation shall include the following notice to the defendant: *“You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the next Monday following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.”*

If a citation is to be served by publication, the requirements of the citation are different from the ones listed in this section. See the next section regarding service of the citation.

### **Checklist for Issuance of Citation**

- State requests clerk to issue citation or citations.
- Clerk prepares citation for issuance.
- Clerk issues citation (clerk may issue separate or additional citations).
- Clerk attaches copy of judgment *nisi* and a copy of the bond to the citation(s).

### **(3) Service of the Citation**

Sureties are entitled to notice by service of a citation. One of the chief difficulties of service is serving the citation on the proper parties. Before requesting service of a citation, the State needs to determine if the name of the bail bond company is merely an assumed or trade name and who the proper party is in the lawsuit. If the bail bond company is a property bail bond company, it will have an individual owner and the citation will be served on the individual in his or her individual capacity. The company may be named “Easy Bonds” but the owner is John Star. The forfeiture lawsuit would be against John Star d/b/a Easy Bonds Company.

If an insurance company is doing business as a bail bonding company, the company will have agents who run the bonding business. Insurance companies must have obtained authority from the Texas Department of Insurance to write surety bonds. The agents have no liability to the State for the bonds. Hence, the citation must be served on the insurance company.

Insurance companies must have a registered agent (this is an attorney) for service on file with the bail bond board in the county. If the court is in a county that does not have a bail bond board, the State (prosecutor) can contact the Office of the Secretary of State and obtain the name and address of the registered agent.

Article 22.03(c) requires that service of a citation to a surety who is a corporation or other entity must be served to the attorney designated for service of process by the corporation or entity under Chapter 804 of the Insurance Code.

Service of a citation to a surety who is an individual must be served to the individual at the address shown on the face of the bond. (Article 22.03(b), C.C.P.) A surety may designate a person other than the surety to receive service of the citation by filing a designation in writing with the clerk. This is effective until revoked. (Article 22.03(d), C.C.P.)

The service of the citation is in the same manner as provided for civil actions. (Article 22.05, C.C.P.) A copy of the judgment *nisi*, a copy of the bond, and a copy of any power of attorney are required to be attached to the citation. (Article 22.04, C.C.P.)

Rule 103, R.Civ.P., states that no person who is a party to or interested in the outcome of a suit shall serve any process. Rule 103 provides that the following persons may serve a citation anywhere:

- any sheriff or constable or other person authorized by law; or
- any person authorized by law or by written order of the court who is not less than 18 years of age.

Article 45.202, C.C.P., provides that all process issuing out of a municipal court may be served by city peace officer or a marshal under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court. The statute also provides that city police officers may serve all process issuing out of a municipal court anywhere in the county in which the city is situated. If the city is situated in more than one county, the city police officer may serve the process throughout those counties, as well. Hence, city peace officers may serve a citation anywhere in the county or counties where the city is situated.

The court clerk may, if requested to, serve a citation by registered or certified mail. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

Rule 106, R.Civ.P., provides for the method of service of a citation. It includes service by mail, personal service, alternative service, and service by publication. The following information explains the procedures for using each method.

- **Service by Mail**

Usually, the prosecutor requests that the clerk serve the citation by registered or certified mail, restricted delivery to addressee only. A copy of the judgment *nisi*, a copy of the bond, and a copy of any power of attorney must be attached to the citation. (Article 22.04, C.C.P.) If the surety is a corporation, such as a bonding company, the clerk should call the company and ask who the registered agent is for accepting service of the citation.

If the defendant (surety) or the defendant's registered agent for service accepts service and signs the green card (return receipt), the clerk must attach the card to the original citation in the forfeiture file. (Rule 107, R.Civ.P.) The clerk fills out the return portion of the citation noting the date and time the return receipt (green card) was signed and returned to the court.

If the citation is returned unclaimed or refused, or if someone other than the defendant (surety) or registered agent for service accepted the citation by signing the green card, the citation has not been served and the clerk would notify the prosecutor.

- **Personal Service**

If service by mail fails, the clerk should notify the prosecutor. The prosecutor then requests that the police department serve the citation on the defendant or the defendant's registered agent personally. A copy of the judgment *nisi*, a copy of the bond, and a copy of any power of attorney must be attached to the citation. Rule 105, R.Civ.P., states that the officer or authorized person to whom the citation is delivered shall endorse the citation with the day and hour on which he or she received it. The person serving the citation must execute it and return it without delay. Rule 107, R.Civ.P., states that the return of the officer or authorized person executing the citation shall be endorsed on or attached to the citation. The return shall:

- state when the citation was served;
- state the manner of service; and
- be signed by the officer officially or by the authorized person.

The return of citation by an authorized person shall be verified (sworn). When the citation was served by registered or certified mail, the return must also contain the return receipt with the addressee's signature.

When the officer or authorized person has not served the citation, the return shall show:

- the diligence used to execute it;
- the reason for failing to execute it; and
- if the whereabouts of the defendant (surety) can be ascertained, that information should also be included on the return.

- **Alternative Service**

If the above methods of service are not successful, the court may authorize alternative service. The officer must have noted the cause for failure to serve the citation and the diligence used in attempting service when he or she returns the citation to the court. The clerk notifies the prosecutor of the failure to serve the citation. The prosecutor must present a motion supported by an affidavit stating the location of the defendant's (surety) usual place of business, usual place of abode, or other place where the defendant can probably be found. The affidavit must state specifically the facts showing that service has been attempted under the abovementioned methods at the location named in the affidavit but has not been successful. If the court grants the motion, the citation can be served:

- by leaving a copy of the citation, with a copy of the judgment *nisi*, a copy of the bond, and a copy of any power of attorney attached, with anyone over 16 years of age at the location specified in such affidavit; or
- in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

If the court grants substitute service, the clerk delivers the citation to the peace officer. The peace officer endorses the citation with the date and hour received



and attempts to serve the citation by leaving a copy with anyone over 16 years of age at the location specified in the affidavit or with the defendant (surety) personally. If the officer is able to serve the citation, the officer signs the citation, noting the manner, person, time, and place served. The officer returns the citation to the court.

- **Service by Publication**

If the officer is unable to serve the citation, the officer notes the cause for failure to serve and the diligence used and returns the citation to the court. The clerk notifies the prosecutor of the failure to serve the citation by substitute service. When a citation is unable to be served by any of the abovementioned methods, Rule 109, R.Civ.P., provides for service by publication. The prosecutor must make an oath that the residence of the defendant (surety) is unknown or that the defendant (surety) is a transient person and that even though due diligence has been used in attempting to serve the citation, the defendant (surety) has not been located. The court must inquire into the sufficiency of the diligence used in attempting to locate the defendant (surety) before granting such service. If the court grants the motion, the clerk shall issue the citation for service by publication.

Rule 114, R.Civ.P., provides for the requirements of a citation that is to be published. The citation shall:

- be styled “The State of Texas;”
- be directed to the defendant (surety) by name;
- if there is more than one defendant (*e.g.*, two sureties), the citation may be directed to all of them by name;
- contain the names of the parties (the city and the sureties names); and
- contain a brief statement of the nature of the suit.

A copy of the judgment *nisi* does not have to be published with the citation.

Rule 116, R.Civ.P., provides that the clerk can have the citation published. It must be published once each week for four consecutive weeks. The first publication is to be at least 28 days before the return day of the citation.

The clerk shall endorse the citation and show how and when the citation was executed, specifying the dates of publication. A copy of the publication shall be attached to the citation. (Rule 117, R.Civ.P.)

Rule 114, R.Civ.P., provides that a defendant (surety) has 42 days from issuance of the citation for publication to file an answer with the court.

Rule 244, R.Civ.P., states that where service of the citation has been made by publication and no answer has been filed nor appearance entered within the prescribed time, the court shall appoint an attorney to defend the suit in behalf of the defendant. Judgment may be rendered as in other cases, but a statement of evidence, approved and signed by the judge shall be filed with the papers of the

case as a part of the record. The court shall allow a reasonable fee to be paid to the attorney for his or her services. This fee is added on as part of the costs.

**b. Waiver of Service**

The defendant (surety) may accept service or waive the issuance of service of the citation by filing with the court a sworn memorandum signed by the defendant (surety) or by his or her duly authorized agent or attorney. The waiver is effective until written revocation is filed with the clerk. The waiver or acceptance shall have the same force and effect as if the citation had been issued and served. The defendant who waives service of the citation is still entitled to have a copy of the judgment *nisi* delivered. Receipt of the copy of the judgment *nisi* must be acknowledged in the memorandum. (Rule 119, R.Civ.P.)

Article 22.03, C.C.P., allows a surety to file a waiver with the clerk of the court waiving service of citation or to designate a person other than the surety or the surety's attorney to receive service of the citation.

**c. Absent Surety or Non-Resident Surety**

If a surety is absent or a non-resident, service of a certified copy of the citation may be made outside of Texas by any person competent to make an oath of the fact. The affidavit of such person stating the facts of service shall be a sufficient return. (Article 22.08, C.C.P.)

When the defendant (surety) is absent from the State or is a non-resident of the State, the form of the notice to the defendant (surety) must be in the same form prescribed for a citation to a resident defendant (surety). The return of service shall be endorsed on or attached to the original notice and shall be in the same form as for the return of service on a resident defendant (surety). (Rule 108, R.Civ.P.)

**d. Deceased Surety**

If a surety is deceased, service of the citation must be on the executor, administrator, or heirs of the deceased surety in the same manner as on the surety. The death of a surety at the time of or after the forfeiture does not invalidate the forfeiture.

**Checklist for Service of Citation**

- Citation with copy of judgment *nisi* and a copy of the bond attached to be served.
- Service by clerk:
  - State requests clerk to serve citation.
  - Clerk endorses the citation with the date and hour received.
  - Clerk serves defendant (defendant charged with criminal offense) by regular mail with a notice (citation) and copy of the judgment *nisi* and copy of the bond.
  - Clerk notes on file that date the citation was mailed.
  - Clerk serves the surety by certified mail return, receipt requested, addressee only.
    - If green card is returned and is properly signed, clerk fills out return portion of citation and enters date of return on *scire facias* docket.

- If green card is returned unsigned, or if someone other than defendant/surety or defendant's registered agent for service signed the green card, clerk notes information on return portion of citation.
    - Clerk notifies prosecutor that service by mail was unsuccessful so that the prosecutor can request service by a peace officer.
  - Service by peace officer:
    - State requests personal service by a city peace officer.
    - Clerk notes on file the date and time citation was given to peace officer.
    - Officer endorses citation with date and hour received.
    - Peace officer attempts service on defendant (surety) personally.
    - If peace officer is able to serve the citation, officer signs citation, noting manner, person, time, and place served and returns citation to court.
      - Clerk enters date of return on *scire facias* docket.
    - If peace officer is unable to serve the citation, peace officer returns citation to court, filling out portion of return stating reason unable to serve.
      - Clerk notifies prosecutor that personal service was unsuccessful.
      - Clerk notes on file the officer's attempt to serve citation.
  - Alternative service:
    - State, by affidavit, petitions the court for alternative service.
    - Court decides whether to grant motion for alternative service. (If granted, peace officer can leave citation with anyone over 16 at address specified in affidavit.)
    - When alternative service is granted, clerk notes the order on *scire facias* docket and delivers citation to peace officer.
    - Clerk notes on the *scire facias* docket the date and time the citation was given to peace officer.
    - Service by a peace officer:
      - Peace officer endorses citation with date and hour received.
      - If peace officer is able to serve the citation, the officer leaves the citation with defendant (surety) or someone over the age of 16 at address specified in affidavit.
        - Officer signs citation, noting manner, person, time, and place served and returns citation to court.
        - Clerk enters date of return on *scire facias* docket.
      - If officer is unable to serve citation, officer notes cause for failure to serve and diligence used and returns citation to court.
      - Clerk notes on record that citation was served or was not able to be served.
      - Clerk notifies State that alternative service was unsuccessful.
  - Service by publication:
    - State, by affidavit, petitions the court for service by publication.

- Court inquires into the sufficiency of the diligence used in attempting to locate the defendant (surety).
- If court determines sufficient diligence was used to serve citation, court orders service by publication.
- Clerk issues another citation for publication (do not publish judgment *nisi*).
- Clerk notes date of issuance on *scire facias* docket.
- Clerk publishes citation in paper once a week for four weeks. The first publication is to be at least 28 days before the return day of the citation.
- Clerk executes return of citation; specifies place and dates of publication; and attaches copy of publication.
- Defendant (surety) has 42 days after issuance of citation to answer or if the first publication was 28 days from the return of the citation, within 28 days from the first publication to answer.

## **E. Answer**

The answer is the formal written statement made by a defendant setting forth the grounds of his or her defense. After the forfeiture of the bond is declared and the defendant (surety) has been notified (successful service of the citation) of the lawsuit, he or she can answer in writing and show cause why the defendant (principal on the bond) did not appear.

### **1. When Filed**

The answer must be filed within the time limit for answering in other civil actions. (Article 22.11, C.C.P.) The civil rules provide that the answer must be filed by 10:00 a.m. on or before the Monday following the 20<sup>th</sup> day after the service of the citation. To compute the period of time, the court does not count the day of service. The court counts calendar days. The last day is included unless it is a Saturday, Sunday, or legal holiday, in which event the period of time runs until the end of the next working day of the court. (Rule 4, R.Civ.P.) For example, if a citation is served on December 1, 2006, which is a Friday, the court starts the counting with Saturday as the first day. The 20<sup>th</sup> day is Thursday, December 21<sup>st</sup>. The court then looks to the following Monday, which would be December 25<sup>th</sup>, 2006, but because this Monday is a holiday and Tuesday is a holiday also, the court then goes to the following day Wednesday, which December 27<sup>th</sup>. The answer is due on Wednesday by 10 a.m. Ten additional days are allowed if the answer is mailed by first class mail, properly addressed and mailed on or before the last day for filing an answer. (Rule 5, R.Civ.P.) When an answer is mailed to the court, the clerk must keep the envelope in which the answer is received to determine if the mailing of the answer was within the time deadline. The postmark will indicate the day that the answer was mailed.

All answers received should be stamped with the time and date received. (Rule 5, R.Civ.P.) After receiving the answer, the clerk sets the case on the *scire facias* trial docket and provides a copy of the answer(s) to the State.

## **2. General Denial**

A general denial, which is an answer that is not required to be denied under oath, is sufficient to put the case on the *scire facias* trial docket. (Rule 92, R.Civ.P.) The defendant (surety) may later amend the answer. However, if the amended answer is filed within seven days of the date of the trial or thereafter, the defendant must get permission from the judge to file the amendment. (Rule 63, R.Civ.P.) When the court receives an amended answer, the clerk should date stamp it and notify the State and the judge.

## **3. Verified Pleadings**

A verified statement is a sworn statement. Rule 93, R.Civ.P., requires that certain pleadings be verified. This means that some answers must be sworn to so that certain issues are raised at the trial of the bond forfeiture case. (Rule 185, R.Civ.P.) Examples of when a verified pleading would be required are:

- when the surety and principal deny the execution of the bond; or
- when the surety and principal plead that the bond was not a valid bond.

If the defendant (surety) filed a general denial, he or she may amend the answer and deny the allegations of the bond forfeiture suit under oath. This is the responsibility of the defendant (surety) and not the court. When the clerk receives a verified answer, the clerk should date stamp it and notify the State.

## **4. Answer before Citation Issues**

If the defendant (surety) files an answer before the court issues the citation, the answer constitutes an appearance and dispenses with the necessity for issuance or service of the citation upon the surety. If the clerk receives an answer before issuing the citation, the clerk should date stamp the answer and note on the file that the answer was received before the issuance of the citation. (Rule 121, R.Civ.P.)

## **5. Appearance in Open Court**

If the defendant (surety) enters an appearance in open court either in person or by attorney or by his or her duly authorized agent, the judge shall note the appearance on the docket and enter it in the minutes. The citation shall be deemed to have been issued and served. (Rule 120, R.Civ.P.)

### **Checklist for Filing Defendant's Answer**

- Defendant (surety) files answer with the court (general denial, specific pleadings, or verified pleadings).
- Clerk stamps date and time on answer received and files answer.
- If answer mailed, clerk keeps envelope and stamps date and time received and files it.
- If general denial (answer) is received and clerk later receives a verified answer, clerk stamps date and time receipt of verified answer.
- If defendant (surety) answered timely, case is set for trial.

- If defendant files answer before issuance of citation is deemed to be issued and served.
  - Clerk stamps date and time answer is received and files it.
  - Case is set for trial.
- Defendant enters an appearance in open court.
  - If the defendant (surety) enters an appearance in open court either in person or by attorney or by his or her duly authorized agent, the judge shall note the appearance on the docket and enter it in the minutes. The citation shall be deemed to have been issued and served.
  - If defendant (surety) answered timely, case is set for trial.

## **F. Setting the Case**

The court may set contested cases on written request of any party [defendant (surety) or State (prosecutor)] or on the court's own motion. The court must give reasonable notice of not less than 45 days of a first setting for trial. When a case has previously been set for trial, the court may reset the case to a later date on any reasonable notice to the parties or by agreement of the parties.

### **1. Continuance**

A case can be postponed or continued by agreement of both the defendant (surety) and the State (prosecutor) for good cause supported by an affidavit presented to the court after notice to the other party or by operation of law. (Rules 247 and 251, R.Civ.P.)

### **2. Non-Contested Cases**

Non-contested cases may be tried or disposed of any time, whether set or not, and may be set at any time for any other time. (Rule 245, R.Civ.P.) If the surety does not contest the case (answer indicates surety not contesting case), the clerk should notify the prosecutor and set the case on the *scire facias* docket. The judge will enter a final judgment for the State. The clerk notifies the surety of the final judgment and that the judgment is due and payable to the city.

#### **Checklist for Setting Case on *Scire Facias* Docket**

- Defendant (surety) does not contest forfeiture:
  - Clerk notifies prosecutor that defendant (surety) is not contesting forfeiture;
  - Clerk sets case on *scire facias* trial docket;
  - Day of trial, court orders judgment for the State;
  - Clerk or State prepares final judgment;
  - Judge signs judgment and enters on *scire facias* docket;
  - State certifies to the clerk the address of the surety;
  - Clerk notifies defendant (surety) by first class mail that judgment has been signed (include a copy of the judgment) (bond now due to be paid to city); and

- If underlying criminal charge is a traffic offense, clerk reports the bond forfeiture to the Department of Public Safety within 30 days after the judgment is final.
- Defendant's answer contests forfeiture.
  - Clerk sets case on *scire facias* trial docket.
  - Clerk gives surety 45 days notice of trial setting.

## **G. Trials**

### **1. Trial before the Judge**

Although a bond forfeiture is a criminal case, the procedures are governed by the Rules of Civil Procedure instead of the rules in the Code of Criminal Procedure. Under the Rules of Civil Procedure, when a defendant wants to contest a lawsuit, the defendant is automatically entitled to a trial before the judge. The rules that govern a jury trial also govern trials by the court in so far as they are applicable. (Rule 262, R.Civ.P.)

### **2. Jury Trial**

A defendant (surety) may request a jury trial. The request must be made in writing and filed with the clerk a reasonable time before the date set for trial on the non-jury docket, but not less than 30 days in advance. (Rule 216, R.Civ.P.) When the clerk receives the request, the clerk should date stamp it and file it with the case.

A defendant (surety) who requests a jury trial must also pay a fee. Defendants in county court are required to pay a five-dollar fee; defendants in district court are required to pay a \$10 fee. Although municipal courts must follow the rules of civil procedure in bond forfeiture cases, the rules do not state if municipal courts use the rule governing county court or the one governing district court. Clerks should ask their judge for guidance on this issue.

If the fee is not paid, the court may deny the jury trial. When the clerk receives the fee, the clerk must promptly enter a notation of the payment of the fee upon the court's docket sheet. (Rule 216, R.Civ.P.) The clerk is required to keep a docket, styled "The Jury Docket," which shall be entered in the order of the cases in which jury fees have been paid or an affidavit of indigence in lieu of the fee has been filed. (Rule 218, R.Civ.P.)

If the request is timely received and the fee is paid, the clerk must summon prospective jurors. (Rule 248, R.Civ.P.) The clerk summons the jury in the same manner as any other jury trial in municipal court. See Level II *Overview of Processing Cases* for information summoning a jury.

If a defendant files with the clerk an affidavit that he or she is unable to pay the fee and cannot otherwise obtain the money, the court shall then order the clerk to enter the suit on the jury docket. (Rule 217, R.Civ.P.)

### **3. Trial Proceedings**

If the trial is a jury trial, either the defendant (surety) or the State may challenge the array (membership) of the jury upon the ground that the officer summoning the jury has acted corruptly and has willfully summoned jurors known to be prejudiced against or for either

side. All such challenges must be in writing setting forth distinctly the grounds of the challenge and be supported by an affidavit. (Rule 221, R.Civ.P.) If the challenge is sustained, the jurors must be discharged, and the court shall order that other jurors be summoned. The person who summoned the first panel of jurors may not summon any other jurors in the case. (Rule 222, R.Civ.P.)

The next step is to question the jurors under oath. During questioning, jurors may be excused for cause (they have a biased view of the case). This is called challenges for cause. Both the defense and the State have the right to strike three persons without assigning a reason to the strike. This type of challenge is called peremptory challenge. After any challenges for cause and the peremptory challenges, the State and the defense shall deliver their lists of jurors to the clerk. The clerk shall call off the first six names on the lists that have not been erased. These six persons are the jury.

Regardless of whether the trial is before the judge or a jury, the evidence and trial procedures are the same. The State offers into evidence the complaint on the original charge for which the bond was given, the bond, the docket entry and indication of the forfeiture, the affidavit of the person who called the name outside the courtroom, and the judgment *nisi*. The bond and judgment *nisi* are the essential elements in a bond forfeiture proceeding. Generally, the State will ask the court to take judicial notice of the bond and judgment *nisi* unless the defendant has filed a sworn answer challenging the bond's validity. [*Hokr v. State*, 545 S.W.2d 463 (Tex. Crim. App. 1997)] If there is a sworn answer, the State follows the required predicate to introduce the bond. The State may also ask for court costs, costs of arrest, if any, and interest from the date of the judgment *nisi* until the date of final judgment. Then, the State rests.

If a proper answer has been filed, the defendant (surety) can state his or her case. If the defendant has not filed or raised a valid defense or raised a defense that must be verified, the State may object. (Note: A bond forfeiture trial is equitable in nature, and therefore, it can be argued that the judge has discretion to hear any testimony he or she may deem fit.)

## **H. Powers of the Court**

After a judicial declaration of forfeiture is entered, the court may proceed with the trial. The court may exonerate the defendant and his or her sureties, if any, from liability on the forfeiture, remit the amount of the forfeiture, or set aside the forfeiture. The court may approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant or the defendant's sureties, if any. (Article 22.125, C.C.P.) See Part 3 in this guide for information on agreed judgments.

## **I. Causes that Will Exonerate**

Article 22.13, C.C.P., provides for causes that will exonerate the principal and/or surety. The court may consider only the causes listed in this statute and no others for exoneration. (Article 22.13(a), C.C.P.) The following are a list of the causes.

- If the bond is not a valid and binding undertaking in law.
- The death of the principal before the forfeiture as taken.



- The sickness of the principal or some uncontrollable circumstance, which prevented the defendant's appearance at the court and it must be shown that the failure to appear arose from no fault on the defendant's part.
- Failure to present an indictment or information at the first term of the court after the principal has been admitted to bail.
- The incarceration of the principal in any jurisdiction in the United States:
  - In the case of a misdemeanor, at the time of or not later than the 180<sup>th</sup> day after the date of the principal's failure to appear in court; or
  - In the case of a felony, at the time or not later than the 270<sup>th</sup> day after the date of the principal's failure to appear in court.

## J. Remittitur before Entry of Final Judgment

Article 22.16(a), C.C.P., provides that after the forfeiture of a bond and before entry of a final judgment, the court shall, on written motion, remit to the surety the amount of the bond after deducting court costs, any reasonable and necessary rearrest costs, and the interest on bond amount after forfeiture if:

- the principal is released on new bail in the case; or
- the case for which the bond was given is dismissed.

Article 22.16(b), C.C.P., provides that for other good cause shown and before entry of a final judgment against the bond, the court in its discretion may remit to the surety all or part of the amount of the bond after deducting the court costs, any reasonable and necessary rearrest costs and interest accrued on the bond from the date of the forfeiture.

### Checklist for Bond Forfeiture Trial

- Defendant (surety) contests forfeiture and requests a trial (right to a bench trial).
  - Clerk sets case on *scire facias* trial docket.
  - Clerk gives defendant (surety) 45 days notice of trial setting.
- If defendant (surety) requests a jury trial, it must be in writing and filed with clerk within a reasonable time before the date set for a non-jury trial, but not less than 30 days before the bench trial setting.
  - Clerk date stamps request and files with case.
  - Defendant (surety) must pay a fee unless defendant submits an affidavit of indigence in lieu of paying fee (check with judge to determine if fee is \$5.00 or \$10.00).
  - If fee is paid or affidavit is submitted, clerk sets case on *scire facias* jury trial docket.
    - Clerk gives defendant (surety) notice of trial setting.
    - Clerk enters case on jury docket.
  - If fee is not paid, clerk notifies judge; judge may deny jury trial.
- Judge orders someone, usually the clerk, to summon a jury (jury is summoned in the same manner as any other jury trial in municipal court).

- Trial Proceedings
  - Defendant may challenge array (if sustained, jury discharged and judge orders someone other than the person who summoned first jury to summon another jury).
  - Both parties (defendants and State) may question the jurors.
  - Both parties may strike three jurors each (preemptory challenges).
  - After the preemptory challenges are given to judge, clerk must call off the first six names on the lists that have not been struck. These persons serve on the jury.
  - The State's case.
    - The complaint (original charge filed with court);
    - The bond;
    - The docket entry and indication of forfeiture (made by the judge on the day when the defendant failed to appear); and
    - The affidavit of the bailiff or person who called the name outside the courtroom.
    - The judgment *nisi*.
      - State may ask court to take judicial notice of bond and judgment *nisi*.
      - Judge will take judicial notice of bond and judgment *nisi* unless defendant (principal or surety) has filed a sworn answer challenging bond's validity. If sworn answer, State must establish required predicate to introduce bond.
        - When the validity of the bond is challenged, the judge cannot take judicial notice of the bond. The State must present evidence that the bond is:
          - The one submitted by the defendant;
          - Received by the court;
          - The court has taken proper care of the bond; and
          - The bond is not more burdensome than required by law.
    - The State rests.
  - Defendant's (surety) case
    - The defendant (principal or surety) produces evidence of exoneration from liability under one of the following causes.
      - Bond is not valid (This defense requires defendant to have filed a verified answer otherwise the defendant may not raise these issues);
        - Bond not valid as to principal or surety;
        - Defendant did not execute bond (must be verified by affidavit); or
        - Bond more burdensome than statute requirements.
      - Defendant (principal) died before forfeiture was taken.
      - Defendant (principal) was sick or prevented by some uncontrollable circumstance from appearing. (This cause shall not be deemed sufficient to exonerate the principal and sureties, if any, unless the principal

appeared before final judgment on the bond to answer the accusation against him or her, or show sufficient cause for not appearing as required.)

- The incarceration of the principal in any jurisdiction in the United States at the time of or not later than the 180<sup>th</sup> day after the date of the principal's failure to appear in court.
- Powers of the court.
  - No exoneration—forfeiture granted for the State.
    - No valid cause for failure to appear.
    - If there is no exoneration, the judge enters judgment against the principal and sureties, if any, for the amount of the bond. (Article 22.14, C.C.P.) (The court finds that the judgment *nisi* is made final, and that the defendant and sureties are jointly and severally bound in the amount of \$\_\_\_\_\_ and costs of court to the city of \_\_\_\_\_, and order that the judgment be entered and execution issued.)
  - Exoneration of defendant(s).
    - Bond not valid and/or binding.
      - If principal not liable, everyone exonerated; or
      - If principal liable and one or more sureties, if any liable on bond, then only non-liable sureties exonerated.
    - Principal died before date bond forfeited;
    - Sickness or principal or uncontrollable circumstances through no fault of principal caused principal's failure to appear.
      - Principal must appear before final judgment or show cause for not appearing.
    - The principal is incarcerated in any jurisdiction at the time or not later than the 180<sup>th</sup> day after the date of the principal's failure to appear in court.
      - Enter dismissal of forfeiture if exoneration is found. Court may order dismissal with or without costs.
  - Remittitur
    - Remittitur is required if the defendant or the sureties show one of the following:
      - The defendant has been released on new bond; or
      - The case for which the bond was given is dismissed.
    - Remittitur is permitted.
      - For other good cause shown and before entry of a final judgment against the bond.
    - The court may remit all or part of the amount of the bond after deducting the costs of court and any reasonable and necessary costs to the county for the return of the principal, and the interest accrued on the bond amount. (Interest accrues on the bond amount from the date of the forfeiture in the same

manner and at the same rate as provided for the accrual of prejudgment interest in civil cases.)

## **K. Judgments**

### **1. Default Judgment**

When the sureties and principal have been properly served but fail to answer within the time limit, the State may make a motion for a judgment by default. (Article 22.15, C.C.P.; Rule 239, R.Civ.P.) Before the court can enter a default judgment, the citation with the officer's return must have been on file in the clerk's office for at least 10 days, exclusive of the date of filing and the date of judgment. (Rule 107, R.Civ.P.) If there is more than one surety, each may have been served on different days and therefore may have different deadlines to answer. The clerk should make sure that the deadlines have passed for all defendants.

Also, before the court can grant a default judgment, the State must provide the court with an affidavit of non-military service regarding the defendant. If the State does not provide the affidavit that the principal is not on active military duty, the court may appoint an *ad litem* (an attorney appointed by the court to appear in a lawsuit on behalf of the party) for the service member, for whom the State must pay the fees, or the court may refuse to proceed with a default and abate the forfeiture action until the service member's return from active duty. Section 201, Servicemembers Civil Relief Act (S.C.R.A.)(2003)) Courts may not enforce bail bonds during the period of military service of the principal on the bond when the military service prevents the surety from obtaining the attendance of the principal. (Section 103(c), S.C.R.A.) The Department of Defense provides a website for government agencies to check military status: [dmdc.osd.mil/udpdiri/owa/sscra.page](http://dmdc.osd.mil/udpdiri/owa/sscra.page).

The court entering a default judgment during or within 60 days after military service of a principal shall, upon application by or on behalf of the service member, reopen the judgment. The purpose is to allow the service member to defend the action if it appears that the service member was materially affected by reason of the military service in making a defense to the action and the service member has a meritorious or legal defense to the action or some part of it. The application must be filed not later than 90 days later the date of termination of or release from military service. (Section 201, S.C.R.A.)

The State prepares the default judgment for the judge's signature. (Rule 305, R.Civ.P.) The State must certify in writing to the clerk the last known mailing address of the surety against whom the default is taken. The certificate is filed with the case. Immediately upon the signing of the judgment, the clerk shall mail written notice of the default judgment to the defendant (surety) at the address shown in the certificate filed by the State. The clerk must also note on the *scire facias* docket the date that the notice was mailed. The notice shall state the number and style of the case, the court in which the case is pending, that the judgment was rendered for the State against the defendant (surety), and the date of the signing of the judgment. Failure to comply with these requirements shall not affect the finality of the judgment. (Rule 239a, R.Civ.P.)

## **2. Failure to Appear at Trial**

If a defendant (surety) files an answer but fails to appear at trial, the court may enter a default judgment against the defendant (surety) after the State has presented its evidence. See information directly above for procedures on default judgments.

## **3. Defendant (Surety) Exonerated**

If the court exonerates or sets aside the forfeiture, it can dismiss with or without costs or dismiss and reinstate the bond. Unless the defendant (principal on bond) has filed a new bond on the original criminal case, there may still be an outstanding *capias* for the defendant's arrest that the court should set aside at the same time.

## **4. Final Judgment - No Sufficient Cause**

If the court finds that no sufficient cause has been shown for failure of the defendant (principal on bond) to appear in the original criminal case, judgment should be made final for the amount in which they are respectively bound; and the amount of the bond shall be collected by execution as in civil actions. See the section *Collection and Enforcement of Judgment* in this guide for information on execution.

## **5. Summary Judgment**

The State (prosecutor) or the defendant (surety) may file for a summary judgment. A summary judgment is a motion filed when either the State or the defendant believes that there is no genuine issue of material fact and that the State or defendant is entitled to prevail as a matter of law. (Rule 166a, R.Civ.P.) Usually, the summary judgment is filed by the prosecutor. The party requesting the summary judgment must file and serve the motion and supporting affidavit at least 21 days before the time specified for hearing on the motion. The adverse party has no later than seven days prior to the hearing to file and serve opposing affidavits. (Rule 166a(c), R.Civ.P.) If the judge grants the motion for summary judgment, the State prepares the judgment for the judge's signature. If the judge denies the motion for summary judgment, the case should be set on *scire facias* trial docket.

## **6. Agreed Judgment**

An agreed judgment is one in which the State (prosecutor) recommends to the court to settle the bond forfeiture lawsuit for an amount less than the amount of the bond. The court may also on its own motion approve such a settlement. (Section 1704.205, O.C.)

Article 22.125, C.C.P., provides authority for the judge to approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant or the defendant's sureties.

## **7. Clerical Mistakes in Judgment Record**

Clerical mistakes in the record of the judgment may be corrected by the judge in open court according to the truth or justice of the case after notice of the motion has been given to the parties interested in the judgment as provided in Rule 21a, R.Civ.P. Thereafter, the execution shall conform to the judgment as amended. (Rule 316, R.Civ.P.)

Rule 21a, R.Civ.P., states that the notice may be served:

- by delivering a copy to the party to be served or the party's duly authorized agent or attorney of record either in person or by agent or by courier receipted delivery;
- by certified or registered mail to the party's last known address;
- by telephonic document transfer to the recipient's current telecopier number; or
- by such other manner as the court in its discretion may direct.

Service by mail shall be complete upon deposit in a post office or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of the notice is made by mail or telephonic document transfer, three days shall be added to the prescribed period. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance by filing a signed written document of the compliance. A certificate by a party or an attorney of record, the return of an officer, or the affidavit of any person showing service of a notice shall be *prima facie* evidence of the fact of service. The clerk, upon receiving a document showing compliance of the service of notice, should date stamp the document and file it with the bond forfeiture case.

## 8. Final Judgment Entered

When no sufficient cause has been shown for the failure to appear of the principal, the judgment shall be made final against him/her or his/her sureties, if any, for the amount in which they are respectively bound. The amount of the forfeiture shall be collected by execution as in civil actions. If there is more than one party, a separate execution shall be issued against each party for the amount adjudged against each. The costs shall be equally divided between sureties, if there is more than one. (Article 22.14, C.C.P.)

### Checklist for Judgments

- Default judgment - defendant(s) has been properly served, but fails to answer.
- Clerk sets case on non-contested *scire facias* docket.
  - Clerk notes on *scire facias* docket that citation with the officer's return has been on file in the clerk's office for at least 10 days, exclusive of the date of the filing and the date of judgment.
  - Clerk notes that affidavit of non-military service from prosecutor is on file.
  - State moves for default judgment.
    - State prepares default judgment for judge's signature.
    - State certifies the address of the parties against whom the default is taken.
    - On day of *scire facias* docket setting, State presents judgment for judge's signature.
  - Judge determines that citation was properly served. Proof of service includes the following:

- Verified waiver;
- Certified mail with green card signed by:
  - Defendant/surety;
  - State Board of Insurance (surety is corporation);
  - Registered agent (surety is a corporation);
  - Executor, administrator heirs (surety is deceased); or
- Personal service by peace officer;
  - Officer's return on citation is completed; and
  - Proof of service on file at least 10 days, exclusive of the date of filing and the date of judgment, for every defendant.
- Judge determines that time has expired for answer for every defendant.
  - Approximately 40 days have elapsed.
- Judge signs judgment.
- Clerk notes order on *scire facias* docket.
- State certifies in writing the last known mailing address of the surety.
  - Certificate is filed with the case.
- Clerk mails written notice of the default judgment to surety.
  - Clerk notes on *scire facias* docket date that the notice was mailed.
- Default judgment - defendant fails to appear at trial.
  - Follow steps for default judgment noted above.
- Defendant appears at trial - court exonerates defendant. See Checklist under Trials.
  - Defendant presented evidence of a cause under Article 22.13, C.C.P.
  - Courts signs order dismissing bond forfeiture.
    - Court may dismiss with or without costs or reinstate bond.
    - Clerk notes order on *scire facias* docket.
- Judgment for State (no sufficient cause). See Checklist under Trials.
  - Defendant fails to present evidence of a sufficient cause under Article 22.13, C.C.P.
  - Court signs a final judgment for State.
  - Court orders bond collected by execution as in civil actions.
  - Clerk notes judgment and execution order on docket.
  - State certifies in writing the last known mailing address of the surety.
    - Certificate is filed with the case.
    - Clerk mails written notice of the default judgment to surety.
    - Clerk notes on *scire facias* docket the date that the notice was mailed.
- Summary judgment (usually filed by the State).
  - State files summary judgment with court.
  - Clerk sets case for a hearing.

- Party requesting must file and serve the motion and supporting affidavit at least 21 days before the time specified for a hearing.
  - If other party (usually sureties and/or principal) files opposing affidavits on motion, clerk accepts, provides copies to the State, and files with case (opposing affidavits must be file not later than seven days prior to hearing).
  - Summary judgment motion filed when:
    - No valid defense is raised;
    - Defenses raised must be verified and the answer verified—defenses required to be verified include:
      - Defendant did not execute bond;
      - Defendant is not liable incapacity sued;
      - There is a defect of parties;
      - Defendant alleged to be a corporation and is not incorporated as alleged; or
      - Bond is not a valid undertaking; or
    - No genuine issue as to material fact and moving party entitled to judgment as matter of law; fact issues include:
      - Whether surety executed bond;
      - Whether principal's name called at courthouse door;
      - Whether principal failed to appear; or
      - Whether principal had a valid reason for not appearing.
- Summary judgment hearing.
  - No oral testimony.
  - Judge reviews pleadings.
  - State asks judge to take judicial notice of bond and judgment *nisi*, then rests.
  - Defense must set forth affidavits; affidavit must include:
    - Information based on personal knowledge; or
    - Must show how affiant became personally familiar with the facts.
    - If no genuine issue, grant movant's (usually the State's) motion for summary judgment.
    - If genuine issue, deny and set for bond forfeiture trial. See Checklist under Trials.
    - Judge determines that motion for summary judgment and any supporting affidavits filed were served at least 21 days before the time specified for the hearing. Judge determines if opposing affidavits on motion are filed no later than seven days prior to the hearing.
    - Judge determines if the motion itself (rather than supporting briefs) states specifically the grounds relied on for granting the motion.
    - If judge grants motion for summary judgment, State prepares judgment for judge's signature.



- Judge signs judgment.
- Clerk enters judgment on *scire facias* docket.
- State certified in writing the last known mailing address of the surety.
  - Certificate is filed with the case.
- Clerk mails written notice of the summary judgment to surety.
- Clerk notes on *scire facias* docket date that the notice was mailed.
- If judge denies motion for summary judgment, clerk sets the case on the *scire facias* trial docket. See Trial Checklist.
- Agreed judgment. (Applies to cities situated in counties that have a bail bond board; or if no bail bond board, the city is situated in a county of at least 110,000 in population.)
  - State and defense agree to an amount less than the bond and recommendation is submitted to the court.
  - If court grants motion, State prepares judgment for judge's signature.
  - Judge signs judgment.
    - Clerk enters judgment on *scire facias* docket.
    - State certifies in writing the last known mailing address of the surety.
      - Certificate is filed with the case.
    - Clerk mails written notice of the agreed judgment to surety.
      - Clerk notes on *scire facias* docket the date that the notice was mailed.
- Clerical mistakes in judgment record.
  - Notice of motion to correct mistake served on interested parties.
    - Notice is served by delivering a copy of party duly authorized agent, or attorney of record either in person or by agent or by courier receipted delivery; by certified or register mail to party's last known address; by telephonic document transfer to the recipient's current telecopier number; or by such other manner as the court in its discretion may direct.
    - Clerk, upon receiving a document showing compliance of the service of notice, should date stamp the document and file it with the bond forfeiture case. (*Prima facie* evidence of service is a certificate by a party or an attorney of record, the return of an officer, or the affidavit of any person showing service of notice.)
  - Judge corrects mistake in open court.
  - Clerk notes correction on *scire facias* docket.

## **L. Post-Judgment Procedures**

### **1. New Trial**

A motion for new trial may be granted in the court's discretion on motion of either party [defendant (surety) or State (prosecutor)] or on the court's own motion for good cause. (Rule

320, R.Civ.P.) The motion must be in writing and signed by the party or his or her attorney. Affidavits or other evidence of a defense must support the motion.

If a defendant (surety) or the State files a motion for new trial, the motion must be filed prior to or within 30 days after the judgment or other order. (Rule 329b, R.Civ.P.)

### **Checklist for New Trial.**

- Motion for new trial.
  - Defendant and/or surety requests within 30 days after final judgment has been signed.
  - Request (motion) is made in writing. (Motion extends time for issuance of execution up to 105 days. If the judge never signs motion for new trial, it will be deemed overruled 75 days after the original judgment was signed. The same rule applies whenever a final judgment is signed.)

## **2. Appeal**

The Code of Criminal Procedure directs that all appeals from municipal courts, including bond forfeitures, go to the county court, except where some other court has jurisdiction. Appeals to the county court are *de novo* (a new trial) unless it is an appeal from a municipal court of record. If the appeal is from a municipal court of record, the appeal is based on error in the record. (Article 45.042, C.C.P.) The Code of Criminal Procedure also states that bond forfeitures are governed by the same rules governing other civil suits. (Article 22.10, C.C.P.)

Although there are special rules governing appeals in civil suits heard in a justice court, there are no special rules regarding appeals from a judgment on a bond forfeiture in municipal court. The civil rules of procedure relate to courts of records and do not address non-record municipal courts. Hence, it is unclear how an appeal from a bond forfeiture judgment from a non-record municipal court is handled other than using the procedures set forth in Chapter 45, C.C.P. See the Level I study guide *Post Trial Procedures* for information on appeals from municipal court.

## **3. Bill of Review**

A bill of review is a proceeding brought for the purpose of reversing a prior judgment of a trial court after a judgment has become final. Within two years of the date of final judgment, a surety may file a bill of review requesting remittitur of the bond amount minus costs and interest. (Article 22.17, C.C.P.) A surety proceeding under Article 22.17 does not have to meet the requirements of a general civil bill of review. [*Gramercy v. State*, 834 S.W.2d 379 (Tex.App.—San Antonio 1992, n.w.h.)] The decision to grant or deny the bill is entirely discretionary with the court. [*Lyles v. State*, 850 S.W.2d 497 (Tex. Crim. App. 1993)] A subsequent appearance by the defendant is not enough for a complete remittitur.

The court can grant or deny the bill of review without an oral hearing even if a party asks for one. Whether or not arguments will be heard is discretionary with the court. [*Hickman v. State*, 141 S.W. 973 (Tex.Crim.App. 1911); *Hester v. Baskin*, 184 S.W. 726 (Tex. Civ. App.—Amarillo 1916, n.w.h.); *Peck v. Murphy & Bolenz*, 184 S.W. 542 (Tex. Civ. App.—Dallas 1916, n.w.h.)] Additionally, not every rule of Texas procedure requires an oral

hearing. *Gulf Coast Investment Corporation v. Nasa 1 Business Center*, 754 S.W.2d 152, (Tex. 1988); *Gordon v. Ward*, 822 S.W.2d 90, (Tex.App.—Houston [1st Dist.] 1991, n.w.h.); *Classic Promotions, Inc. v. Shafer*, 846 S.W. 2d 948, (Tex.App.—Houston [14th Dist.] 1993, n.w.h.)] An oral hearing is not mandatory unless the rule explicitly requires one. (*Gulf Coast*, 754 S.W.2d at 153; *Classic Promotions*, 846 S.W.2d at 950; and *Gordon* 822 S.W.2d at 92) Neither Article 22.17, C.C.P. nor Rule 329b, R.Civ.P., requires a hearing on a bill of review.

#### **Checklist for Bill of Review.**

- Defense presents not later than two years after the date of a final judgment.
- Includes request, on equitable grounds, that final judgment and all or part of the bond be remitted to the surety.
- The court grants the bill in part or in whole. The courts grants the bill of review and orders that the judgment be reformed and the amount \$ \_\_\_\_ be returned to the defendant.

### **M. Collection and Enforcement of Judgment**

#### **1. Bail Bond Surety**

A “bonding business” means the solicitation, negotiation, or execution of a bail bond by a bail bond surety. A “bail bond surety” is a person who executes a bail bond as a surety or cosurety for another person for compensation. (Section 1704.001(2), O.C.) A “person” is an individual or corporation. (Section 1704.001(5), O.C.) Chapter 1704 of the Occupations Code only applies to a county with a population of 110,000 or more or less than 110,000 in which a bail bond board is created. (Section 1704.002, O.C.) A person may not act as a bail bond surety in the county unless the person holds a license issued under Chapter 1704, O.C. (Section 1704.151, O.C.) Section 1704.163, O.C., makes an exception to the licensing provision for a person licensed to practice law in Texas who represents the defendant in a criminal case and where the attorney files notice of appearance as counsel of record in the case for which bond was given. Under Section 1704.163(b), however, the attorney representing his or her client may not engage in conduct involved with a practice that would subject a bail bond surety to license revocation. If the sheriff determines that the attorney has violated Subsection (b), the attorney may not execute a bail bond or act as a surety until the attorney has remedied the violation.

Section 1704.204, O.C., requires a license holder under Chapter 1704 to pay a final judgment on a forfeiture of a bail bond not later than the 30<sup>th</sup> day after the date of the final judgment. If the license holder fails to pay a final judgment as required, the judgment shall be paid from the security deposited or executed by the license holder required upon application for a license under Section 1704.160, O.C.

#### **a. Surety in Default**

Article 17.11, Section 2, C.C.P., provides that a surety on a bail bond who is in default is disqualified to sign as a surety so long as the surety’s is in default on a bond. Once a final judgment is signed, a surety is deemed to be in default until the judgment is satisfied or set

aside. (Article 17.11, C.C.P.) However, for the purposes of the bail bond board regulations of bail bondsmen, Section 1704.212, O.C., provides that a surety is not considered to be in default until the 11<sup>th</sup> day after final judgment is entered. If a surety is in default, merely having a payment plan does not entitle a surety to regain his or her bonding privileges until all the judgment is satisfied or set aside. A surety who is in default is disqualified to sign as a surety as long as he or she is in default on a bond. (Article 17.11, Section 2, C.C.P.) It is the duty of the clerk to notify in writing the sheriff, chief of police, or other peace officer of the default. (Article 17.11, C.C.P.)

## **b. Corporation in Default**

To be eligible to be licensed under Chapter 1704 of the Occupations Code, a corporation must be chartered or admitted to do business in Texas and qualified to write fidelity, guaranty, and surety bonds under the Insurance Code. (Section 1704.152, O.C.)

Under the regulations in Chapter 1704, O.C., a corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bail bonds. Under Sections 1704.212(a) and (b), O.C., if a corporation defaults on a bail bond, the clerk of the court in which the corporation executed the bond shall deliver a written notice of the default to:

- the sheriff;
- the chief of police; or
- another appropriate peace officer.

A corporation is considered to be in default on a bail bond beginning on the 11<sup>th</sup> day after the date the trial court enters a final judgment on the *scire facias* and ending on the date the judgment is satisfied or set aside. (Section 1704.212(c)(1), O.C.) A license holder shall pay a final judgment on a forfeiture of a bail bond executed by the license holder not later than the 30<sup>th</sup> day after the date of the final judgment. However, if the license holder fails to pay a final judgment as required, the judgment shall be paid from the security deposited or executed by the license holder required upon application for a license. (Section 1704.204, O.C.)

A corporation is not considered to be in default on a bail bond if, pending appeal, the corporation deposits cash in the amount of the final judgment with the court in which the bond is executed. (Section 1704.212(c)(2), O.C.) The cash deposit shall be applied to the payment of a final judgment in the case. (Section 1704.212(d), O.C.)

## **2. Executions**

Execution means carrying out some act or course of conduct to its completion. Execution upon a money judgment is the legal process of enforcing the judgment, usually by seizing and selling property of the debtor.

Since municipal courts have jurisdiction over the forfeiture and final judgment of all bail bonds taken in criminal cases over which it has jurisdiction, and since all matters pertaining to bail bonds are governed by the Rules of Civil Procedure, execution is a way to satisfy a bond forfeiture judgment. (Articles 4.14 and 22.10, C.C.P.) Rule 308, R.Civ.P., states the court must cause its “judgments and decrees to be carried into execution.” The rule also states that the court may enforce its judgments by “attachment, fine and imprisonment.” Article

22.14, C.C.P., states that the judgment in a bond forfeiture case shall be collected by execution as in civil actions and that separate execution shall issue against each party for the amount adjudged against him or her. The costs shall be equally divided between the sureties if there is more than one.

Rule 621, R.Civ.P., states that the judgment shall be enforced by execution or other appropriate process if there is no writ commanding the court to stay the proceedings or an appeal.

Such execution or other process shall be returnable in 30, 60, or 90 days from the time a final judgment is signed as requested by the State (prosecutor). Usually, the state requests that the writ of execution be returnable in 30 days. If a timely motion for new trial or an arrest of judgment is filed, the clerk shall not issue execution upon the judgment until 30 days from the time the order overruling the motion is signed or from the time the motion is overruled by operation of law. The city attorney must make application for the execution. (Rule 627, R.Civ.P.)

Execution may be issued at any time before the 30<sup>th</sup> day upon the filing of an affidavit by the city attorney in the judgment that the defendant is about to remove personal property subject to execution by law out of the county or is about to transfer or hide such personal property for the purpose of defrauding his or her creditors. (Rule 628, R.Civ.P.)

A writ (written order) of execution is a formal process issued by court generally evidencing the debt of the defendant (surety) to the plaintiff (State) and commanding the officer to take property of the defendant in satisfaction of the debt. Rule 629, R.Civ.P., provides for the requirements of the writ of execution. They are:

- the style shall be “The State of Texas;”
- shall be direct to any sheriff or any constable with the State of Texas;
- shall be signed by the clerk or judge and bear the seal of the court, if any;
- shall require the officer to execute it according to its terms;
- to make costs which have been adjudged against the defendant in execution and the further costs of executing the writ;
- shall describe the judgment, stating the court in which and the time when rendered, and the names of the parties in whose favor and against whom the judgment was rendered;
- a copy of the bill of costs taxed against the defendant in execution shall be attached to the writ; and
- shall require the officer to return it within 30, 60, or 90 days as directed by the State (prosecutor).

Rule 636, R.Civ.P., requires the officer receiving the execution to endorse it with the exact hour and day when he or she received it. If the officer receives more than one on the same day against the same person, the officer shall number them as received.

When an execution is issued upon a judgment for a sum of money, or directing the payment of a sum of money, it must specify the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the

officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law. (Rule 630, R.Civ.P.) The property secured by the constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of bail, either as to principal or sureties, if any. (Article 17.12, C.C.P.) Chapter 42 of the Property Code defines exempt personal property that is not subject to execution. Some exempt items include the following:

- home furnishings, including family heirlooms;
- food and beverages;
- farming or ranching implements and vehicles;
- tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
- clothes;
- jewelry not to exceed 25 percent of the aggregate limitations prescribed by Subsection (a) of Section 41.001, P.C. (That section states that personal property is exempt from execution if the property is provided for a family and has an aggregate fair market value of not more than \$60,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property; or property owned by a single adult who is not a member of a family, and has an aggregate fair market value of not more than \$30,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.);
- two firearms;
- athletic and sporting equipment, including bicycles;
- a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of the family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person;
- The following animals and forage on hand for their consumption:
  - two horses, mules, or donkeys, and a saddle, blanket, and bridle for each;
  - 12 head of cattle;
  - 60 head of other types of livestock; and
  - 120 fowl;
- household pets;
- life insurance policies;
- retirement plans and I.R.A.s; or
- Current wages for personal services are also exempt and cannot be garnished directly from a defendant's employer. However, when wages are deposited into checking or saving accounts they may be subject to garnishment. [*American Express Travel Related Services v. Harris*, 831 S.W.2d 531 9 Tex.App.—Houston (14th Dist.) 1992]

## **N. Costs, Interest, and Remittitur**

### **1. Costs**

Civil court costs may be assessed in bail bond forfeiture cases after entry of the judgment *nisi*. [*Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993)] The costs must be equally divided between the sureties, if there is more than one. The costs include necessary and reasonable expenses in rearresting the defendant and any other costs involved in the bond forfeiture case such as any costs for service of process.

### **2. Interest**

Under Section 301.002(a)(4) of the Finance Code (Fin. C.), “interest” is the compensation allowed by law for the use, forbearance, or detention of money. Interest on the bond amount after forfeiture begins to accrue on the face amount of the bond at six percent per annum if no specified rate of interest is agreed upon by the defendant (surety) or State (prosecutor). The six percent per year on the principal amount begins on the 30<sup>th</sup> day after the date on which the amount is due. If an obligor has agreed to pay to a creditor any compensation that constitutes interest, the obligor is considered to have agreed on the rate produced by the amount of that interest, regardless of whether that rate is stated in the agreement. (Section 302.002, Fin. C.) Although Section 302.002 provides that interest does not begin to accrue until 30 days after the date on which the amount is due, Articles 22.16(e) and 22.17(a), C.C.P., and *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993) say that the interest on a bond forfeiture begins to accrue from the date of the judgment *nisi*.

### **3. Remittitur**

A surety can request remittitur of the bond before and after a final forfeiture, but the court can, before remitting the bond, deduct costs and interests. Article 22.16(a), C.C.P., says that before a forfeiture is final, the court shall, on written motion and sufficient cause, remit to the surety the amount of the bond after deducting the costs for the return of the principal and the *interest on the bond*. Article 22.17, C.C.P., says that not later than two years after the date a final judgment is entered in a bond forfeiture proceeding, the surety on the bond may file with the court a special bill of review to reform the bond forfeiture judgment to remit all or part of the bond to the surety after deducting costs for the return of the principal and the interest accrued on the bond from the date of forfeiture.

## **PART 4 PERSONAL BOND FORFEITURE**

The court may release a defendant on his or her recognizance without any sureties. (Article 17.03, C.C.P.) Article 17.04, C.C.P., provides requirements for a personal bond and includes the provision that the defendant must swear to and sign an oath promising to appear or pay to the court the principal sum of the bond plus all necessary and reasonable expenses incurred in any arrest for failure to appear. If the principal fails to appear, then a judgment *nisi* should be issued and all the other normal procedures of bail bond forfeitures should be followed since

there are no distinctions made in the law between the forfeiture of a surety bond and a personal recognizance bond.

## **PART 5 CASH BOND FORFEITURE**

When a defendant who has filed a cash bond with the court in lieu of sureties fails to appear, the court may use the procedures in Chapter 22, C.C.P., or the procedures in Article 45.044, C.C.P., to forfeit the bond.

### **A. Forfeiture under Chapter 22, C.C.P.**

If the court elects to use Chapter 22 procedures, the process is initiated in the same manner as a surety bond—with a judgment *nisi*. The judgment *nisi* is entered on the *scire facias* docket. Next, if the defendant has provided his or her address on the bond, the court is required to give the defendant notice by regular mail. This notice should be by citation, the same as for sureties. The court should attach a copy of the judgment *nisi* to the notice. (Article 22.05, C.C.P.) See Part 3 of this guide for information on the requirements of a citation. Since the notice to the defendant is not required to be sent certified mail with a return receipt, the court will not know when the defendant received the notice and will not know when to start counting the time period in which the defendant should file and answer.

However, Rule 21a, R.Civ.P., provides rules for service of notices by regular mail. That rule provides that three days shall be added to the time period. This means that the clerk would count three days from mailing the notice and then count the 20 days. The defendant's answer would be due in court on the Monday after the 20 days. If the defendant files an answer, the court handles the case in the same manner as a bond forfeiture case involving a surety. See Part 3 of this guide for information on setting the hearing. If the defendant does not file an answer, the court may enter a default judgment. See Part 3 in this guide for information regarding judgments.

It is not necessary to give notice of the bond forfeiture to the defendant unless he or she has furnished an address on the bond. (Article 22.05, C.C.P.) If the court has an address, the notice is sent by regular mail. The court should attach a copy of the judgment *nisi* to the notice.

Article 22.05, C.C.P., does not define what is meant by “notice” to the defendant. Proper notice, however, under the Civil Rules of Procedure is a citation. The court should issue a citation, attach a copy of the judgment *nisi* and a copy of the bond to it, and serve it by regular mail.

### **B. Forfeiture under Article 45.044, C.C.P.**

The other method of forfeiting a cash bond under Article 45.044, C.C.P., applies only to cash bonds and not to any other type of bond. Under this statute, the court may enter a judgment of conviction and forfeit a cash bond to satisfy a defendant's fine and costs when certain conditions are met. Those conditions are the defendant:



- must have entered a written and signed plea of *nolo contendere* and a waiver of jury trial; and
- must have failed to appear according to the terms of the defendant's release.

When a court enters a judgment of conviction, the court is required to immediately notify the defendant in writing by regular mail addressed to the defendant's last known address that:

- a judgment of conviction and forfeiture of bond was entered against the defendant on the date that the defendant failed to appear;
- the forfeiture satisfies the defendant's fine and costs; and
- the defendant has a right to a new trial, if the defendant applies for the new trial not later than the 10<sup>th</sup> day after the date of the judgment and forfeiture. (Note: Under Article 45.013, C.C.P., if the defendant files the request for a new trial by mail, the request must be mailed on or before the due date of filing and the clerk must receive the request within 10 days after the due date. This is called the "Mailbox Rule" and increases the amount of time that a defendant has to request a new trial.)

If the defendant applies for a new trial, the court must allow the defendant to withdraw the previously entered *nolo contendere* plea and waiver of jury trial. The court would also reinstate the bond.

If the defendant does not apply for a new trial, the judgment becomes final. If the defendant spent time in jail, since there is now a conviction, the court is required to give the defendant credit for time spent in jail before the conviction. (Articles 42.03, Section 2 and 45.041(c), C.C.P.) Jail time is credited not less than \$50 for a period of time specified in the judgment. "Period of time" is defined as not less than eight hours or more than 24 hours. (Articles 45.041(c) and 45.048, C.C.P.) This means that the court may be remitting to the defendant part or all of the bond. The court would also have to remit court costs to the State Comptroller. If the case involved a traffic offense, a notice of final conviction would be sent to the Department of Public Safety with 30 days of the judgment.

**Checklist for Bond Forfeitures under Article 45.044, C.C.P.**

- Ask the defendant to acknowledge his or her presence when the defendant's name is called.
- If the defendant fails to answer, order the bailiff or another to call the defendant's name distinctly at the courtroom door.
- If a cash bond is posted and the defendant has signed a conditional plea of *nolo contendere* and waiver of jury trial, the judge may forfeit the bond for fine and court costs when the defendant fails to appear.
- Notify the defendant by regular mail of the court action and the right to request a new trial.
- If the defendant makes a request for new trial within 10 days, the court shall grant the motion and allow the defendant to withdraw his or conditional plea of *nolo contendere* and waiver of jury trial. The bond is reinstated and the case is set for trial.

The bond is reinstated and the case is set for trial. (Amount of time enlarged by the “Mailbox Rule.”)

- ❑ If the defendant does not make a timely motion for a new trial, the judgment and forfeiture becomes final. Jail credit is granted, court costs are paid to the State and the amount of fine, less the jail credit amount is deposited. If the offense is a traffic offense, the court reports the conviction to the Department of Public Safety (DPS).

## **PART 6 REPORTING BOND FORFEITURES TO THE DEPARTMENT OF PUBLIC SAFETY**

Courts are required to report to the Department of Public Safety (DPS) a bond forfeiture of a person who has been charged with violating a law regulating the operation of a vehicle on a highway. (Section 543.201, T.C.) The court has 30 days after the final forfeiture is entered to send the notice of the bond forfeiture to DPS. This notice can be submitted along with the notice of final convictions on traffic offenses.

## GLOSSARY

**Affidavit:** A sworn statement.

**Agreed Judgment:** A judgment entered on agreement of the parties which receives the sanction of the court. The judgment is binding and operates as an adjudication between them.

**Answer:** The formal written statement made by a defendant setting forth the grounds of his or her defense.

**Array:** The whole body of persons summoned to serve as jurors (membership of the jury).

**Bail:** The security given by the accused that he or she will appear and answer before the proper court.

**Bail Bond:** A written agreement entered into by the defendant and sureties that assures the appearance of the defendant before the court to answer a criminal charge. If the defendant fails to appear when required, the court can forfeit the bond and use the proceeds to defray the cost of returning the defendant to court to answer the charges.

**Bail Bond Surety:** A person who executes a bail bond as a surety or cosurety for another person for compensation.

**Bill of Review:** A proceeding brought for the purpose of reversing or correcting a prior judgment.

**Bond:** A type of bail required to ensure the presence of a defendant in a criminal case.

**Capias:** A writ (order) issued by a court with jurisdiction over a defendant when a defendant is not in custody ordering a peace officer to bring the defendant before the court. Required to be issued when a bail forfeiture is declared.

**Citation:** Notice that the person cited must appear to answer before a court.

**Default Judgment:** A judgment rendered when a defendant fails to appear or answer.

**Defendant:** In a criminal action, the defendant is the person who allegedly committed a crime. In a bail forfeiture, the defendant is the surety on a bail bond. The surety binds himself or herself on the bond to ensure the presence of a criminal defendant in court.

**Denial:** A pleading of an allegation of fact or defense. In a bail forfeiture, the answer is the pleading denying the allegation of the facts which caused the forfeiture.

**Exonerate:** To free from obligation.

**Execute:** To complete; to carry out according to the terms; to fulfill a command or order of the court.

**Execution:** The process of enforcing a judgment, usually by seizing and selling property of the debtor.

**Judgment:** In a criminal case, it is the written declaration of the court signed by the trial judge and entered in the record showing the conviction or acquittal of a defendant. In a bail forfeiture case, the judgment is the final decision of the court resolving the dispute and

determining the rights and obligations of the parties. It determines the liability of the defendant (surety).

**Judgment *Nisi*:** A temporary order that will become final unless the defendant and/or surety shows good cause as to why the judgment should be set aside.

**Jurisdiction:** The legal power or authority that courts have over certain types of offenses and over certain geographical locations. The power to hear and decide cases.

**Jury Summons:** A notice sent to prospective jurors notifying them to appear for jury duty. Usually, this act is performed by the court clerk.

**Magistrate:** A judicial officer whose duty it is to preserve the peace by use of all lawful means within a certain territorial jurisdiction, to issue all process intended to aid in preventing and suppressing crime, and to cause the arrest of all offenders by lawful means in order that they may be brought to trial or after trial to punishment.

**Misdemeanor:** Offenses lower than felonies and generally punishable by fine or imprisonment. Municipal court has jurisdiction over misdemeanors that are fine-only offenses.

**Party:** A person whose name is designated on a court record as either the plaintiff or the defendant.

**Peremptory Challenge:** An objection made to a particular juror, which does not require that any cause be shown or that any ruling be made by the judge; the striking of a juror.

**Person:** An individual or corporation.

**Personal Bond:** A bond that is granted in the court's discretion that releases the defendant on his or her word or promise to appear, without sureties or other security, to appear in court to answer criminal charges.

**Plaintiff:** A person who complains or sues in a civil action. In a bail forfeiture, the plaintiff is the city attorney.

**Principal:** The criminal defendant.

**Processes:** Written orders such as a warrant, *capias*, *capias pro fine*, and summons issued by the municipal court judge.

**Remittitur:** To put back into the previous position and may include the return of all or part of the amount of the bond.

***Scire Facias*:** A special docket required by law to handle all cases and proceedings involved in the forfeiture of bail bonds. The process of issuing a citation (notice) to the parties of a temporary judgment (judgment *nisi*) that they need to come to court or lose the bond money to the State.

**Summary Judgment:** A judgment made when there is no genuine issue of material fact and the party is entitled to prevail as a matter of law.

**Surety:** One who bonds and obligates himself or herself to guarantee the appearance of the citizen accused of an offense in court at times ordered to answer the charges. Should the defendant fail to appear, the surety is liable on the bond.

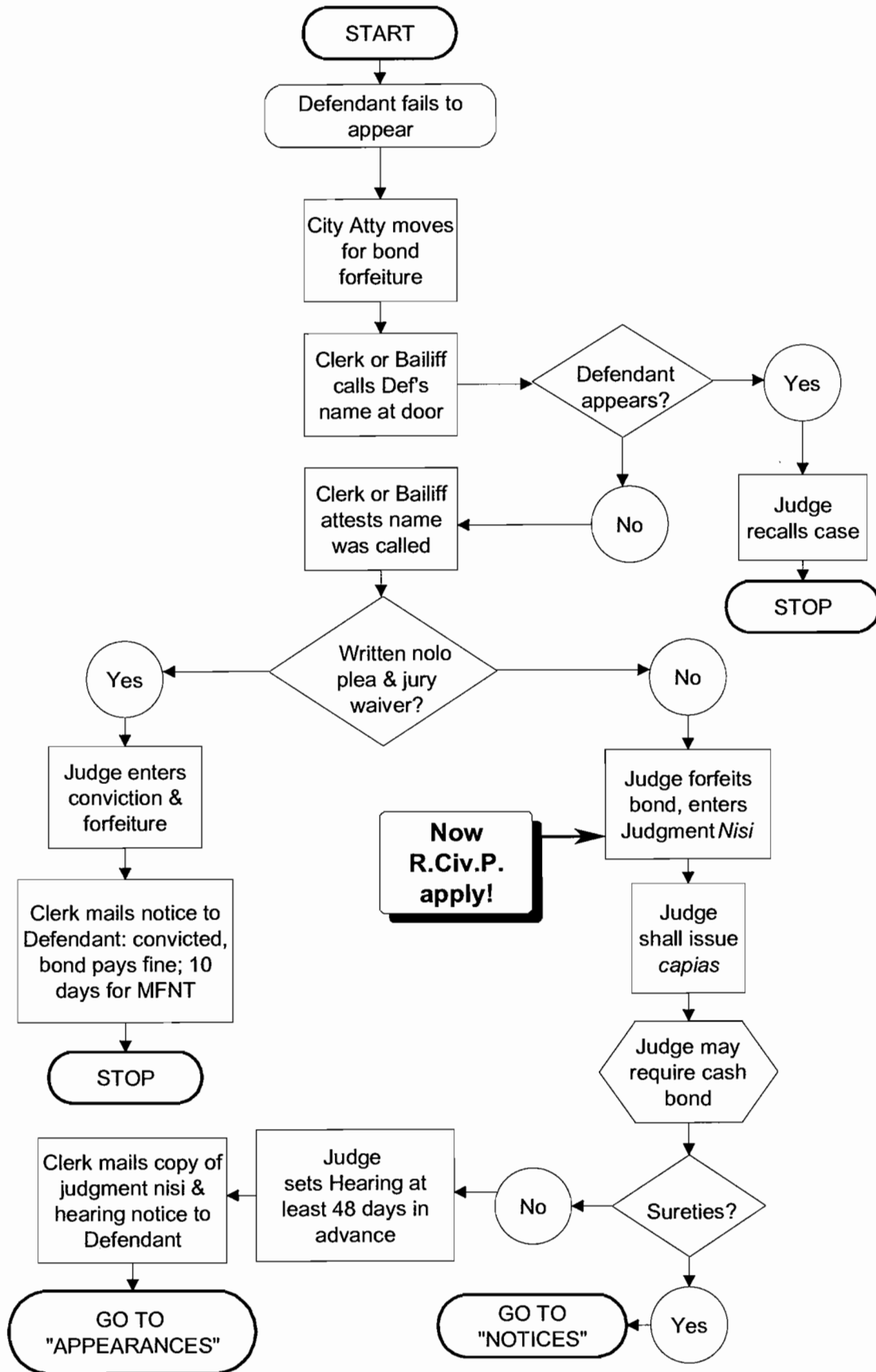
**Verify:** To confirm the truth, correctness, and authenticity of a matter by affidavit or oath.

**Writ:** An order of the court.

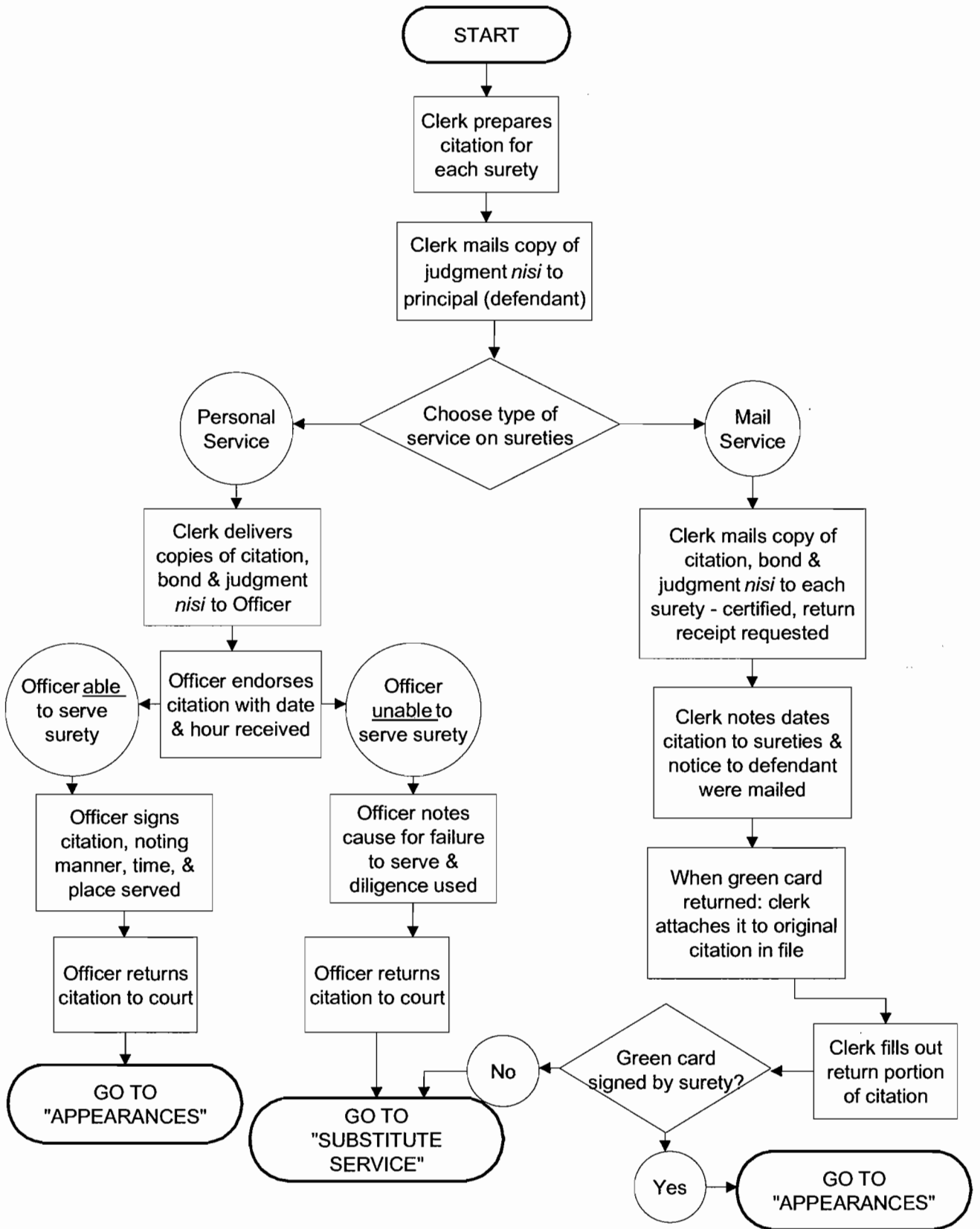
**Writ of Execution:** The formal process issued by the court that evidences the debt of the defendant (surety) to the plaintiff (city prosecutor) and commands an officer to take the property of the defendant in satisfaction of the debt (judgment of forfeiture on the bail bond).



**BOND FORFEITURE**

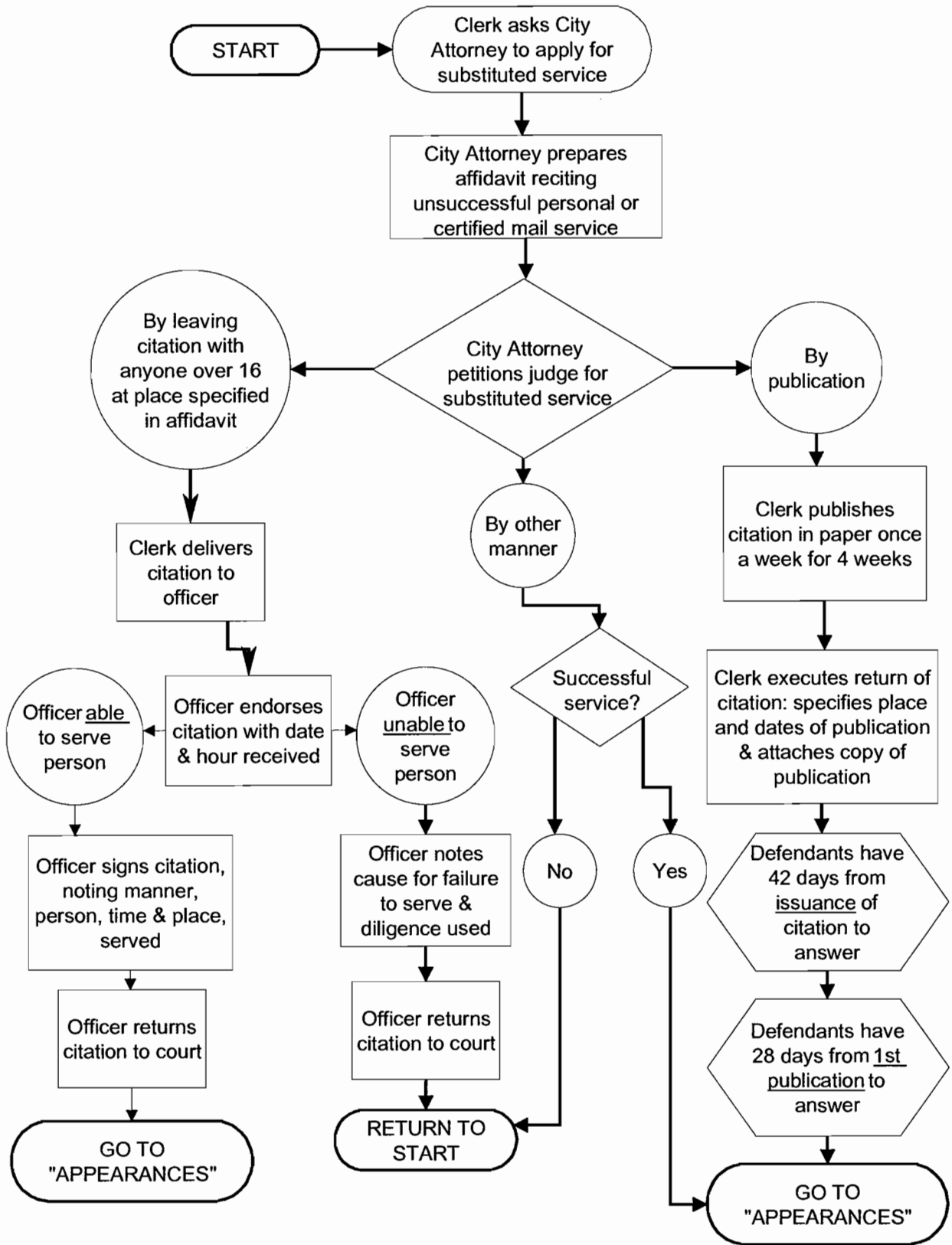


**NOTICES**

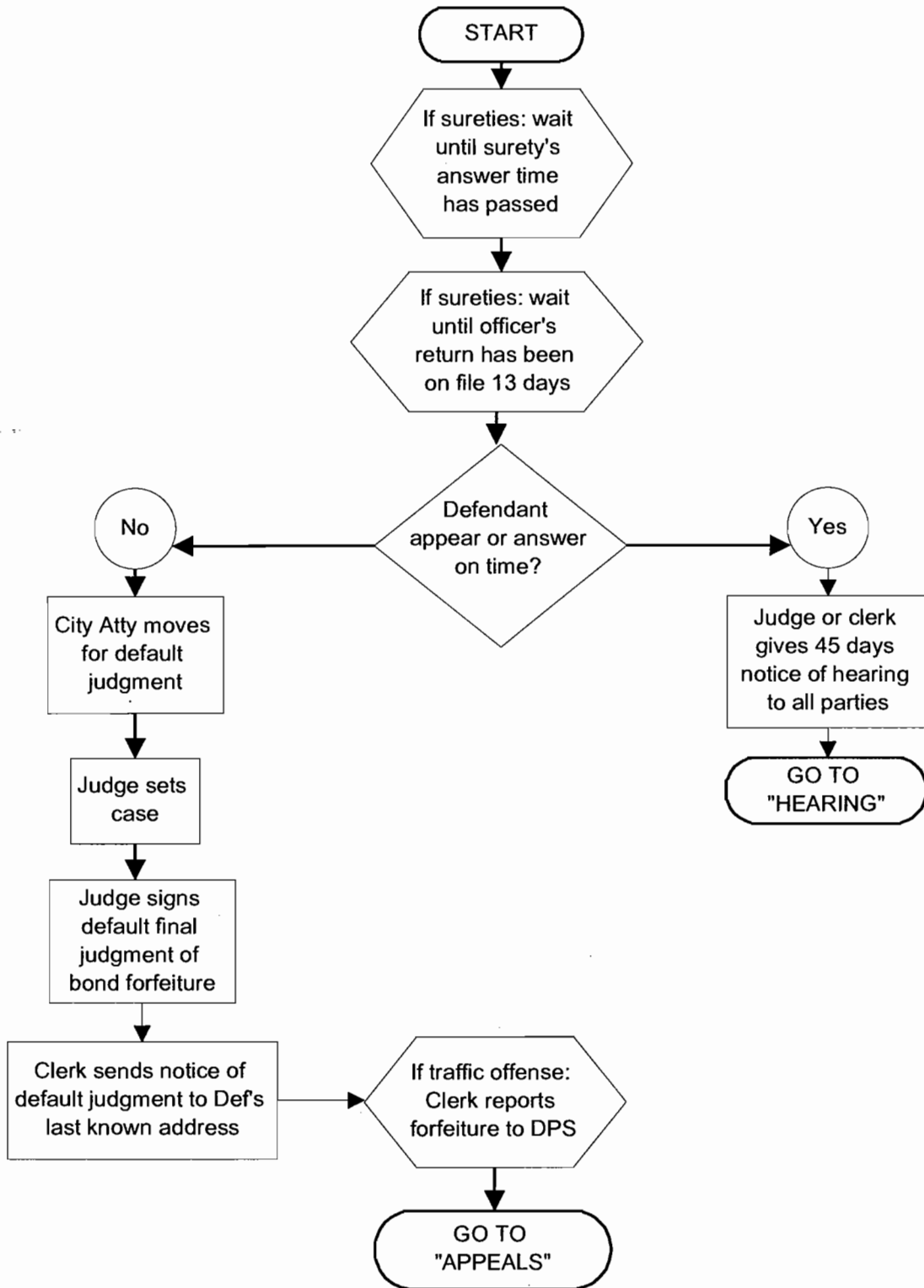


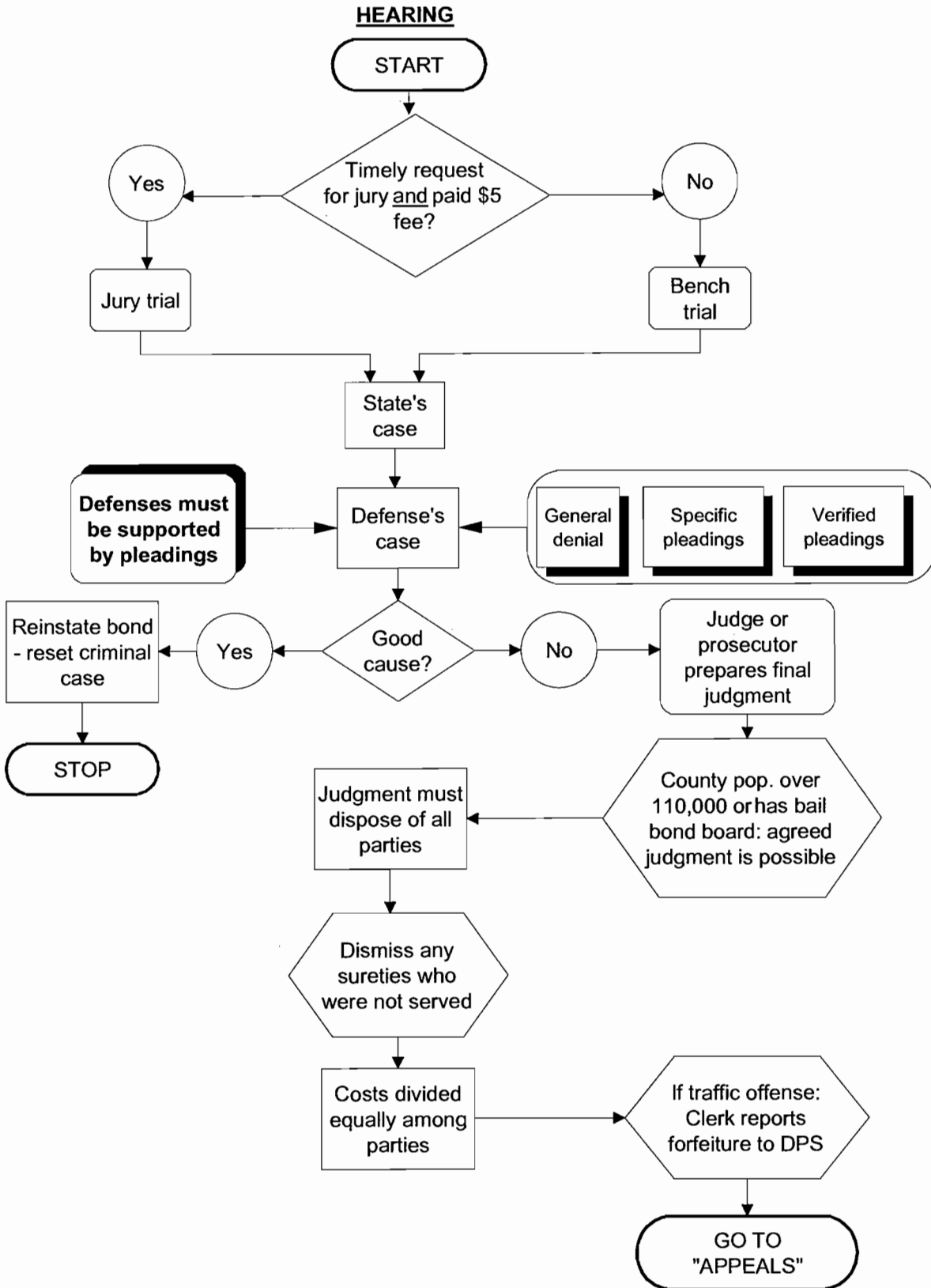


**SUBSTITUTE SERVICE**

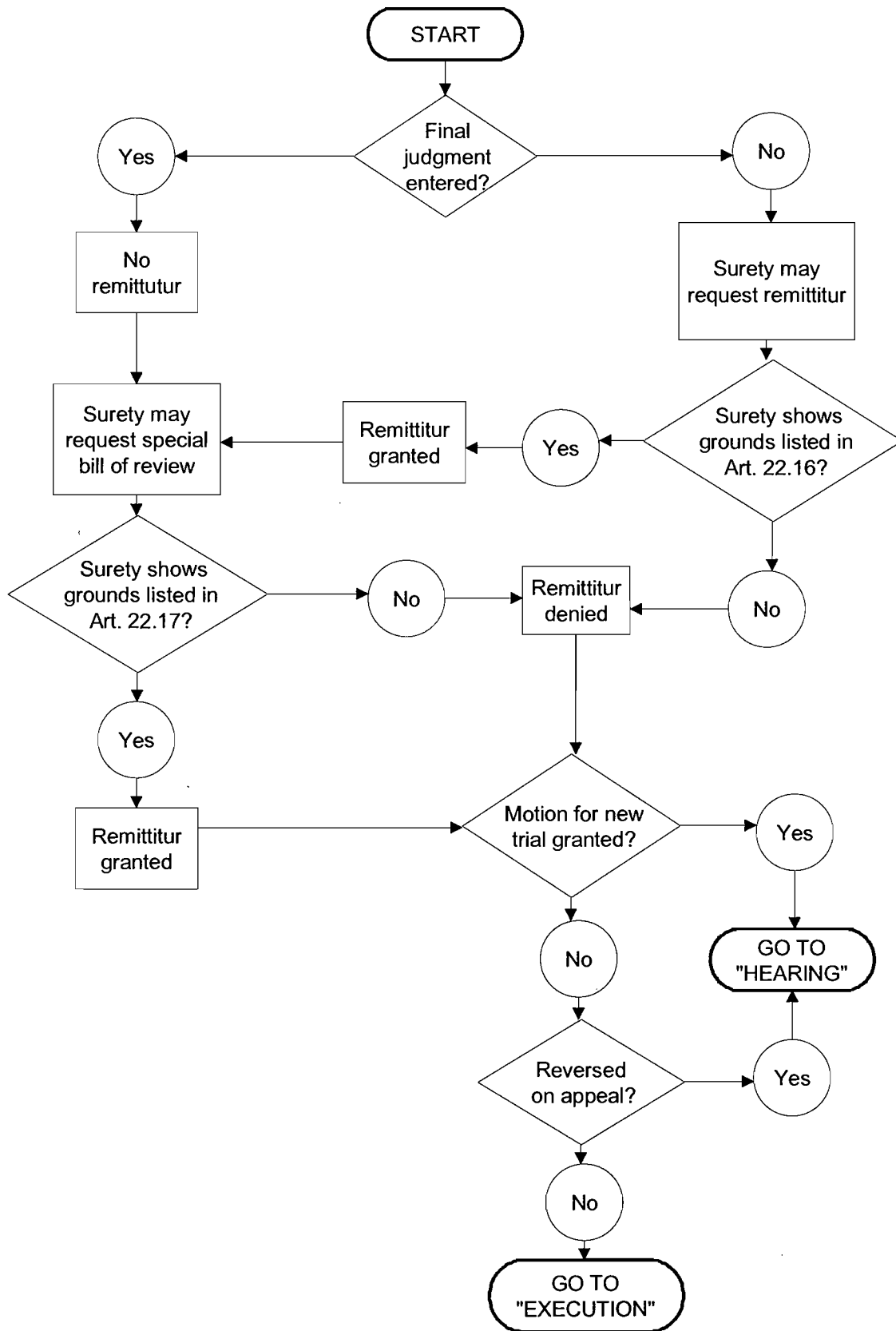


**APPEARANCES**

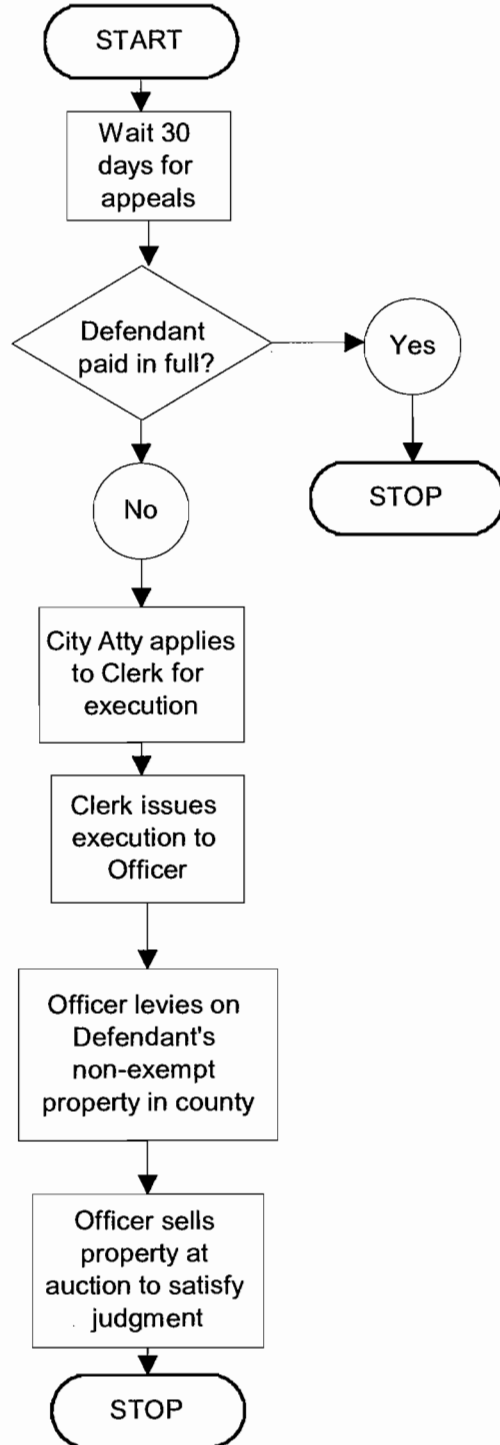




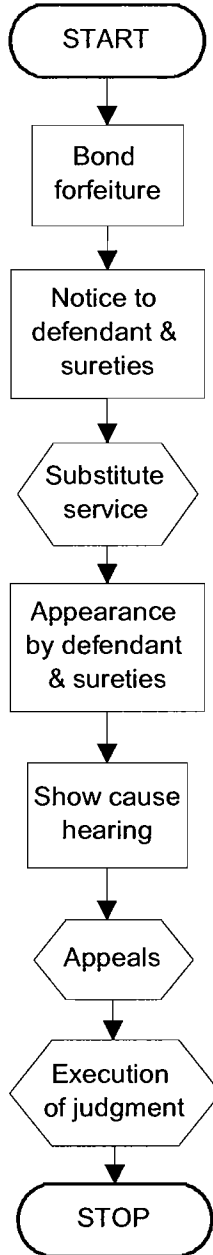
**APPEALS**



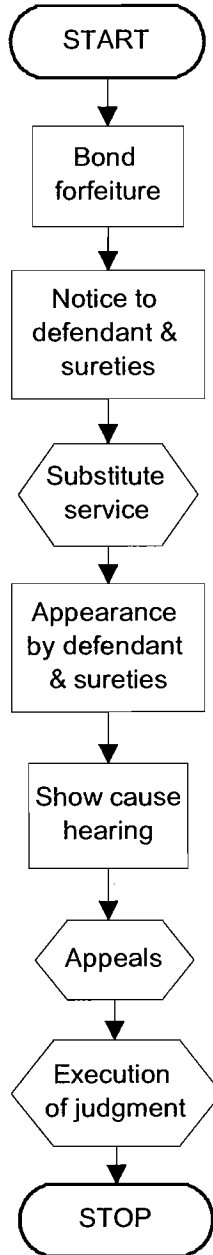
**EXECUTIONS**



**SUMMARY**



**SUMMARY**







## CHECKLISTS

### Checklist for Surrender of Principal

- Court receives an affidavit for surrender of principal.
  - Clerk date stamps the affidavit and immediately gives it to the judge and a copy to the State.
- The surety may relieve himself or herself of undertaking by surrendering the defendant into custody regardless of whether it is in the county or city where the prosecution is spending, some other county, federal custody, or custody in another State.
- If the judge determines there is sufficient cause to surrender, the clerk files the affidavit with the case and prepares a warrant of arrest or *capias* for the judge's signature.
- The judge issues the warrant or *capias*.
- The State, bail bond board, or the principal may contest the surrender if the State determines that the reason for the surrender was without reasonable cause.
  - If the court determines that the surety surrendered the defendant without reasonable cause, the court may require the person who executed the bond to refund to the principal all of part of the fees paid for execution of the bond.
- The clerk or judge should note on the record (docket) the date the warrant or *capias* was issued and to whom the warrant or *capias* was given for execution.
  - The warrant or *capias* is given to a peace officer, a security officer, or a licensed private investigator to be executed.

### Checklist for Day of Appearance on Criminal Charge

- Criminal docket called (defendant fails to appear or answer).
- Judge directs that name be called outside of courtroom.
  - Clerk or bailiff calls defendant's name outside of courtroom.
  - Clerk or bailiff notifies judge whether defendant answered or appeared.
- If defendant fails to answer or appear, prosecutor moves for a forfeiture of the bond.
- Judge grants motion for forfeiture.
- Clerk or bailiff swears to an affidavit that name was called outside of courtroom.
- The affidavit is filed with the bond forfeiture case.

### Checklist for Issuance of *Capias*

- Clerk prepares *capias* (for original criminal charge filed).
- Judge signs and issues the *capias*.
- Clerk or judge notes issuance of *capias* on the record (criminal docket).
- Clerk gives *capias* to police department or to a private investigator licensed under the Chapter 1702 of the Occupations Code to serve.

### **Checklist for Declaring the Forfeiture**

- After the defendant fails to appear, the court is required to enter a judgment (judgment *nisi*). The judgment *nisi* initiates the forfeiture.
- Clerk prepares judgment *nisi*.
- Judge signs judgment *nisi*.
- Judge or clerk enters judgment on the record (*scire facias* docket).

### **Checklist for Scire Facias Docket**

- Clerk or judge enters judgment *nisi* on *scire facias* docket.
  - A *scire facias* docket number is assigned.
  - The State of Texas is plaintiff.
  - Principal and sureties, if any, are defendants.
  - Names of the attorney are noted.
  - Nature of the action (bond forfeiture).
  - Any pleas, motions, and rulings of the court are noted on docket.
- Clerk prepares case file for bond forfeiture case.

### **Checklist for Issuance of Citation**

- State requests clerk to issue citation or citations.
- Clerk prepares citation for issuance.
- Clerk issues citation (clerk may issue separate or additional citations).
- Clerk attaches copy of judgment *nisi* and a copy of the bond to the citation(s).

### **Checklist for Service of Citation**

- Citation with copy of judgment *nisi* and a copy of the bond attached to be served.
- Service by clerk:
  - State requests clerk to serve citation.
  - Clerk endorses the citation with the date and hour received.
  - Clerk serves defendant (defendant charged with criminal offense) by regular mail with a notice (citation) and copy of the judgment *nisi* and a copy of bond.
    - Clerk notes on file that date the citation was mailed.
    - Clerk serves the surety by certified mail return, receipt requested, addressee only.
      - If green card is returned and is properly signed, clerk fills out return portion of citation and enters date of return on *scire facias* docket.
      - If green card is returned unsigned, or if someone other than defendant/surety or defendant's registered agent for service signed the green card, clerk notes information on return portion of citation.
  - Clerk notifies prosecutor that service by mail was unsuccessful so that the prosecutor can request service by a peace officer.

- Service by peace officer:
  - State requests personal service by a city peace officer.
  - Clerk notes on file the date and time citation was given to peace officer.
  - Officer endorses citation with date and hour received.
  - Peace officer attempts service on defendant (surety) personally.
  - If peace officer is able to serve the citation, officer signs citation, noting manner, person, time, and place served and returns citation to court.
    - Clerk enters date of return on *scire facias* docket.
  - If peace officer is unable to serve the citation, peace officer returns citation to court, filling out portion of return stating reason unable to serve.
    - Clerk notifies prosecutor that personal service was unsuccessful.
    - Clerk notes on file the officer's attempt to serve citation.
- Alternative service:
  - State, by affidavit, petitions the court for alternative service.
  - Court decides whether to grant motion for alternative service. (If granted, peace officer can leave citation with anyone over 16 at address specified in affidavit.)
  - When alternative service is granted, clerk notes the order on *scire facias* docket and delivers citation to peace officer.
  - Clerk notes on the *scire facias* docket the date and time the citation was given to peace officer.
  - Service by a peace officer:
    - Peace officer endorses citation with date and hour received.
    - If peace officer is able to serve the citation, the officer leaves the citation with defendant (surety) or someone over the age of 16 at address specified in affidavit.
      - Officer signs citation, noting manner, person, time, and place served and returns citation to court.
      - Clerk enters date of return on *scire facias* docket.
    - If officer is unable to serve citation, officer notes cause for failure to serve and diligence used and returns citation to court.
    - Clerk notes on record that citation was served or was not able to be served.
    - Clerk notifies State that alternative service was unsuccessful.
- Service by publication:
  - State, by affidavit, petitions the court for service by publication.
    - Court inquires into the sufficiency of the diligence used in attempting to locate the defendant (surety).
    - If court determines sufficient diligence was used to serve citation, court orders service by publication.
  - Clerk issues another citation for publication (do not publish judgment *nisi*).

- Clerk notes date of issuance on *scire facias* docket.
- Clerk publishes citation in paper once a week for four weeks. The first publication is to be at least 28 days before the return day of the citation.
- Clerk executes return of citation; specifies place and dates of publication; and attaches copy of publication.
- Defendant (surety) has 42 days after issuance of citation to answer or if the first publication was 28 days from the return of the citation, within 28 days from the first publication to answer.

#### **Checklist for Filing Defendant's Answer**

- Defendant (surety) files answer with the court (general denial, specific pleadings, or verified pleadings).
  - Clerk stamps date and time on answer received and files answer.
  - If answer mailed, clerk keeps envelope and stamps date and time received and files it.
  - If general denial (answer) is received and clerk later receives a verified answer, clerk stamps date and time receipt of verified answer.
  - If defendant (surety) answered timely, case is set for trial.
  - If defendant files answer before issuance of citation is deemed to be issued and served.
    - Clerk stamps date and time answer is received and files it.
    - Case is set for trial.
- Defendant enters an appearance in open court.
  - If the defendant (surety) enters an appearance in open court either in person or by attorney or by his or her duly authorized agent, the judge shall note the appearance on the docket and enter it in the minutes. The citation shall be deemed to have been issued and served.
  - If defendant (surety) answered timely, case is set for trial.

#### **Checklist for Setting Case on *Scire Facias* Docket**

- Defendant (surety) does not contest forfeiture:
  - Clerk notifies prosecutor that defendant (surety) is not contesting forfeiture;
  - Clerk sets case on *scire facias* trial docket;
  - Day of trial, court orders judgment for the State;
  - Clerk or State prepares final judgment;
  - Judge signs judgment and enters on *scire facias* docket;
  - State certifies to the clerk the address of the surety;
  - Clerk notifies defendant (surety) by first class mail that judgment has been signed (include a copy of the judgment) (bond now due to be paid to city); and
  - If underlying criminal charge is a traffic offense, clerk reports the bond forfeiture to the Department of Public Safety within 30 days after the judgment is final.

- Defendant's answer contests forfeiture.
  - Clerk sets case on *scire facias* trial docket.
  - Clerk gives surety 45 days notice of trial setting.

**Checklist for Bond Forfeiture Trial**

- Defendant (surety) contests forfeiture and requests a trial (right to a bench trial).
  - Clerk sets case on *scire facias* trial docket.
  - Clerk gives defendant (surety) 45 days notice of trial setting.
- If defendant (surety) requests a jury trial, it must be in writing and filed with clerk within a reasonable time before the date set for a non-jury trial, but not less than 30 days before the bench trial setting.
  - Clerk date stamps request and files with case.
  - Defendant (surety) must pay a fee unless defendant submits an affidavit of indigence in lieu of paying fee (check with judge to determine if fee is \$5.00 or \$10.00).
  - If fee is paid or affidavit is submitted, clerk sets case on *scire facias* jury trial docket.
    - Clerk gives defendant (surety) notice of trial setting.
    - Clerk enters case on jury docket.
  - If fee is not paid, clerk notifies judge; judge may deny jury trial.
- Judge orders someone, usually the clerk, to summon a jury (jury is summoned in the same manner as any other jury trial in municipal court).
- Trial Proceedings
  - Defendant may challenge array (if sustained, jury discharged and judge orders someone other than the person who summoned first jury to summon another jury).
  - Both parties (defendants and State) may question the jurors.
  - Both parties may strike three jurors each (preemptory challenges).
  - After the preemptory challenges are given to judge, clerk must call off the first six names on the lists that have not been struck. These persons serve on the jury.
  - The State's case.
    - The complaint (original charge filed with court);
    - The bond;
    - The docket entry and indication of forfeiture (made by the judge on the day when the defendant failed to appear); and
    - The affidavit of the bailiff or person who called the name outside the courtroom.
    - The judgment *nisi*.
      - State may ask court to take judicial notice of bond and judgment *nisi*.
      - Judge will take judicial notice of bond and judgment *nisi* unless defendant (principal or surety) has filed a sworn answer challenging

bond's validity. If sworn answer, State must establish required predicate to introduce bond.

- When the validity of the bond is challenged, the judge cannot take judicial notice of the bond. The State must present evidence that the bond is:
  - The one submitted by the defendant;
  - Received by the court;
  - The court has taken proper care of the bond; and
  - The bond is not more burdensome than required by law.
- The State rests.
- Defendant's (surety) case
  - The defendant (principal or surety) produces evidence of exoneration from liability under one of the following causes.
    - Bond is not valid (This defense requires defendant to have filed a verified answer otherwise the defendant may not raise these issues);
      - Bond not valid as to principal or surety;
      - Defendant did not execute bond (must be verified by affidavit); or
      - Bond more burdensome than statute requirements.
    - Defendant (principal) died before forfeiture was taken.
    - Defendant (principal) was sick or prevented by some uncontrollable circumstance from appearing. (This cause shall not be deemed sufficient to exonerate the principal and sureties, if any, unless the principal appeared before final judgment on the bond to answer the accusation against him or her, or show sufficient cause for not appearing as required.)
    - The incarceration of the principal in any jurisdiction in the United States at the time of or not later than the 180<sup>th</sup> day after the date of the principal's failure to appear in court.
- Powers of the court.
  - No exoneration—forfeiture granted for the State.
    - No valid cause for failure to appear.
    - If there is no exoneration, the judge enters judgment against the principal and sureties, if any, for the amount of the bond. (Article 22.14, C.C.P.) (The court finds that the judgment *nisi* is made final, and that the defendant and sureties are jointly and severally bound in the amount of \$\_\_\_\_\_ and costs of court to the city of \_\_\_\_\_, and order that the judgment be entered and execution issued.)
  - Exoneration of defendant(s).
    - Bond not valid and/or binding.
      - If principal not liable, everyone exonerated; or

- If principal liable and one or more sureties, if any liable on bond, then only non-liable sureties exonerated.
- Principal died before date bond forfeited;
- Sickness or principal or uncontrollable circumstances through no fault of principal caused principal's failure to appear.
  - Principal must appear before final judgment or show cause for not appearing.
- The principal is incarcerated in any jurisdiction at the time or not later than the 180<sup>th</sup> day after the date of the principal's failure to appear in court.
  - Enter dismissal of forfeiture if exoneration is found. Court may order dismissal with or without costs.
- Remittitur
  - Remittitur is required if the defendant or the sureties show one of the following:
    - The defendant has been released on new bond; or
    - The case for which the bond was given is dismissed.
  - Remittitur is permitted.
    - For other good cause shown and before entry of a final judgment against the bond.
  - The court may remit all or part of the amount of the bond after deducting the costs of court and any reasonable and necessary costs to the county for the return of the principal, and the interest accrued on the bond amount. (Interest accrues on the bond amount from the date of the forfeiture in the same manner and at the same rate as provided for the accrual of prejudgment interest in civil cases.)

### Checklist for Judgments

- Default judgment - defendant(s) has been properly served, but fails to answer.
  - Clerk sets case on non-contested *scire facias* docket.
    - Clerk notes on *scire facias* docket that citation with the officer's return has been on file in the clerk's office for at least 10 days, exclusive of the date of the filing and the date of judgment.
    - Clerk notes that affidavit of non-military service from prosecutor in file.
    - State moves for default judgment.
      - State prepares default judgment for judge's signature.
      - State certifies the address of the parties against whom the default is taken.
      - On day of *scire facias* docket setting, State presents judgment for judge's signature.
  - Judge determines that citation was properly served. Proof of service includes the following:

- Verified waiver;
- Certified mail with green card signed by:
  - Defendant/surety;
  - State Board of Insurance (surety is corporation);
  - Registered agent (surety is a corporation);
  - Executor, administrator heirs (surety is deceased); or
- Personal service by peace officer;
  - Officer's return on citation is completed; and
  - Proof of service on file at least 10 days, exclusive of the date of filing and the date of judgment, for every defendant.
- Judge determines that time has expired for answer for every defendant.
  - Approximately 40 days have elapsed.
- Judge signs judgment.
- Clerk notes order on *scire facias* docket.
- State certifies in writing the last known mailing address of the surety.
  - Certificate is filed with the case.
- Clerk mails written notice of the default judgment to surety.
  - Clerk notes on *scire facias* docket date that the notice was mailed.
- Default judgment - defendant fails to appear at trial.
  - Follow steps for default judgment noted above.
- Defendant appears at trial - court exonerates defendant. See Checklist under Trials.
  - Defendant presented evidence of a cause under Article 22.13, C.C.P.
  - Courts signs order dismissing bond forfeiture.
    - Court may dismiss with or without costs or reinstate bond.
    - Clerk notes order on *scire facias* docket.
- Judgment for State (no sufficient cause). See Checklist under Trials.
  - Defendant fails to present evidence of a sufficient cause under Article 22.13, C.C.P.
  - Court signs a final judgment for State.
  - Court orders bond collected by execution as in civil actions.
  - Clerk notes judgment and execution order on docket.
  - State certifies in writing the last known mailing address of the surety.
    - Certificate is filed with the case.
    - Clerk mails written notice of the default judgment to surety.
    - Clerk notes on *scire facias* docket the date that the notice was mailed.
- Summary judgment (usually filed by the State).
  - State files summary judgment with court.
  - Clerk sets case for a hearing.



- Party requesting must file and serve the motion and supporting affidavit at least 21 days before the time specified for a hearing.
  - If other party (usually sureties and/or principal) files opposing affidavits on motion, clerk accepts, provides copies to the State, and files with case (opposing affidavits must be file not later than seven days prior to hearing).
  - Summary judgment motion filed when:
    - No valid defense is raised;
    - Defenses raised must be verified and the answer verified—defenses required to be verified include:
      - Defendant did not execute bond;
      - Defendant is not liable incapacity sued;
      - There is a defect of parties;
      - Defendant alleged to be a corporation and is not incorporated as alleged; or
      - Bond is not a valid undertaking; or
    - No genuine issue as to material fact and moving party entitled to judgment as matter of law; fact issues include:
      - Whether surety executed bond;
      - Whether principal's name called at courthouse door;
      - Whether principal failed to appear; or
      - Whether principal had a valid reason for not appearing.
- Summary judgment hearing.
  - No oral testimony.
  - Judge reviews pleadings.
  - State asks judge to take judicial notice of bond and judgment *nisi*, then rests.
  - Defense must set forth affidavits; affidavit must include:
    - Information based on personal knowledge; or
    - Must show how affiant became personally familiar with the facts.
    - If no genuine issue, grant movant's (usually the State's) motion for summary judgment.
    - If genuine issue, deny and set for bond forfeiture trial. See Checklist under Trials.
    - Judge determines that motion for summary judgment and any supporting affidavits filed were served at least 21 days before the time specified for the hearing. Judge determines if opposing affidavits on motion are filed no later than seven days prior to the hearing.
    - Judge determines if the motion itself (rather than supporting briefs) states specifically the grounds relied on for granting the motion.
    - If judge grants motion for summary judgment, State prepares judgment for judge's signature.

- Judge signs judgment.
- Clerk enters judgment on *scire facias* docket.
- State certified in writing the last known mailing address of the surety.
  - Certificate is filed with the case.
- Clerk mails written notice of the summary judgment to surety.
- Clerk notes on *scire facias* docket date that the notice was mailed.
- If judge denies motion for summary judgment, clerk sets the case on the *scire facias* trial docket. See Trial Checklist.
- Agreed judgment. (Applies to cities situated in counties that have a bail bond board; or if no bail bond board, the city is situation in a county of at least 110,000 in population.)
  - State and defense agree to an amount less than the bond and recommendation is submitted to the court.
  - If court grants motion, State prepares judgment for judge's signature.
  - Judge signs judgment.
    - Clerk enters judgment on *scire facias* docket.
    - State certifies in writing the last known mailing address of the surety.
      - Certificate is filed with the case.
    - Clerk mails written notice of the agreed judgment to surety.
      - Clerk notes on *scire facias* docket the date that the notice was mailed.
- Clerical mistakes in judgment record.
  - Notice of motion to correct mistake served on interested parties.
    - Notice is served by delivering a copy of party duly authorized agent, or attorney of record either in person or by agent or by courier receipted delivery; by certified or register mail to party's last known address; by telephonic document transfer to the recipient's current telecopier number; or by such other manner as the court in its discretion may direct.
    - Clerk, upon receiving a document showing compliance of the service of notice, should date stamp the document and file it with the bond forfeiture case. (*Prima facie* evidence of service is a certificate by a party or an attorney of record, the return of an officer, or the affidavit of any person showing service of notice.)
  - Judge corrects mistake in open court.
  - Clerk notes correction on *scire facias* docket.

#### **Checklist for New Trial.**

- Motion for new trial.
  - Defendant and/or surety requests within 30 days after final judgment has been signed.
  - Request (motion) is made in writing. (Motion extends time for issuance of execution up to 105 days. If the judge never signs motion for new trial, it will be

deemed overruled 75 days after the original judgment was signed. The same rule applies whenever a final judgment is signed.)

**Checklist for Bill of Review.**

- Defense presents not later than two years after the date of a final judgment.
- Includes request, on equitable grounds, that final judgment and all or part of the bond be remitted to the surety.
- The court grants the bill in part or in whole. The courts grants the bill of review and orders that the judgment be reformed and the amount \$\_\_\_\_\_ be returned to the defendant.

**Checklist for Bond Forfeitures under Article 45.044, C.C.P.**

- Ask the defendant to acknowledge his or her presence when the defendant's name is called.
- When the defendant fails to answer, order the bailiff or another to call the defendant's name distinctly at the courtroom door.
- If a cash bond is posted and the defendant has signed a conditional plea of *nolo contendere* and waiver of jury trial, the judge may forfeiture the bond for fine and court costs when the defendant fails to appear.
- Notify the defendant by regular mail of the court action and the right to request a new trial.
- If the defendant makes a request for new trial within 10 days, the court shall grant the motion and allows the defendant to withdraw his or conditional plea of *nolo contendere* and waiver of jury trial. The bond is reinstated and the case is set for trial. The bond is reinstated and the case is set for trial. (Amount of time enlarged by the "Mailbox Rule.")
- If the defendant does not make a timely motion for a new trial, the judgment and forfeiture becomes final. Jail credit is granted, court costs are paid to the State and the amount of fine, less the jail credit amount is deposited. If the offense is a traffic offense, the court reports the conviction to the Department of Public Safety (DPS).



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## **TEXAS MUNICIPAL COURTS EDUCATION CENTER**

1609 SHOAL CREEK BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701  
TELEPHONE (512) 320-8274  
1-800-252-3718  
FAX (512) 320-0996

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# **FINANCIAL MANAGEMENT & COURT COSTS**

**Presented by**

**Rene Henry  
Consultant  
Hot Springs Village, Arkansas**



**MUNICIPAL COURTS  
Regional Clerks Program  
Fiscal 2007  
Financial Management**

Rene Henry

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**State Traffic Fine**

Does it apply to:

No Valid Driver's License

Yes

No

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**State Traffic Fine**

Does it apply to:

No Motorcycle Protective Headgear

Yes

No

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**State Traffic Fine**

Does it apply to:

No Motorcycle Protective Headgear

Yes

**No**

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**State Traffic Fine**

Does it apply to:

Not Wearing Safety Belt

Yes

No

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**State Traffic Fine**

Does it apply to:

Expired Motor Vehicle Inspection Certificate

Yes

No

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**State Traffic Fine**

Does it apply to:

**Violation of Promise to Appear**

Yes

No

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**State Traffic Fine**

Does it apply to:

**Speeding**

Yes

No

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**State Traffic Fine**

Does it apply to:

**Failure to Maintain Financial Responsibility**

Yes

No

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**State Traffic Fine**

Does it apply to:

Passing a School Bus

Yes

No

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**State Traffic Fine**

Does it apply to:

Expired Motor Vehicle Registration

Yes

No

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**Time Payment Fee**

Does it apply to:

Cases disposed of by Deferred Disposition

Yes

No

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**Time Payment Fee**

If judgment is entered on November 1<sup>st</sup>, would the TPF apply if the defendant paid 50 percent of the amount owed on November 15<sup>th</sup> and the other 50 percent on December 15<sup>th</sup>?

Yes

No

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**Time Payment Fee**

If judgment is entered on November 1<sup>st</sup>, would the TPF apply if the defendant paid 50 percent of the amount owed on November 15<sup>th</sup> and the other 50 percent on November 30<sup>th</sup>?

Yes

No

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**Time Payment Fee**

If counting days to determine if the TPF applies, day one is the day the judgment is entered.

True

False

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### Time Payment Fee

If the 30<sup>th</sup> day falls on a city holiday, a Saturday, or a Sunday, the time to pay without the TPF being added is extended to the next business day.

True

False

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### Time Payment Fee

The "Mail Box Rule" does not apply to the TPF.

True

False

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### Arrest and Warrant Fees

The \$5 Arrest Fee applies to cases disposed of by Deferred Disposition.

True

False

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### Arrest and Warrant Fees

The \$5 Arrest Fee does not apply to the offenses Failure to Appear and Violate Promise to Appear.

True

False

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### Arrest and Warrant Fees

If a Department of Public Safety officer issues a written notice to appear for a speeding ticket, the State is entitled to how much of the Arrest Fee if the defendant is convicted?

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### Arrest and Warrant Fees

There can only be one warrant fee per conviction.

True

False

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### Arrest and Warrant Fees

If your judge issues a warrant that is executed by a peace officer from another local jurisdiction, that jurisdiction is entitled to the fee if requested within 15 days after the date of execution.

True

False

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### Arrest and Warrant Fees

If a warrant is executed by a peace officer from another local jurisdiction and the fee is timely requested, how much does your city owe the other jurisdiction if the defendant receives jail credit for the total amount owed?

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### Dismissal Fees

There is an optional not to exceed \$10 fee for dismissing a charge of Driving with an Expired Motor Vehicle Registration.

True

False

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### Dismissal Fees

There is an optional not to exceed \$10 fee for dismissing a charge of Driving with an Expired Driver's License.

True

False

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### Dismissal Fees

There is an optional not to exceed \$10 fee for dismissing a charge of Failure to Maintain Financial Responsibility.

True

False

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### Dismissal Fees

There is a not to exceed \$10 fee for the mandatory dismissals of Driving with an Expired Inspection Certificate.

True

False

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### Credits

Jail credit can be \$75 for each period of time served.

True

False

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### Credits

Jail credit must be at least \$50 for each period of time served.

True

False

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### Credits

The period of time as determined by the judge, must be not less than 12 hours or more than 24 hours.

True

False

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### Credits

Community service credit can be \$10 for each hour served.

True

False

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### Credits

If the full amount is not paid, any credits are applied to the court costs and fees first and then to the fine.

True

False

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### Internal Control Simple Definition

Financial management checks and balances.

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**Internal Control  
Traditional Definition**

Plans and procedures in a municipal court to provide reasonable assurance of:

- (1) Reliable financial information;
- (2) Compliance with applicable laws and regulations; and
- (3) Effective and efficient operations.

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**Internal Control  
Components**

- Control Environment
- Risk Assessment
- Control Activities
- Information and Communication
- Monitoring

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**Control Environment**

- Integrity and Ethical Values
- Competence
- Philosophy and Operating Style of Management
- Assignment of Authority and Responsibility
- How Personnel are Developed

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## Risk Assessment

From Internal and External Sources  
Classify Impact and Probability  
Quantitative and Qualitative

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## Control Activities

Specific Policies and Procedures  
Should Address Identified Risks  
Traditional Principles of Internal Control

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## Information and Communication

Appropriate  
Timely  
Both Ways

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## Monitoring

Is System Effective?  
Ongoing and Separate  
Preventive and Detective

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## Auditing Definition

Examination of information and operations for  
mathematical accuracy, legality, and propriety.  
Process for determining whether all transactions  
are properly recorded in the accounts and  
appropriately reflected in statements and  
reports.

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## Auditing Objectives

Court has collected all the money they are supposed to  
Money collected was properly remitted to appropriate  
parties  
Property is properly managed  
Money and other property is properly accounted for,  
properly reported, and adequately safeguarded  
Operations conform to laws, rules, and prescribed  
procedures

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**Auditing  
Property**

Existence and Location  
Properly Recorded  
Condition and Usage  
At Least Annually

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**Auditing  
Computer Security**

Policies and Procedures  
Access  
Passwords  
Operations Conform

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**Auditing  
Analytical Review**

Big Picture  
Traditional Might Miss  
Unusual or Unexpected  
Relationships, Changes, or Fluctuations

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**Auditing  
Citations Docketed**

Police Department Cooperation  
Sample  
All Cases Set Up  
Offenses Correct

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**Auditing  
Hardcopy Receipts**

Ordering, Receiving, and Securing  
Official and Chronological  
Periodically Accounted For

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**Auditing  
Receipts General**

Sample  
All Information Included and Correct  
Amounts Correct  
Agree with Other Records

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**Auditing  
Credits**

Sample  
Authorized and Earned  
Properly Calculated and Applied  
Payments Not Received for Earned or Outstanding

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**Auditing  
Confirmations**

Sample  
Positive and Negative  
Positive Generally Better for Courts  
Amount Paid, Nothing Paid, Credit Earned, and  
Amount Owed

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**Auditing  
Cash Counts**

Surprise  
Irregular  
Custodian Present  
No "Excluded" Comfort Level

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**Auditing**  
**Flow and Composition of Funds**

Daily Receipt Amounts Matched with  
Deposits/Remittances and Accounting  
Records/Reports

Composition of Daily Receipts Matched with  
Deposits/Remittances

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**Auditing**  
**Keep An Eye Out For**

Personal Financial Trouble  
Living Beyond Apparent Means  
Drug, Alcohol, Gambling Addictions  
Sloppy Records  
Anxious, Upset, Edgy when Questioned  
Wants to be in Total Control of Financial Records  
Discrepancies between Procedures and Operations

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**Auditing**  
**Keep An Eye Out For**

Cannot Find Supporting Documentation  
No, or Very Short, Vacations  
Significant or Unusual Delays in Providing  
Requested Information  
Employee or Odd Endorsements on Checks  
Received  
Unexplained Fluctuations in Cash/Collections

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**MUNICIPAL COURTS**

**Regional Clerks Program**

**Fiscal 2007**

**Financial Management**

**Presented By**

**Rene Henry  
OFFICE OF COURT ADMINISTRATION  
512.463.1625**



**State and Local Shares Example  
Disorderly Conduct**

Assume:

Local peace officer

Municipal court building security fee of \$3.00

Municipal court technology fee of \$4.00

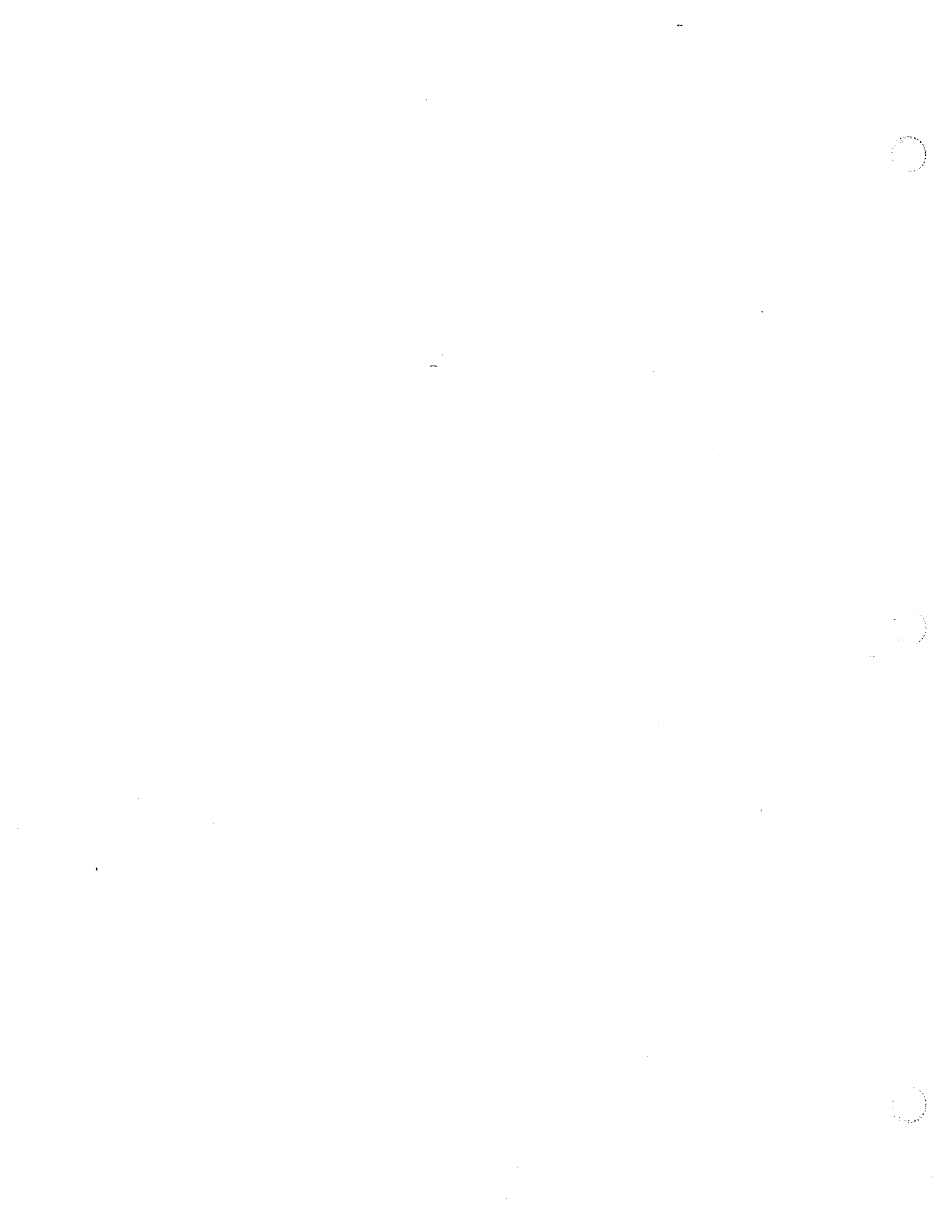
<b>Description</b>	<b>Total Amount</b>	<b>State Amount</b>	<b>Local Amount</b>
<b>COSTS AND FEES</b>			
Consolidated Court Cost	40.00	36.00	4.00
Jury Reimbursement Fee	4.00	3.60	0.40
Judicial Support Fee	4.00	3.40	0.60
Security Fee	3.00	0.00	3.00
Technology Fee	4.00	0.00	4.00
Arrest Fee	5.00	0.00	5.00
<b>Total Costs and Fees</b>	<b>60.00</b>	<b>43.00</b>	<b>17.00</b>
<b>Percentages</b>	<b>100.00%</b>	<b>71.67%</b>	<b>28.33%</b>
<b>FINE</b>			
If \$100.00	100.00	0.00	100.00
If \$150.00	150.00	0.00	150.00
If \$200.00	200.00	0.00	200.00
<b>TOTAL COSTS, FEES, AND FINE</b>			
If Fine \$100.00	160.00	43.00	117.00
<b>Percentages</b>	<b>100.00%</b>	<b>26.88%</b>	<b>73.13%</b>
If Fine \$150.00	210.00	43.00	167.00
<b>Percentages</b>	<b>100.00%</b>	<b>20.48%</b>	<b>79.52%</b>
If Fine \$200.00	260.00	43.00	217.00
<b>Percentages</b>	<b>100.00%</b>	<b>16.54%</b>	<b>83.46%</b>



**State and Local Shares Example  
Speeding**

Assume:  
Local peace officer  
Municipal court building security fee of \$3.00  
Municipal court technology fee of \$4.00

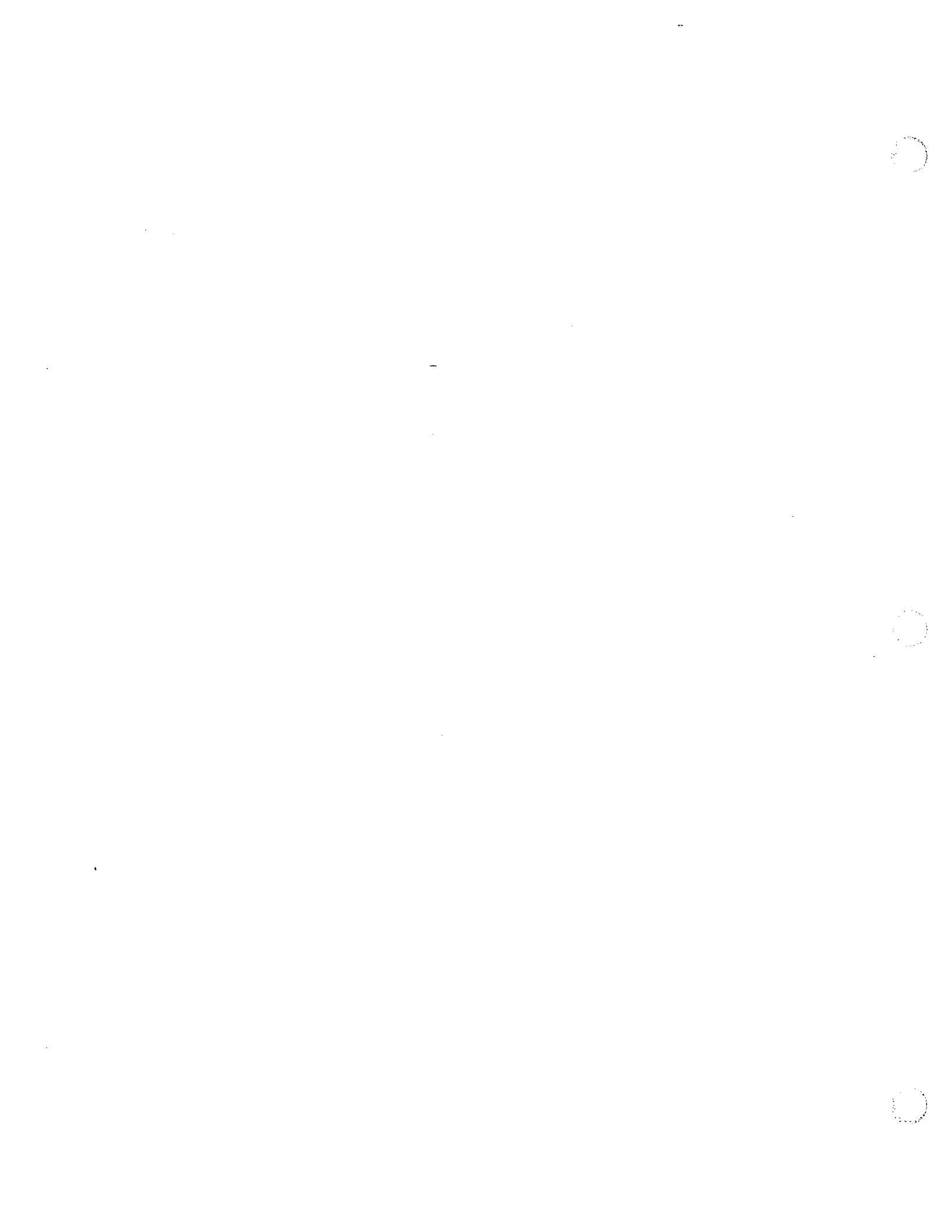
<b>Description</b>	<b>Total Amount</b>	<b>State Amount</b>	<b>Local Amount</b>
<b>COSTS AND FEES</b>			
Consolidated Court Cost	40.00	36.00	4.00
Jury Reimbursement Fee	4.00	3.60	0.40
Judicial Support Fee	4.00	3.40	0.60
State Traffic Fine	30.00	28.50	1.50
Local Traffic Court Cost	3.00	0.00	3.00
Security Fee	3.00	0.00	3.00
Technology Fee	4.00	0.00	4.00
Arrest Fee	5.00	0.00	5.00
<b>Total Costs and Fees</b>	<b>93.00</b>	<b>71.50</b>	<b>21.50</b>
<b>Percentages</b>	<b>100.00%</b>	<b>76.88%</b>	<b>23.12%</b>
<b>FINE</b>			
If \$50.00	50.00	0.00	50.00
If \$100.00	100.00	0.00	100.00
If \$150.00	150.00	0.00	150.00
<b>TOTAL COSTS, FEES, AND FINE</b>			
If Fine \$50.00	143.00	71.50	71.50
<b>Percentages</b>	<b>100.00%</b>	<b>50.00%</b>	<b>50.00%</b>
If Fine \$100.00	193.00	71.50	121.50
<b>Percentages</b>	<b>100.00%</b>	<b>37.05%</b>	<b>62.95%</b>
If Fine \$150.00	243.00	71.50	171.50
<b>Percentages</b>	<b>100.00%</b>	<b>29.42%</b>	<b>70.58%</b>



**State and Local Shares Example  
Failure to Maintain Financial Responsibility - First Conviction**

Assume:  
Local peace officer  
Municipal court building security fee of \$3.00  
Municipal court technology fee of \$4.00

Description	Total Amount	State Amount	Local Amount
<b>COSTS AND FEES</b>			
Consolidated Court Cost	40.00	36.00	4.00
Jury Reimbursement Fee	4.00	3.60	0.40
Judicial Support Fee	4.00	3.40	0.60
Security Fee	3.00	0.00	3.00
Technology Fee	4.00	0.00	4.00
Arrest Fee	5.00	0.00	5.00
<b>Total Costs and Fees</b>	<b>60.00</b>	<b>43.00</b>	<b>17.00</b>
Percentages	100.00%	71.67%	28.33%
<b>FINE</b>			
If \$175.00	175.00	0.00	175.00
If \$225.00	225.00	0.00	225.00
If \$275.00	275.00	0.00	275.00
<b>TOTAL COSTS, FEES, AND FINE</b>			
If Fine \$175.00	235.00	43.00	192.00
Percentages	100.00%	18.30%	81.70%
If Fine \$225.00	285.00	43.00	242.00
Percentages	100.00%	15.09%	84.91%
If Fine \$275.00	335.00	43.00	292.00
Percentages	100.00%	12.84%	87.16%





## **State Traffic Fine**

Does the State Traffic Fine apply to the following offenses?

▪ No Valid Driver's License	Yes	No
▪ No Motorcycle Protective Headgear	Yes	No
▪ Not Wearing Safety Belt	Yes	No
▪ Expired Motor Vehicle Inspection Certificate	Yes	No
▪ Violation of Promise to Appear -	Yes	No
▪ Speeding	Yes	No
▪ Failure to Maintain Financial Responsibility	Yes	No
▪ Passing a School Bus	Yes	No
▪ Expired Motor Vehicle Registration	Yes	No

### **Time Payment Fee Application**

Does the Time Payment Fee apply to cases disposed of by Deferred Disposition?

Yes \_\_\_\_ No \_\_\_\_

If judgment is entered on November 1<sup>st</sup>, would the Time Payment Fee apply if the defendant paid 50 percent of the amount owed on November 15<sup>th</sup> and the other 50 percent on December 15<sup>th</sup>?

Yes \_\_\_\_ No \_\_\_\_

If judgment is entered on November 1<sup>st</sup>, would the Time Payment Fee apply if the defendant paid 50 percent of the amount owed on November 15<sup>th</sup> and the other 50 percent on November 30<sup>th</sup>?

Yes \_\_\_\_ No \_\_\_\_

In counting days to determine if the Time Payment Fee applies, day one is the day the judgment is entered.

True \_\_\_\_ False \_\_\_\_

If the 30<sup>th</sup> day falls on a city holiday, a Saturday, or a Sunday, the time to pay without the Time Payment Fee being added is extended to the next business day.

True \_\_\_\_ False \_\_\_\_

The "Mail Box Rule" does not apply to the Time Payment Fee.

True \_\_\_\_ False \_\_\_\_

### Arrest and Warrant Fees

The \$5 Arrest Fee applies to cases disposed of by Deferred Disposition.

True \_\_\_\_ False \_\_\_\_

The \$5 Arrest Fee does not apply to the offenses Failure to Appear and Violate Promise to Appear.

True \_\_\_\_ False \_\_\_\_

If a Department of Public Safety officer issues a written notice to appear for a speeding ticket, the State is entitled to how much of the Arrest Fee if the defendant is convicted?

\_\_\_\_\_

There can only be one warrant fee per conviction.

True \_\_\_\_ False \_\_\_\_

If your judge issues a warrant that is executed by a peace officer from another local jurisdiction, that jurisdiction is entitled to the fee if requested within 15 days after the date of execution.

True \_\_\_\_ False \_\_\_\_

If a warrant is executed by a peace officer from another local jurisdiction and the fee is timely requested, how much does your city owe the other jurisdiction if the defendant receives jail credit for the total amount owed?

\_\_\_\_\_

## Dismissal Fees Application

There is an optional not to exceed \$10 fee for dismissing a charge of Driving with an Expired Motor Vehicle Registration.

True \_\_\_\_ False \_\_\_\_

There is an optional not to exceed \$10 fee for dismissing a charge of Driving with an Expired Driver's License.

True \_\_\_\_ False \_\_\_\_

There is an optional not to exceed \$10 fee for dismissing a charge of Failure to Maintain Financial Responsibility.

True \_\_\_\_ False \_\_\_\_

There is a not to exceed \$10 fee for the mandatory dismissals of Driving with an Expired Inspection Certificate.

True \_\_\_\_ False \_\_\_\_

## **Credits**

Jail credit can be \$75 for each period of time served.

True \_\_\_\_ False \_\_\_\_

Jail credit must be at least \$50 for each period of time served.

True \_\_\_\_ False \_\_\_\_

The period of time, as determined by the judge, must be not less than 12 hours or more than 24 hours.

True \_\_\_\_ False \_\_\_\_

Community service credit can be \$10 for each hour served.

True \_\_\_\_ False \_\_\_\_

If the full amount is not paid, any credits are applied to the court costs and fees first and then to the fine.

True \_\_\_\_ False \_\_\_\_

## Court Cost and Fee Exercises

### Exercise 1

Speeding offense: June 1, 2006

Fine assessed: \$182.00

Payment arrangement: One-third per month for three months beginning June 20<sup>th</sup>.

Assumptions:

Local peace officer

Security fee: \$3.00

Technology fee: \$4.00

(a) What are total court costs and fees?

(b) Allocate each of the payments

**Exercise 2**

Disorderly conduct: July 1, 2006

Fine assessed: \$150.00

Payment arrangement: Full amount due by the end of the month

Assumptions:

Local peace officer

Security fee: \$3.00

Technology fee: \$4.00

If the only payment ever received is \$30.00, on July 25<sup>th</sup>, what amounts should be allocated to the applicable individual court costs and fees?

If a payment of \$30.00 is received on July 25<sup>th</sup>, a warrant is issued and executed, what is the balance owed?

**Exercise 3**

Failure to maintain financial responsibility: June 30, 2006

Fine assessed: \$265.00

Warrant issued and processed

Turned over to a private vendor for collection under Chapter 103 of the Code of Criminal Procedure

**Assumptions:**

Local peace officer

Security fee: \$3.00

Technology fee: \$4.00

What is the total amount owed by the defendant?

If the vendor's efforts result in recovering \$390.00, how would it be allocated?



## **Internal Control**

### **Simple Definition**

Financial management checks and balances.

### **Traditional Definition**

Plans and procedures in a municipal court designed to provide reasonable assurance of:

- (1) Reliable financial information;
- (2) Compliance with applicable laws and regulations; and
- (3) Effective and efficient operations.

### **Components of Internal Control**

Control Environment

Risk Assessment

Control Activities

Information and Communication

Monitoring

### **Control Environment**

Integrity and Ethical Values

Competence

Philosophy and Operating Style of Management

Assignment of Authority and Responsibility

How Personnel are Developed

### **Risk Assessment**

From Internal and External Sources

Classify Impact and Probability

Quantitative and Qualitative

**Control Activities**

Specific Policies and Procedures  
Should Address Identified Risks  
Traditional Principles of Internal Control

**Information and Communication**

Appropriate  
Timely  
Both Ways

**Monitoring**

Is System Effective?  
Ongoing and Separate  
Preventive and Detective

## **Auditing**

### **Definition:**

- (1) Examination of information and operations for mathematical accuracy, legality, and propriety.
- (2) Process for determining whether all transactions are properly recorded in the accounts and appropriately reflected in statements and reports.

### **Objectives:**

- (1) Court has collected all the money they are supposed to.
- (2) Money collected was properly remitted to appropriate parties.
- (3) Property is properly managed.
- (4) Money and other property is properly accounted for, properly reported, and adequately safeguarded.
- (5) Operations conform to laws, rules, and prescribed procedures.

### **Property:**

Existence and location  
Properly recorded  
Condition and usage  
At least annually

### **Computer Security:**

Policies and procedures  
Access  
Passwords  
Operations conform

**Analytical Review:**

Big picture

Traditional might miss

Unusual or unexpected

Relationships, changes, or fluctuations

**Citations Docketed:**

Police department cooperation

Sample

All cases set up

Offenses correct

**Hardcopy Receipts:**

Ordering, receiving, and securing

Official and chronological

Periodically accounted for

**Receipts General:**

Sample

All information included and correct

Amounts correct

Agree with other records

**Credits:**

Sample

Authorized and earned

Properly calculated and applied

Payments not received for earned or outstanding

**Confirmations:**

Sample

Positive and negative

Positive generally better for courts

Amount paid, nothing paid, credit earned, and amount owed

**Cash Counts:**

Surprise

Irregular

Custodian present

No "excluded" comfort level

**Flow and Composition of Funds:**

Daily receipt amounts matched with deposits/remittances and accounting records/reports

Composition of daily receipts matched with deposits/remittances

**Keep an Eye Out For:**

Personal financial trouble

Living beyond apparent means

Drug, alcohol, gambling addictions

Sloppy records

Anxious, upset, edgy when questioned

Wants to be in total control of financial records

Discrepancies between procedures and operations

Cannot find supporting documentation

No, or very short, vacations

Significant or unusual delays in providing requested documentation

Excessive adjustments to records

Employee or odd endorsements on checks received

Unexplained fluctuations in cash/collections



FUNDED BY A GRANT FROM THE  
TEXAS COURT OF CRIMINAL APPEALS

## **TEXAS MUNICIPAL COURTS EDUCATION CENTER**

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

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# **CURRENT ISSUES (HANDLING HOT CHECKS, ELECTRONIC RECORDS, AND DISMISSALS)**

**Presented by**

**Jo Ann Sacharko  
Court Administrator  
Lancaster**

Participants will be able to:

- Explain the process for handling insufficient checks taken in the court for fine payment;
- Explain the process for accepting for filing the offense of “issuance of bad check;” and
- Explain the process for handling merchants who want to file “issuance of bad check.”





# CURRENT ISSUES

Presented by  
Jo Ann Sacharko  
Court Administrator, Lancaster

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# HANDLING HOT CHECKS

Presented by  
Jo Ann Sacharko  
Court Administrator, Lancaster

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# Taken in Court



- Check "bounces"
  - Fine and costs not paid
  - Judgment in default

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## Notice



- Certified notice to defendant
- Wait 10 days after defendant receives notice

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## Time Payment Fee



- If 31 days past judgment add \$25 TPF
- Counting days
  - Don't count day judgment signed
  - Count calendar days
  - Count last day unless falls on weekend or holiday, then go to next working day of court
  - That is the 30<sup>th</sup> day
  - Next day is 31<sup>st</sup> day

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## *Capias Pro Fine*



- Probable cause required
- *Capias Pro Fine*

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## Other Financial Issues



- Court costs
  - Has city already paid?
  - Make sure they are not double paid
- Court cannot collect NSF

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## Other Collection Options



- DPS FTA program
- Outside vendor
- Civil Execution

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## Issuance of Bad Check



- Prosecutor decides
- Clerk prepares complaint
- Any person (clerk) can be affiant
- File complaint in court
- Enter on docket
- Probable cause affidavit (clerk can be affiant)
- Judge may issue warrant

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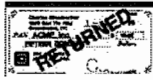
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### Merchant Files Charge



- Merchant has already sent certified notice
- Merchant swears to complaint
- Merchant swears to probable cause affidavit
- Clerk accepts complaint for filing
- Clerk enters complaint on docket

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### Merchant Files Charges



- Judge may issue warrant of arrest
- Warrant given to PD to serve

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### Merchant Files Charge



- Issuance of Bad Check (Sec. 32.41, P.C.)
- Insufficient funds
- No bank account
- Payment refused by bank
- Payment refused to holder

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## Issuance of Bad Check



- Penalty
  - Maximum fine \$200
  - Base court costs -\$48
- Judge may require restitution up to \$500 (Article 45.041, C.C.P.)
- If deferred disposition granted
  - Restitution up to amount of fine assessed (Article 45.051(b)(2), C.C.P.)

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## Electronic Records



- Means
  - Original record
  - Certification of original record
  - Accurate copy

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## Electronic Records



- Complaint
  - Created electronically
  - Sworn to
  - Signed electronically

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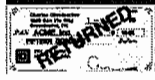
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## Electronic Records



### ■ Judgments

- Signed electronically
- Judge's signature captured electronically
- Judge signs or clerk may in judge's presence after judge reviews (like signature stamp)

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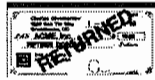
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## Electronic Records



### ■ Warrants

- Probable cause affidavits
  - Sworn and signed electronically
- Warrants
  - Judge reviews affidavit on screen
  - Judge signs electronically

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## Electronic Records



### ■ Technology

- Changes medium (from paper to computer)
- Does not change rules

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## Dismissals



- Compliance
  - Expired Registration
  - Expire MVI
  - Expire DL
- Judge signs dismissal judgment
  - Clerk notes dismissal in docket

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## DSC



- Defendant complies
- Judge must dismiss
  - Judge signs judgment of dismissal
- Clerk notes judgment in docket

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## Deferred



- Defendant complies
- Judge must dismiss
  - Judge signs judgment of dismissal
  - If assessing special expense,  
orders special expense paid
- Clerk notes judgment in docket

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# HANDLING HOT CHECKS

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## Handling Hot Checks

### A. Checks Taken as Payment of Fine and Costs

#### 1. Judgment Not Satisfied

When a defendant's check for payment of fine and costs "bounces," what should the court do? First, the court should realize that the fine and costs are not paid.

The court can send a notice to the defendant and give them an opportunity to bring in cash to take care of their judgment. The notice must state the following: "This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

If the prosecutor is contemplating filing on the defendant for the offense of issuance of bad check, the notice should be sent certified mail with return receipt requested. (Issuance of bad check is a Class C misdemeanor that can be filed in municipal court. See Section 32.41, Penal Code.) If the court does not hear from the defendant, notify the prosecutor.

#### 2. *Capias Pro Fine*

The next step is to prepare a *capias pro fine*. If a defendant fails to satisfy a judgment according to its terms, the court may order a *capias pro fine* issued. Article 45.045, C.C.P.

#### 3. Time Payment Fee

Most likely, 31 days have passed since the judgment. Hence, the time payment fee is now due. A person convicted of an offense shall pay in addition to all other costs, a fee of \$25 if the person pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution. Section 133.103, L.G.C.

#### 4. Other Financial Issues

One important thing to remember is whether or not the court has reported the court costs to the State Comptroller because the court does not want to double report court costs. If the court reported the court costs on the first payment from the check that "bounced," make sure that they are not reported a second time. The cash payment from the defendant making the check good would just be reimbursing the city for the payment of the court costs already sent to the State.

One thing the court cannot do is collect the insufficient check fee. Municipal court has not authority to collect this fee.

## **5. Other Collection Options**

If the court has a contract with an outside vendor or the Texas Department of Public Safety, the court will notify them of the failure to pay.

## **5. Issuance of Bad Check**

If the prosecutor files the charge of issuance of bad check, with a probable cause affidavit, the court will issue a warrant of arrest for this charge.

Section 32.41, P.C., Issuance of Bad Check, is a Class C misdemeanor. The clerk prepares a sworn complaint. Anyone with knowledge (i.e., another clerk) could swear to the complaint. The complaint is filed in the court and entered in the docket. After a probable cause affidavit is prepared and sworn, the judge may issue a warrant of arrest.

## **B. Merchants Filing Issuance of Bad Check**

### **1. The Law**

§ 32.41. ISSUANCE OF BAD CHECK. (a) A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for purposes of this section, the issuer's knowledge of insufficient funds is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b)(2) may be actual notice or notice in writing that:

(1) is sent by registered or certified mail with return receipt requested, by telegram with report of delivery requested, or by first class mail if the letter was returned unopened with markings indicating that the address is incorrect and that there is no current forwarding order;

(2) is addressed to the issuer at his address shown on:

(A) the check or order;

(B) the records of the bank or other drawee; or

(C) the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

(d) If notice is given in accordance with Subsection (c), it is presumed that the notice was received no later than five days after it was sent.

(e) A person charged with an offense under this section may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court.

(f) Except as otherwise provided by this subsection, an offense under this section is a Class C misdemeanor. If the check or similar sight order that was issued or passed was for a child support payment the obligation for which is established under a court order, the offense is a Class B misdemeanor.

(g) An offense under this section is not a lesser included offense of an offense under Section 31.03 or 31.04.

## **2. Complaint Filed**

Merchant files sworn complaint to initiate charges against defendant. Merchant swears to complaint in front of clerk.

Merchant must have already sent notice to person. The notice must state the following: "This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

## **4. Warrant Issued**

The merchant must also swear to a probable cause affidavit. With probable cause, the judge can issue a warrant of arrest. Article 45.014, C.C.P.

## **5. Penalty**

This offense is a Class C misdemeanor, meaning that the maximum fine is \$500.

The offense of issuance of bad check is not a lesser included offense of Section 31.03, P.C., theft of property.





**JUDGMENT: JURY WAIVED – GUILTY**

**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) (not guilty) and waived a jury trial; and the Court, 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 order incorporated as part of this judgment.
- (If sentence in addition to payment of fine is authorized) It is further **Ordered** that the Defendant shall \_\_\_\_\_ no later than \_\_\_\_\_, 200\_\_\_\_\_.
- The Defendant is hereby **Ordered** to pay restitution in the amount of \_\_\_\_\_ to the victim in this case. Said restitution to be paid by \_\_\_\_\_.

**It is further Ordered and Adjudged**, 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.

\_\_\_\_\_  
Judge, Municipal Court Date

(municipal court seal)

City of \_\_\_\_\_,

\_\_\_\_\_ County, Texas





**JUDGMENT: JURY WAIVED – NOT GUILTY**

**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) and entered a plea of not guilty and waived a jury trial; and the Court, having heard the evidence and arguments, finds the Defendant **not 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.

**It is therefore Ordered and Adjudged**, the Defendant, being found **not guilty**, is immediately discharged from all further liability for the offense alleged in this cause and the Defendant may go hence without payment of costs.

*(municipal court seal)*

\_\_\_\_\_  
Judge, Municipal Court

\_\_\_\_\_  
Date

City of \_\_\_\_\_,

\_\_\_\_\_ County, Texas



**JUDGMENT: JURY WAIVED – GUILTY (JUVENILE)**

**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 (with a parent or guardian)(presence of parent or guardian waived after diligence used to obtain presence) (was represented by an attorney) (representation by an attorney waived) 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, 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 order incorporated as part of this judgment.

It is further **Ordered** that the Defendant shall no later than \_\_\_\_\_, 200\_\_:

- Attend counseling;
- Attend self-esteem and leadership class;
- Attend job skills training;
- Attend job interviewing training;
- Attend work preparation training;
- Attend self-improvement training;
- Attend parenting class;
- Attend parental responsibility training;
- Attend manners training;
- Attend violence avoidance training;
- Get tutoring;
- Perform community service at \_\_\_\_\_ for \_\_\_\_\_ hours;
- Participate in an advocacy or mentoring program;
- Go to services under Section 264.302, Family Code (Early Youth Intervention Services)

The above order program(s) shall be completed by \_\_\_\_\_, 200\_\_.

The Court further finds that the Defendant is at risk and orders the parent to attend:  
 crisis family intervention;  
 emergency short-term residential care for children 10 years of age or older;  
 family counseling;  
 parenting skills training;  
 youth coping skills training;  
 advocacy training; and  
 mentoring.

The above order program(s) shall be completed by \_\_\_\_\_, 200\_\_.

The Defendant is hereby **Ordered** to pay restitution in the amount of \_\_\_\_\_ to the victim in this case. Said restitution to be paid by \_\_\_\_\_.

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



**JUDGMENT: JURY WAIVED – NOT GUILTY (JUVENILE)**

**CAUSE NUMBER:** \_\_\_\_\_

<b>STATE OF TEXAS</b>  <b>VS.</b>  _____	§  §  §	<b>IN THE MUNICIPAL COURT</b>  <b>CITY OF</b> _____  _____ <b>COUNTY, TEXAS</b>
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On this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, the Defendant in the above numbered and entitled cause appeared in person (with a parent or guardian)(presence of parent or guardian waived after diligence used to obtain presence) (was represented by an attorney) (representation by an attorney waived) and entered a plea of not guilty and waived a jury trial; and the Court, having heard the evidence and arguments, finds the Defendant **not 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.

**It is therefore Ordered and Adjudged**, the Defendant, being found **not guilty**, is immediately discharged from all further liability for the offense alleged in this cause and the Defendant may go hence without payment of costs.

*(municipal court seal)*

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



**DISMISSAL BY THE COURT**

**CAUSE NUMBER:** \_\_\_\_\_

<b>STATE OF TEXAS</b>	§	<b>IN THE MUNICIPAL COURT</b>
<b>VS.</b>	§	<b>CITY OF</b> _____
_____	§	_____ <b>COUNTY, TEXAS</b>

**DISMISSAL**

- On this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, the Defendant appeared in the above numbered and styled cause and presented evidence of remedying a defect. Therefore, the above numbered and styled cause is dismissed on the Defendant’s motion for the reason:
  - Defendant presented evidence of remedied expired driver’s license within 10 working days. (Sec. 521.026, TC)
  - Defendant presented evidence of remedied expired inspection certificate within 10 working days, and the inspection certificate has not been expired for more than 60 days. (Sec. 548.605, TC)
  - Defendant presented evidence of remedied expired registration within 10 working days after the day of the offense. (Sec. 502.407, TC)
  - It is also ordered that the Defendant pay a \$10 fee.
  
- On this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, the Defendant appeared in the above numbered and styled cause and presented evidence of a valid defense to the prosecution. Therefore, the above numbered and styled cause is dismissed on the State’s motion for the reason:
  - Defendant presented evidence of valid financial responsibility that was valid at the time of arrest. (Sec. 601.193, TC)
  - Defendant presented evidence of a valid Texas driver’s license that was valid at the time of arrest. (Sec. 521.025, TC)
  - Defendant presented evidence of a valid Texas inspection certificate that was valid at the time of arrest. (Sec. 548.602, TC)

\_\_\_\_\_  
Judge, Municipal Court Date

*(municipal court seal)*

City of \_\_\_\_\_,

\_\_\_\_\_ County, Texas

**Editor’s Note:** With the few exceptions referenced in the first portion of this form and under the provisions detailed in the Deferred Proceedings, local trial courts generally do not have the authority to unilaterally dismiss charges without a prosecutor’s motion. The second portion of this form illustrates the limited instances where a statutory defense to prosecution exists. With few exceptions denoted in case law, a dismissal by a trial court requires a written motion by the prosecution and the consent of the presiding judge (Art. 32.02, Code of Criminal Procedure). Such a motion and order to dismiss can be found in the Prosecutor Forms portion of this publication.





**JUDGMENT AFTER JURY VERDICT**

**CAUSE NUMBER:** \_\_\_\_\_

<b>STATE OF TEXAS</b>  <b>VS.</b>  _____	§ § §	<b>IN THE MUNICIPAL COURT</b>  <b>CITY OF</b> _____  _____ <b>COUNTY, TEXAS</b>
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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 demanded a jury trial; and the jury, having heard the evidence and arguments, found the Defendant:

- Not guilty of the offense of \_\_\_\_\_. **It is therefore Ordered and Adjudged** by the Court that the Defendant is not guilty of the offense and is discharged.
- Guilty of the offense of \_\_\_\_\_ and assessed a fine of \$\_\_\_\_\_.
- Guilty of the offense of \_\_\_\_\_, the Court assesses a fine of \$\_\_\_\_\_.
- It 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 order incorporated as part of this judgment.
- The Defendant is hereby **Ordered** to pay restitution in the amount of \_\_\_\_\_ to the victim in this case. Said restitution to be paid by \_\_\_\_\_.

**It is further Ordered** that if the Defendant fails to comply with the orders of this judgment that the Defendant shall be committed to the custody of the Chief of Police of the City of \_\_\_\_\_, Texas until the said fine and costs are fully discharged. 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 Defendant for the amount of the fine and costs.

(municipal court seal)

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



**JUDGMENT AFTER JURY VERDICT (JUVENILE)**

**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 (with a parent or guardian)(presence of parent or guardian waived after diligence used to obtain presence) (was represented by an attorney) (representation by an attorney waived) and entered a plea of not guilty and demanded a jury trial; and the jury, having heard the evidence and arguments, found the Defendant:

- Not guilty of the offense of \_\_\_\_\_. **It is therefore Ordered and Adjudged** by the Court that the Defendant is not guilty of the offense and is discharged.
- Guilty of the offense of \_\_\_\_\_ and assessed a fine of \$\_\_\_\_\_.
- Guilty of the offense of \_\_\_\_\_; the Court assesses a fine of \$\_\_\_\_\_.
- It 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 order incorporated as part of this judgment.
- The Defendant is hereby **Ordered** to pay restitution in the amount of \_\_\_\_\_ to the victim in this case. Said restitution to be paid by \_\_\_\_\_.

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



**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 or any 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 and present evidence (a uniform certificate of completion of the driving safety course) (a verification of completion of the motorcycle operator training course) to this Court by \_\_\_\_\_, 200\_\_. Furthermore, when presenting evidence of course completion, the Defendant is ordered to present a certified 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 of the request to take this course 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

\_\_\_\_\_  
Date

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 a certified copy of the Defendant's driving record from the Texas Department of Public Safety, and the required 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  by \_\_\_\_\_  at designated intervals

(See the attached payment order 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 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



**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 in the amount of \$ \_\_\_\_\_.  
 immediately;  by \_\_\_\_\_;  at designated intervals (see the attached payment order incorporated as part of this judgment).
  - 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





**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 order 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 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.

*(municipal court seal)*

\_\_\_\_\_  
Judge, Municipal Court

\_\_\_\_\_  
Date

City of \_\_\_\_\_

\_\_\_\_\_  
County, Texas



JUDGMENT/JAIL CREDIT ADDENDUM (For Persons Age 17 and Older)

CAUSE NUMBER: \_\_\_\_\_

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

On the \_\_\_\_\_ of \_\_\_\_\_, 200\_\_, Defendant failed to pay the fine and costs in the amount of \_\_\_\_\_ as ordered in the judgment of the above noted Cause Number. **It is therefore Ordered and Adjudged** that 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. 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.

**This Order** shall be attached and incorporated as part of the original judgment.

(municipal court seal)

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



**JUDGMENT: POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES OR TOBACCO PRODUCT BY MINOR – GUILTY (Secs. 161.252 and 161.253, HSC)**

CAUSE NUMBER: \_\_\_\_\_

STATE OF TEXAS VS. _____	§ § §	IN THE MUNICIPAL COURT CITY OF _____ _____ COUNTY, TEXAS
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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 City of _____ _____ County, Texas
	Date _____

**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 order 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 order 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 City of _____ _____ County, Texas
	Date _____

**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 – NOT GUILTY (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 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.

*(municipal court seal)*

\_\_\_\_\_  
Judge, Municipal Court  
City of \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
County, Texas



**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:** \_\_\_\_\_

<b>STATE OF TEXAS</b>	§	<b>IN THE MUNICIPAL COURT</b>
<b>VS.</b>	§	<b>CITY OF</b> _____
_____	§	_____ <b>COUNTY, TEXAS</b>

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 order 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 11<sup>th</sup> day after the date of this judgment.
- deny the issuance of a driver's license or permit to the Defendant for \_\_\_\_\_ days effective the 11<sup>th</sup> 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.

(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: 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 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.

*(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 \_\_\_\_\_, 200\_\_\_\_, 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. The suspension is ordered to begin on \_\_\_\_\_, 200\_\_\_\_, and end on \_\_\_\_\_, 200\_\_\_\_.

*(municipal court seal)*

\_\_\_\_\_  
Judge, Municipal Court Date  
City of \_\_\_\_\_  
\_\_\_\_\_ County, Texas



**ORDER OF DRIVER'S LICENSE SUSPENSION FOR FAILURE TO COMPLETE TOBACCO AWARENESS PROGRAM (Sec. 161.252, HSC)**

**CAUSE NUMBER:** \_\_\_\_\_

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

On the \_\_\_\_\_ of \_\_\_\_\_, 200\_\_\_\_, Defendant failed to present to this Court evidence of completion of the tobacco 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. The suspension is ordered to begin on \_\_\_\_\_ 200 \_\_\_\_ and end on \_\_\_\_\_ 200 \_\_\_\_.

*(municipal court seal)*

\_\_\_\_\_  
Judge, Municipal Court Date  
City of \_\_\_\_\_  
\_\_\_\_\_ County, Texas



ORDER FOR IMPOUNDMENT OF OUT-OF-STATE MOTOR VEHICLE (Secs. 601.291 and 601.294, TC)

CAUSE NUMBER: \_\_\_\_\_

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

WHEREAS IT IS FOUND:

- 1. The owner or operator of the vehicle has not registered the vehicle in this state;
- 2. The owner or operator of the vehicle was involved in a motor vehicle accident in this state that resulted in bodily injury, death, or damage to the property of one person to an apparent extent of at least \$500;
- 3. There is a reasonable possibility of in judgment being rendered against the owner or operator of the vehicle for any death, injury, or property damage sustained in motor vehicle accident;
- 4. The owner or operator of the vehicle failed to provide:
  - a. Evidence of financial responsibility for the bodily injury, death, or property damage; or
  - b. Evidence that the person is exempt from the requirement of financial responsibility, pursuant to Section 601.051, Transportation Code.

THE MAGISTRATE IS REQUIRED TO ORDER:

Pursuant to Section 601.294 of the Transportation Code, that the Sheriff of \_\_\_\_\_ County, Texas, (Chief of Police of \_\_\_\_\_, Texas) to take into possession and safekeeping the described motor vehicle, to wit:

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Color: \_\_\_\_\_ Year: \_\_\_\_\_  
License Number: \_\_\_\_\_ State: \_\_\_\_\_ VIN: \_\_\_\_\_  
Vehicle Operator: \_\_\_\_\_  
Vehicle Owner: \_\_\_\_\_  
Address of Owner: \_\_\_\_\_

NOTICE TO VEHICLE OWNER:

Texas law provides:

- 1. The duration of impoundment is 180 days.
- 2. The Sheriff may not release the impounded vehicle until:
  - a. You apply to the Court for release of the vehicle, provide proof of financial responsibility in compliance with Sections 601.053 and 601.262, Transportation Code, and pay the impoundment fee, which the Court is required to impose against you at a cost of \$15 per day; or
  - b. A lien holder on the vehicle's certificate of title presents certificate of title and an accompanying affidavit by an officer of the lien holder establishing that the debt secured by the vehicle is in default or matured, pursuant to Section 601.267, Transportation Code.
- 3. The impoundment of your motor vehicle is in addition to any other punishment imposed under Chapter 601, Transportation Code.
- 4. You must apply for permission from the Court before transferring title to the impounded vehicle, which the Court shall approve if it finds the transfer is being made in good faith and is not being made to circumvent Chapter 601, Transportation Code.
- 5. The Court shall order the release of the impounded vehicle if, while the vehicle is impounded, title to the vehicle is transferred by foreclosure, sale on execution, cancellation of a conditional sales contract, or judicial order.

Ordered signed and delivered on \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Judge, Municipal Court Date  
City of \_\_\_\_\_  
\_\_\_\_\_  
County, Texas



ORDER FOR IMPOUNDMENT OF IN-STATE MOTOR VEHICLE (Secs. 601.191 and 601.261, TC)

CAUSE NUMBER: \_\_\_\_\_

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

WHEREAS IN THE ABOVE STYLED CAUSE NUMBER, THE COURT FINDS:

- 1. The named Defendant has been found guilty of operating a motor vehicle in violation of Section 601.191 of the Transportation Code;
- 2. The conviction in this cause is a second or subsequent conviction;
- 3. The Defendant was the owner of the vehicle at the time of the offense; and
- 4. The Defendant is an owner on the date of the second or subsequent conviction.

THE COURT IS REQUIRED TO ORDER:

Pursuant to Section 601.261 of the Transportation Code, that the Sheriff of \_\_\_\_\_ County Texas, to take into possession and safekeeping the described motor vehicle, to wit:

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Color: \_\_\_\_\_ Year: \_\_\_\_\_  
License Number: \_\_\_\_\_ State: \_\_\_\_\_ VIN: \_\_\_\_\_  
Vehicle Operator: \_\_\_\_\_  
Vehicle Owner: \_\_\_\_\_  
Address of Owner: \_\_\_\_\_

NOTICE TO VEHICLE OWNER:

Texas law provides:

- 1. The duration of impoundment is 180 days.
- 2. The Sheriff may not release the impounded vehicle until:
  - a. You apply to the Court for release of the vehicle, provide proof of financial responsibility in compliance with Sections 601.053 and 601.262, Transportation Code, and pay the impoundment fee, which the Court is required to impose against you at a cost of \$15 per day; or
  - b. A lien holder on the vehicle's certificate of title presents certificate of title and an accompanying affidavit by an officer of the lien holder establishing that the debt secured by the vehicle is in default or matured, pursuant to Section 601.267, Transportation Code.
- 3. The impoundment of your motor vehicle is in addition to any other punishment imposed under Chapter 601, Transportation Code.
- 4. You must apply for permission from the Court before transferring title to the impounded vehicle, which the Court shall approve if it finds the transfer is being made in good faith and is not being made to circumvent Chapter 601, Transportation Code.
- 5. The Court shall order the release of the impounded vehicle if, while the vehicle is impounded, title to the vehicle is transferred by foreclosure, sale on execution, cancellation of a conditional sales contract, or judicial order.

Ordered signed and delivered on \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
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 BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701  
TELEPHONE (512) 320-8274  
1-800-252-3718  
FAX (512) 320-0996

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# **DPS REPORTING**

**Presented by**

**Rhonda Kuehn, CMCC  
Court Administrator  
Brenham**

Participants will be able to:

- List all the required forms for reporting;
- List the time deadlines for reporting;
- Explain the procedures for reporting;
- Report properly.



## DPS Reporting

1. *Faint, illegible text*  
2. *Faint, illegible text*  
3. *Faint, illegible text*

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## DPS Reporting

- Alcoholic Beverage Code
- Penal Code
- Health and Safety
- Transportation Code
- Education Code
- New Trials
- Appeals
- Forms
- Contract with DPS

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## Alcoholic Beverage Code

- Convictions
- DL suspensions or denial
- Failure to complete Alcohol Awareness Program
- Failure to Complete Community Service
- Order of Deferred Disposition
- Acquittals of driving under the Influence (DUI)

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### Alcoholic Beverage Code

- **Convictions- Possession, purchase, attempt to purchase, consumption of alcohol by a minor, or misrepresentation of age by a minor**
  - **Mandatory DL suspension**
    - Suspension effective on 11<sup>th</sup> day after judgment
  - **First conviction – 30 days**
  - **Second conviction (charge enhanced to allege prior conviction) – 60 days**
  - **Third offense – 180 days (no jurisdiction)**
  - **Report order on DIC-15**

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### Alcoholic Beverage Code

- **Failure to complete alcohol awareness program**
  - **Mandatory DL suspension**
    - For a period not to exceed six months
    - For a period not to exceed one year (offense filed as second or subsequent)
  - **Judge orders**
  - **Clerk reports court order on DIC-15**
  - **Must indicate beginning and ending date of suspension period**

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### Alcoholic Beverage Code

- **Failure to complete community service**
  - **Mandatory DL suspension**
    - For a period not to exceed six months
    - For a period not to exceed one year (offense filed as second or subsequent)
  - **Judge orders**
  - **Clerk reports court order on DIC-15**
  - **Must indicate beginning and ending date of suspension period**

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## Alcoholic Beverage Code

- Orders of Deferred
  - Must report when ordered
  - Report order on DIC-15
  - If defendant fails to complete alcohol awareness program (required term)
    - Mandatory DL suspension or denial for up to six months
    - Judge orders
    - Court reports court order on DIC-15

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## Alcoholic Beverage Code

- DUI
  - Acquittal
  - Report to DPS
  - Report on DIC-15

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### NOTICE OF CONVICTION AND SUSPENSION/DISQUALIFICATION PLEASE PRINT OR TYPE

NAME \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST) (SO SEC NO)

ADDRESS \_\_\_\_\_

DRIVER LICENSE # \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_ RACE \_\_\_\_\_ SEX \_\_\_\_\_  
OR NONE

OFFENSE COMMITTED \_\_\_\_\_

DATE OFFENSE COMMITTED \_\_\_\_\_ DISPOSITION DATE \_\_\_\_\_

TRANSPORTING HAZARDOUS MATERIAL \_\_\_\_\_ NO \_\_\_\_\_ YES

EMPLOYER \_\_\_\_\_  
(IF CONVICTED OF VIOLATING OUT OF SERVICE ORDER)

NOTE: COURT MUST PROVIDE SUSPENSION OR DISQUALIFICATION DATES

BEGINNING DATE \_\_\_\_\_ ENDING DATE \_\_\_\_\_

CERTIFIED BY \_\_\_\_\_ TITLE \_\_\_\_\_  
SIGNATURE \_\_\_\_\_

COURT \_\_\_\_\_ CAUSE # \_\_\_\_\_ COUNTY \_\_\_\_\_

MAIL TO DRIVER IMPROVEMENT & CONTROL  
TEXAS DEPARTMENT OF PUBLIC SAFETY  
PO BOX 4087  
AUSTIN TX 78773-0001

DIC-15 (REV 3/96)

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**Penal Code**

- **Public Intoxication (person under age 21 and at least age 17)**
  - Punishment same a ABC offense
  - Mandatory DL suspension
  - Alcohol awareness course
  - Community Service
  - See ABC information on reporting

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**Penal Code**

- **Possession of Alcoholic Beverage in Motor Vehicle**
  - Report like a traffic conviction
  - Report electronically (DPS code 3323) or use DR-18

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**Penal Code**

- **Theft of gasoline**
  - Loss of less than \$50 (jurisdiction)
  - Court required to enter an affirmative judgment on first conviction
  - Court required to enter a special affirmative judgment on second conviction
  - Report like traffic electronically (DPS code: 3206) or use DR-18 form

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## Health and Safety Code

- Failure to complete tobacco awareness program
  - Mandatory DL suspension or denial
    - Suspension not to exceed six months
  - Court orders suspension
  - Clerks report court order on DIC-15

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### NOTICE OF CONVICTION AND SUSPENSION/DISQUALIFICATION PLEASE PRINT OR TYPE

NAME \_\_\_\_\_ (FIRST) \_\_\_\_\_ (MIDDLE) \_\_\_\_\_ (LAST) \_\_\_\_\_ (SO, SEC NO)

ADDRESS \_\_\_\_\_

DRIVER LICENSE # \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_ RACE \_\_\_\_\_ SEX \_\_\_\_\_  
ID # OR NONE

OFFENSE COMMITTED \_\_\_\_\_

DATE OFFENSE COMMITTED \_\_\_\_\_ DISPOSITION DATE \_\_\_\_\_

TRANSPORTING HAZARDOUS MATERIAL \_\_\_\_\_ NO \_\_\_\_\_ YES

EMPLOYER \_\_\_\_\_  
(IF CONVICTED OF VIOLATING OUT OF SERVICE ORDER)

NOTE: COURT MUST PROVIDE SUSPENSION OR DISQUALIFICATION DATES

BEGINNING DATE \_\_\_\_\_ ENDING DATE \_\_\_\_\_  
CERTIFIED BY \_\_\_\_\_  
SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

COURT \_\_\_\_\_ CAUSE # \_\_\_\_\_ COUNTY \_\_\_\_\_

MAIL TO: DRIVER IMPROVEMENT & CONTROL  
TEXAS DEPARTMENT OF PUBLIC SAFETY  
PO BOX 4987  
AUSTIN TX 78775-0001

DIC-15 (REV. 3/98)

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## Transportation Code

- Report convictions and final judgments on bond forfeitures on all traffic offenses
- Convictions under Section 521.453, T.C.
- Date of driving safety course completions
- Teen court completion on traffic offenses
- Failure to comply with Nonresident Violator Compact

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## Transportation Code

- All traffic convictions and forfeitures of bail
  - Report by 30<sup>th</sup> day after date of conviction or forfeiture
  - If on time payment do not wait for final payment
  - Report electronically or use DR-18

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### NOTICE OF FINAL CONVICTION FOR TRAFFIC LAW VIOLATION (Misdemeanor)

Class No. \_\_\_\_\_  
Title No. \_\_\_\_\_

STATE OF TEXAS \_\_\_\_\_

First \_\_\_\_\_ Middle \_\_\_\_\_ Last \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Town \_\_\_\_\_

LICENSE STATE # AND \_\_\_\_\_ COA \_\_\_\_\_ SDN \_\_\_\_\_

DATE OF BIRTH	SEX	RACE	<input type="checkbox"/> DMV - CDL <input type="checkbox"/> PLACARDED VEHICLE	VEHICLE REGISTRATION NUMBER	STATE	YEAR
<small>OFFENSE COMMITTED (check one)</small> <input type="checkbox"/> SPEEDING POSTED <input type="checkbox"/> SPEEDING 15 OR OVER POSTED <input type="checkbox"/> ALLIED <input type="checkbox"/> VIOLATED LICENSE RESTRICTION <input type="checkbox"/> SERIOUS TRAFFIC VIOLATION RE COMMERCIAL VEHICLE ONLY <input type="checkbox"/> RAN RED LIGHT <input type="checkbox"/> DRIVING ON WRONG SIDE OF ROAD <input type="checkbox"/> VIOLATED LICENSE ENDORSEMENT <input type="checkbox"/> SPEEDING IN SCHOOL ZONE <input type="checkbox"/> ALLIED <input type="checkbox"/> RAN STOP SIGN <input type="checkbox"/> NO CLASS C LICENSE <input type="checkbox"/> VIOLATED LICENSE ENDORSEMENT <input type="checkbox"/> COOL <input type="checkbox"/> RECKLESS DRIVING <input type="checkbox"/> FAIL YIELD RIGHT OF WAY <input type="checkbox"/> NO CLASS B LICENSE <input type="checkbox"/> NO LIABILITY INSURANCE <input type="checkbox"/> IMPROPER LANE CHANGE <input type="checkbox"/> ILLEGAL TURN <input type="checkbox"/> NO CLASS M LICENSE <input type="checkbox"/> OTHER VIOLATION _____ <input type="checkbox"/> FOLLOWING TOO CLOSELY						
<input type="checkbox"/> DATE COMPLETED DRIVING SAFETY COURSE _____ (Code 3402) Date violation committed _____ Date Convicted _____						
Paid: <input type="checkbox"/> Cash <input type="checkbox"/> M/R Cash <input type="checkbox"/> Auto Deductible <input type="checkbox"/> Judgment <input type="checkbox"/> Cash <input type="checkbox"/> Forfeited Bond Amount \$ _____ Court: <input type="checkbox"/> Municipal <input type="checkbox"/> Justice of the Peace, Precinct _____ Precinct _____ City _____ Town <input type="checkbox"/> Other Court _____ Search of Public: <input type="checkbox"/> Yes <input type="checkbox"/> No. Consent to Search: <input type="checkbox"/> Yes <input type="checkbox"/> No County _____						
CERTIFIED AS TRUE AND CORRECT. <span style="float: right;">DR-18 (Rev. 1/02)</span>						
<input type="checkbox"/> MAGISTRATE <input type="checkbox"/> CLEAR						

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## TRANSPORTATION CODE

- SPEEDING
  - Greater than 10 % above posted limit – Use DPS code 3586
  - Speeding in a school zone – Use DPS code 3596

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### Transportation Code

- **Form of report for convictions & forfeitures**
  - Name, address, physical description, race, or ethnicity, date of birth, DL number;
  - Registration number
  - Date and nature of offense
  - Date of conviction
  - Amount of fine or forfeiture
  - If a search was conducted and if consent was given

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### Transportation Code

- **Form of report for convictions & forfeitures (additional information on CMV and CDL)**
  - Whether vehicle a commercial motor vehicle
    - Involved in transporting hazardous materials
    - Whether offense was a serious traffic offense
  - Additional information on CDL
    - Social security number of driver
    - CDL or CD learner's permit number

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### Transportation Code

- **Passing School Bus Loading or Unloading Children**
  - Second or Subsequent conviction
  - Court may order DL suspension
    - No longer than six (6) months
    - Report order on DIC-15 form

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## Transportation Code

- **Convictions under Section 521.453, T.C.**  
(Class C misdemeanor-\$500 max fine)
  - Selling, manufacturing, distributing, or possessing a document that is deceptively similar to a driver's license or a personal identification certificate issued by DPS unless the document displays the statement "NOT A GOVERNMENT DOCUMENT" diagonally printed clearly and indelibly on both the front and back of the document in solid red capital letters at least one-fourth inch in height.

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## Transportation Code

- **Conviction under Section 521.453, T.C.**
  - Automatic DL suspension
  - Court may require surrender of DL
    - Clerk must send the DL with a report of the conviction to DPS by 10<sup>th</sup> after license surrendered
    - Court orders suspension
    - Suspension period: not less than 90 days or more than one year
    - Clerk reports suspension on DIC-21 form

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**NOTICE OF SUSPENSION-VIOLATION OF LICENSE OR CERTIFICATE PROVISION  
ARTICLE 6687B, SECTION 32 AND 32A, V.T.C.S.**

(PRINT OR TYPE)

NAME \_\_\_\_\_ (FIRST) \_\_\_\_\_ (MIDDLE) \_\_\_\_\_ (LAST) \_\_\_\_\_ (SO SEC NO.) \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ TEXAS \_\_\_\_\_ (Zip Code)

DRIVER LICENSE # \_\_\_\_\_ BIRTH DATE OF \_\_\_\_\_ RACE \_\_\_\_\_ SEX \_\_\_\_\_

OFFENSE COMMITTED \_\_\_\_\_

DATE OFFENSE COMMITTED \_\_\_\_\_ DISPOSITION DATE \_\_\_\_\_

TRANSPORTING HAZARDOUS MATERIAL \_\_\_\_\_ NO \_\_\_\_\_ YES

EMPLOYER \_\_\_\_\_ (IF CONVICTED OF VIOLATING OUT OF SERVICE ORDER)

NOTE: Court must indicate beginning and ending dates of suspension

DRIVER LICENSE OR OPERATING PRIVILEGE SUSPENDED

BEGINNING DATE \_\_\_\_\_ ENDING DATE \_\_\_\_\_

CERTIFIED BY \_\_\_\_\_ TITLE \_\_\_\_\_

COURT \_\_\_\_\_ PRECINCT \_\_\_\_\_ PLACE \_\_\_\_\_

CAUSE # \_\_\_\_\_ CITY \_\_\_\_\_ COUNTY \_\_\_\_\_

(See Reverse Side)

(FORMERLY DL-21) DIC-21 (REV. 10/90)

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### Transportation Code

- **DSC dismissals**
  - Report date defendant completed course
  - Report on DR-18 or electronically by DPS code
- **Teen court dismissals**
  - Report the date of completion of teen court for traffic offenses
  - Report on DR-18 or electronically by DPS Code

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### Transportation Code

- **Nonresident Violator Compact (NRVC)**
  - For FTA or FTP
  - Six part form
    - Mail first to defendant, wait 15 days
    - If no response, mail second and third pages of form to DPS
    - When defendant disposes of case, mail fourth page (defendant's receipt) to defendant
    - Mail fifth copy to DPS (notice of withdrawal of suspension)
    - Keep sixth part in case file
  - Must report within six months

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### Transportation Code NRVC Exemptions

- Moving violations that carry a suspension
- Equipment violations
- Motor carrier violations
- Lease law violations
- Registration law violations
- Offenses requiring a personal appearance
- Size and weight limit violations
- Parking or standing violations
- Transporting hazardous material violations

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### Education Code

- **Failure to Attend School Offense**
  - DL suspension or denial sanction (discretionary with judge)
    - For a period not to exceed 365 days
    - Use DIC-15 form

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### New Trial

- Do not report if new trial granted
- If second trial results in conviction of a traffic offense or an Alcoholic Beverage Code offense, report

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### Appeal

- Do not report
- If county court refuses jurisdiction of traffic or Alcoholic Beverage Code conviction and sends the case back, report

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## Failure to Appear

- Defendant under age 17 fails to appear, court:
  - May order DPS to suspend or deny issuance of DL
  - Must submit report within 2 years of FTA
  - Suspension or denial effective until person complies
  - Report on DIC-81
  - Report on DIC-81 when defendant fully complies

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## Failure to Pay or Violation of Court Order

- Person under age 17
- Applies to All offenses
- Court conducts contempt hearing
- If court retains jurisdiction of contempt under Article 45.050, C.C.P., Court:
  - May order DL suspended or denied until defendant complies
    - Report on DIC-81
  - Report when defendant fully complies
    - Reported on DIC-81

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## Information Reported on Forms

- DIC-15
  - Alcoholic Beverage Code
    - Convictions (DL suspensions)
    - Acquittals of DUI
    - Orders of deferred disposition
    - Failure to complete alcohol awareness program
    - Failure to complete community service

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### Information Reported on Forms

- **DIC-15**
  - **Penal Code**
    - **Public Intoxication (persons under age 21 and at least age 17)**
      - Conviction (DL suspension)
      - Orders of deferred disposition
      - Failure to complete alcohol awareness program
      - Failure to complete community service

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### Information Reported on Forms

- **DIC-15**
  - **Health and Safety Code**
    - Failure to complete tobacco awareness program
  - **Education Code (Failure to Attend School)**
    - If court suspends DL as a sanction
  - **Transportation Code**
    - DL suspension on second or subsequent conviction for passing a school bus loading or unloading children if court orders suspension

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### Information Reported on Forms

- **DIC-81**
  - **Failure to Appear (under age 17)**
  - **Failure to pay (under age 17)**
    - Sanction of contempt

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**Information Reported on Forms**

- **DR-18**
  - **Transportation Code**
    - Traffic convictions
    - Bond forfeitures on traffic offenses
    - Dismissals of DSC/MOC and Teen Court
  - **Penal Code**
    - Possession of alcoholic beverage in motor vehicle
    - Theft of gasoline

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**Information Reported on Forms**

- **DIC-21**
  - **Transportation Code**
    - Conviction under Section 521.453 (DL suspension)

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**Addresses**

<ul style="list-style-type: none"> <li>• <b>Automated reports</b> <ul style="list-style-type: none"> <li>– Texas Department of Public Safety Driver Records/Data Submission P.O. Box 4087 Austin, Texas, 78773-0364</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Manual reports</b> <ul style="list-style-type: none"> <li>– Texas Department of Public Safety Driver Records/Ticket Verification P.O. Box 4087 Austin, Texas 78773-0361</li> </ul> </li> </ul>
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### To Correct an Error

- Send to one of the address
- If offense is not failure to maintain financial responsibility, court may call at
  - 512/424-2031
  - 512/424-3545
  - 512/424-5988

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### Denial of Renewal of DL

- City must contract with DPS
- For FTA, FTP, or failing to satisfy a judgment in a manner ordered by the court
- Defendant cannot renew DL
- Traffic citations must have a notice
- Defendant pays \$30 fee

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### Contract with DPS

- DPS may not continue to deny renewal if court notifies DPS
  - That person acquitted
  - The case was destroyed according to records retention policy

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**THE END**

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## REPORTS TO THE DEPARTMENT OF PUBLIC SAFETY

### A. Alcoholic Beverage Code

Courts are required to report to the Department of Public Safety (DPS) certain information regarding Alcoholic Beverage Code offenses committed by minors.

The information maintained by DPS regarding Alcoholic Beverage Code offenses reported by courts is confidential and may not be disclosed, except to law enforcement agencies and to courts to enable these agencies and courts to carry out their official duties. (Section 106.117(c) and (d), A.B.C.)

#### 1. Convictions

Section 106.117(a)(2). A.B.C. requires courts to report to DPS the convictions of Alcoholic Beverage Code offenses committed by minors.

- Order of Driver's License Suspension or Denial
  - The court is required to order DPS to suspend or deny issuance of the driver's license of a minor convicted of the following offenses: *possession, consumption, purchase, or attempt to purchase alcohol; or misrepresentation of age by a minor.*
  - The judge orders the suspension or denial of issuance of a driver's license.
  - Clerks submit the report of the order. (Section 106.071(h), A.B.C.)
- Length of Suspension or Denial
  - The suspension takes effect on the 11<sup>th</sup> day after the date the minor is convicted (date judgment is entered).
  - If the conviction is for a first offense, the suspension or denial of issuance of a driver's license is for 30 days;
  - For a second conviction, the suspension or denial is for 60 days.
  - If the defendant is under 17 years of age and the conviction is a third conviction, the suspension or denial is for 180 days.
  - If the defendant charged with an Alcoholic Beverage Code offense is age 17, the punishment for a third offense when there are two prior convictions is a fine of not less than \$250 or more than \$2,000 and/or confinement for a jail term not to exceed 180 days. (Section 106.071(d)(2), A.B.C.)
- Form of Report
  - To report electronically, courts can submit the information by diskette or by e-mail. DPS provides courts with codes that courts can enter into tables on their computers in order to properly generate the reports. Contact DPS headquarters in Austin for a copy of the codes.
  - If a court reports manually, the court must submit this information to DPS on their form, DIC-15.

## **2. Failure to Complete Alcohol Awareness Program**

- If a minor fails to complete the alcohol awareness program, the court must order DPS to suspend or deny issuance of the driver's license.
- Length of Suspension or Denial
  - When a minor fails to complete the alcohol awareness program, the court must order DPS to suspend or deny issuance of the minor's driver's license for a period not to exceed six months. (Section 106.115, A.B.C.)
- Form of Report
  - To report electronically, courts can submit the information by diskette or by e-mail. DPS provides courts with codes that courts can enter into tables on their computers in order to properly generate the reports. Contact DPS headquarters in Austin for a copy of the codes.
  - If a court reports manually, the court must submit this information to DPS on their form, DIC-15.
- Regardless of whether the court reports manually or electronically, the court must indicate on the report the beginning and ending suspension period.

## **3. Failure to Complete Community Service**

- If a minor fails to complete the required community service, the court must order DPS to suspend or deny issuance of the minor's driver's license. (Section 106.115, A.B.C.)
- Length of Suspension or Denial
  - If a minor fails to complete the required community service, the court must order DPS to suspend or deny issuance of the minor's driver's license for a period not to exceed six months. (Section 106.115, A.B.C.)
- Form of Report
  - To report electronically, courts can submit the information by diskette or by e-mail. DPS provides courts with codes that courts can enter into tables on their computers in order to properly generate the reports. Contact DPS headquarters in Austin for a copy of the codes.
  - If a court reports manually, the court must submit this information to DPS on their form, DIC-15.
- Regardless of whether the court reports manually or electronically, the court must indicate on the report the beginning and ending suspension period.

## **6. Orders of Deferred Disposition for an Alcoholic Beverage Code Offense**

- Courts must report to DPS an Alcoholic Beverage Code offense deferred under Article 45.051, C.C.P. (Section 106.117(a)(3), A.B.C.)
- The report must be submitted to DPS when the court grants and orders the deferred.

- Notice of the deferred must be in a form prescribed by DPS and must contain the driver's license number, if any, of the defendant. (Section 106.117(c), A.B.C.) DPS is requiring courts to use the DIC-15 form for this report.
- If the minor does not complete the terms of the deferral, the court does not have to notify DPS since deferral constitutes a conviction for enhancement purposes.
- Because Section 106.115, A.B.C. requires courts to make a defendant attend an alcohol awareness course as a term of the deferral, if the defendant does not complete the alcohol awareness course, the court must order DPS to suspend or deny issuance of the driver's license for a period not to exceed six months. This order is submitted on DPS form DIC-15.

## **7. Acquittals of Driving under the Influence**

- Section 106.117(a)(4), A.B.C. requires courts to report to DPS the acquittal of the offense of driving under the influence of alcohol (DUI) by a minor.
- If the court reports manually, the court submits this report on the DPS form DIC-15.
- If the court submits an electronic report, it is reported by code to DPS.

## **B. Penal Code**

### **1. Public Intoxication**

- When a person under the age of 21 is charged with the offense of public intoxication, the court must follow the punishment rules required when a person is convicted of committing an Alcoholic Beverage Code offense. (Section 49.02(e), P.C.)
- The court sets the fine at no more than \$500, orders DPS to suspend or deny issuance of the driver's license, requires community service, and requires attendance at an alcohol awareness program.
- Length of Suspension or Denial
  - The suspension takes effect on the 11<sup>th</sup> day after the date the minor is convicted (date judgment is entered).
  - If the conviction is for a first offense, the suspension or denial of issuance of a driver's license is for 30 days.
  - For a second conviction, the suspension or denial is for 60 days.
  - If the defendant is under 17 years of age and the conviction is a third conviction, the suspension or denial is for 180 days.
  - If the defendant charged with an Alcoholic Beverage Code offense or public intoxication is age 17, the punishment for a third offense when there are two prior convictions is a fine of not less than \$250 or more than \$2,000 and/or confinement for a jail term not to exceed 180 days. (Section 106.071(d)(2), A.B.C.)

- Form of Report
  - To report to DPS the order of driver’s license suspension required upon conviction and the order of driver’s license suspension for failure to complete the alcohol awareness program, courts must use the DIC-15 form to report manually or use the DPS codes to report electronically.
  - The information required to be reported is the same as for the Alcoholic Beverage Code offenses.
- Failure to complete the alcohol awareness program or perform community service
  - If the defendant does not complete the alcohol awareness program or perform the community service, the court must order DPS to suspend or deny issuance of a driver’s license for a period not to exceed six months. (Sections 106.071 and 106.115, A.B.C.) [Note: Because municipal court does not have jurisdiction over a person under the age of 17 charged with public intoxication, municipal court would only handle a person charged with public intoxication if he or she is at least 17 years of age when the offense is committed. (Section 51.03(f), F.C.)]

## **2. Possession of Alcoholic Beverage in Motor Vehicle**

- The penal offense of possession of alcoholic beverage in motor vehicle in Section 49.031, P.C. is commonly called “open container law.” Although this offense is in the Penal Code, it is a traffic offense. Courts are required to report convictions of this offense to DPS.
- If courts report electronically, the court must use DPS Code 3323.
- Courts that report manually can submit the conviction report on a copy of the citation with the conviction information noted or use the DPS form DR-18 and complete it like any other traffic conviction.

## **3. Theft of Gasoline**

- Municipal court has jurisdiction of theft under Section 31.03, P.C. if the pecuniary loss is less than \$50. Since most theft of gasoline is less than \$50, these cases are filed in the municipal court.
- Article 42.019, C.C.P. requires a judge to enter an affirmative finding if it is determined beyond a reasonable doubt in either the guilt or innocence phase of trial that the defendant has committed theft of gasoline under Section 31.03, P.C. When the judge enters an affirmative finding and determines that the defendant has previously been convicted of a prior offense of theft of gasoline, the judge must enter a special affirmative finding in the judgment about the prior conviction.
- The court must then report all convictions of theft of gasoline.
- After DPS receives a report of a second conviction, DPS will automatically suspend the defendant’s driver’s license.
- Length of Suspension or Denial

- Section 521.349 of the Transportation Code authorizes DPS to automatically suspend the defendant’s driver’s license for 180 days from the date of final conviction when there is a special affirmative finding.
- In the event the defendant’s license is revoked or the defendant does not have a driver’s license, the period of license denial is the 180 days after the date the person applies to the department for reinstatement or issuance of a driver’s license.
- If the defendant has previously been denied a license under this section or had a license suspended, the period of suspension is one year from the date of a final conviction. The period of license denial is one year after the date the person applies to DPS for reinstatement or issuance of a driver’s license.
- Form of Report
  - The conviction is reported in the same manner as traffic convictions and should be reported as soon as possible after the conviction.
  - If a court reports manually, the court can submit the report on the DPS form DR-18, on a copy of the citation, or by computer list.
  - If the court reports electronically, the report can be submitted by diskette, computer tape, or e-mail. Contact DPS for the code to report electronically.

## **C. Health and Safety Code**

### **1. Tobacco Awareness Program**

- Tobacco offenses include *possession, purchase, consumption, or receipt of cigarettes or tobacco products.*
- The court must order a person under the age of 18 convicted of a tobacco offense to complete a tobacco awareness program. (Section 161.253, H.S.C.)

### **2. Failure to Complete Tobacco Awareness Program**

- If the defendant does not complete the tobacco awareness program, the court must order DPS to suspend or deny issuance of a driver’s license or permit.
- Length of Suspension or Denial
  - The order has to specify the period of the suspension or denial, which may not exceed 180 days after the date of the order. (Section 161.254, H.S.C.)
- Form of Report
  - The court must use DPS form DIC-15 to report the failure to complete the tobacco awareness program. Although the statute does not provide how long the court has to submit the DIC-15 form, it should be submitted as soon as possible after the judge orders the suspension so that DPS can immediately start the suspension process.

## **D. Transportation Code**

- Each magistrate or judge of a non-record court and each clerk of a court of record must maintain records of cases involving a violation of laws regulating the operation of vehicles on highways. (Section 543.201, T.C.) Although judges in courts of non-record are required to keep records of defendants charged with traffic violations, judges usually delegated this duty to clerks because there is no discretion in keeping the record.
- Courts are required to report the following information on all traffic violations, including city ordinance traffic violations, regardless of whether the defendant has a driver's license or regardless of the what kind of plea was entered as long as there was a finding of guilty:
  - convictions and forfeiture of bail;
  - convictions under Section 521.453 T.C.;
  - driving safety course completions;
  - teen court completions;
  - minor's failure to appear;
  - minor's failure to pay or violation of a court order; and
  - defendant's failure to comply with the Nonresident Violator Compact.

### **1. Convictions and Forfeitures of Bail**

- A record of traffic convictions and forfeitures of bail on traffic offenses must be submitted to DPS no later than the 30<sup>th</sup> day after the date of the conviction or forfeiture. (Section 543.203, T.C.) The court counts the 30 days starting with the day after date the judgment was entered. (Section 311.014, G.C.)
- The following examples illustrate reporting time for convictions:
  - When a defendant makes an appearance by mail and pays the fine or delivers to the court a plea and fine payment, the clerk must give the fine payment to the judge to accept and enter a judgment of conviction. In this instance, the court starts counting the 30 days after the day the judge enters judgment, not from the time the court receives the payment.
  - When a court grants an extension or a time payment plan, the court does not wait to receive the final payment before reporting. The court determines the proper reporting period by counting 30 days from day after the date the judgment was entered by the judge.
  - When a defendant discharges a fine by community service, the court starts counting the 30-day time period starting with the day after judgment was entered by the judge, not when the defendant completes the community service.
- When a defendant charged with a traffic offense posts bond and fails to appear, a forfeiture of bail is declared. At the end of forfeiture process, which usually takes about three months, if the court enters a final judgment for the state, the court



must report the bond forfeiture on the traffic offense as if it were a conviction. The clerk has 30 days starting from the day after final judgment was entered to report the forfeiture to DPS.

- Form of the Report
  - The report required to be submitted to DPS by a magistrate, judge, or clerk must contain the date of conviction or forfeiture of bail of a person charged with violating a law regulating the operation of a vehicle on a highway. (Section 543.203, T.C.)
  - The report must include the following:
    - ♦ Name, address, physical description, including race or ethnicity (Caucasian, African, Hispanic, Asian, or Native American Descent), date of birth, and driver's license number of the person charged;
    - ♦ Registration number of the vehicle involved;
    - ♦ Whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;
    - ♦ The person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver's learner's permit;
    - ♦ The date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;
    - ♦ Whether a search of the vehicle was conducted and whether consent for the search was obtained;
    - ♦ The plea, the judgment, and whether bail was forfeited;
    - ♦ The date of the conviction; and
    - ♦ The amount of the fine or forfeiture.
  - If a court reports manually, the court can report by submitting the information on DPS form DR-18, a legible duplicate copy of the citation, or a computer list.
  - If the court reports electronically, the court can submit the report by diskette, e-mail, or magnetic tape.
  - Courts should contact DPS to discuss a certain reporting method to be certain it is acceptable to DPS. Contact DPS at (512) 424-2028 for more information on methods of reporting.
- Failure to Report
  - If a judge, magistrate, or clerk fails to submit a traffic conviction report to DPS, he or she may be removed from office. (Section 543.206, T.C.)
  - Failure to report may constitute misconduct of office. Misconduct of office is any unlawful behavior by a public officer in relation to the duties of his or her office. It includes a failure to act when there is an affirmative duty to act.

## **2. Convictions under Section 521.453 T.C.**

- Section 521.453, T.C. says that a person may not sell, manufacture, distribute, or possess a document that is deceptively similar to a driver's license or a personal identification certificate issued by DPS unless the document displays the statement "NOT A GOVERNMENT DOCUMENT" diagonally printed clearly and indelibly on both the front and back of the document in solid red capital letters at least one-fourth inch in height. A document is deceptively similar to a driver's license or personal identification certificate if a reasonable person would assume that it was issued by DPS. An offense under this section is a Class C misdemeanor. (Section 521.453(d), T.C.)
- A person convicted of this offense will have his or her license suspended. The requirement for the suspension is found in Section 521.341, T.C., which provides that a license is automatically suspended on final conviction of the license holder if he or she is convicted under Section 521.453, T.C.
- The court in which the person is convicted may require the surrender to the court all driver's licenses held by the person. (Section 521.347, T.C.) If the court requires a defendant to surrender his or her driver's license, the clerk must send the license with a report of the conviction to DPS by the 10<sup>th</sup> day after the license is surrendered. (Section 521.347, T.C.)
- Length of Suspension
  - Section 521.346, T.C. provides that the period of suspension shall be for not less than 90 days or more than one year.
- Form of Report
  - When a defendant is convicted of an offense charged under Section 521.453, T.C., the court must report this conviction on DPS form DIC-21. This form is used to report any offense that carries an automatic driver's license suspension upon conviction.

## **3. Driving Safety Course Completion**

- Defendants may elect to take a driving safety course (DSC) to have certain traffic violations dismissed. (Article 45.0511, C.C.P.)
- If the defendant completes the course and timely submits proof to the court, the court must dismiss the case and report to DPS the date of completion of the course.
- The completion of the DSC can be reported manually on the DPS form DR-18, by a copy of the citation, or by computer list or electronically by diskette, computer tape, or e-mail. If a copy of the citation is used to report, the court must report the case number and date of completion of the DSC.

#### 4. Teen Court Completion

- If a charge for a traffic offense is deferred under Article 45.052, C.C.P., the court is required to report the completion of the teen court program. (Article 45.052(d), C.C.P.)
- The completion of the teen court program can be reported manually on the DPS form DR-18, by a copy of the citation, or by computer list or electronically by diskette, computer tape, or e-mail.

#### 7. Failure to Comply with the Nonresident Violator Compact

- Under the terms of the Nonresident Violator Compact of 1977, DPS must request driver's license suspension of any resident of a member state who receives a citation for a traffic violation in Texas, fails to respond to the citation, and is reported to DPS by a court. The other members of the Compact may also request the suspension of the driver's license of any Texas resident who fails to respond to a citation in the other state's respective jurisdiction. (Chapter 703, T.C.) All states are members, except for Alaska, California, Michigan, Montana, Oregon, and Wisconsin.
- Procedures
  - When an out-of-state violator fails to respond to a citation or to pay a fine for a violation, the court reports to DPS using the six-page *Notice of Failure to Comply* form. Contact DPS at (512) 424-2028 for information about where to order the form.
  - The steps to report non-compliance of an out-of-state violator are as follows:
    - ♦ mail original, or first page, of form to the defendant;
    - ♦ hold form in file for 15 days to await response from defendant;
    - ♦ if defendant fails to answer notice, mail second and third pages of the form to DPS (DPS will notify the motorist's home state of the non-compliance);
    - ♦ hold fourth, fifth, and sixth pages of the notice in the court file; and
    - ♦ when the defendant resolves the case; mail fourth page (defendant's receipt) to defendant and fifth page (notice of withdrawal of suspension) to DPS.
- Statutorily Exempt Violations
  - moving traffic violations which alone carry a suspension;
  - equipment violations;
  - motor carrier violations;
  - lease law violations;
  - registration law violations;
  - offenses which mandate personal appearance;
  - size and weight limit violations;

- parking or standing violations; and
- transportation of hazardous material violations.
- Time Limit for Reporting
  - DPS may not transmit a report on any violation if the date of the transmission is more than six months after the date on which the traffic citation was issued. (Section 703.002, Article III(f), T.C.)

## **8. Prohibited Reporting of Traffic Cases Deferred**

- A municipal court judge who defers a traffic case under Article 45.051, C.C.P. and places a defendant on probation may not submit a written record to DPS unless the judge subsequently adjudicates the defendant's guilt. Then, the judge must submit the record not later than the 30<sup>th</sup> day after the date on which the judge adjudicates guilt. (Section 543.204, T.C.)
- This conviction record is submitted either electronically by diskette or e-mail or manually by computer list, by a copy of the citation with conviction information, or by DPS form DL-18.

## **E. Education Code**

### **1. Failure to Attend School**

- Driver's License Suspension or Denial Sanction
  - Article 45.054, C.C.P., which is the statute containing the proceedings for the offense of failure to attend school, permits the court to order, in addition to any other order under Article 45.054, the Department of Public Safety to suspend or deny issuance of a driver's license or permit. (Article 45.054(f), C.C.P.)
  - Length of Suspension or Denial
    - ◆ The suspension or denial of issuance of a driver's license and permit cannot exceed 365 days. (Article 45.054(f), C.C.P.)
  - Form of Report
    - ◆ The court must use DPS form DIC-15 to report the order of driver's license suspension. The report should be submitted as soon as possible after the order of suspension or denial.

## **F. New Trial**

- When a defendant requests a new trial, the court does not report a conviction or order of driver's license suspension or denial unless the defendant is not granted the new trial and does not appeal.
- If a new trial is granted, the court reports only if the defendant is convicted at the second trial and does not appeal. The report would be submitted in the same manner and use the same methods or forms as if no new trial had been granted.

## **G. Appeals**

- When a defendant appeals his or her conviction, the court does not report the conviction or driver's license suspension because the municipal court judgment is not a final conviction.
- In non-record courts, if the defendant is convicted in the county court, the county court reports the conviction to DPS.
- In municipal courts of record, if the judgment is affirmed on appeal, then the municipal court reports the conviction. The report would be submitted in the same manner and use the same methods or forms as if no appeal had occurred.

## **H. Failure to Pay and Violation of a Court Order**

- Article 45.050, provides that when a child fails to pay a fine or violates a court order for any fine-only offense, the municipal court may, if it retains jurisdiction, order DPS to suspend or deny issuance of the child's driver's license or permit until the child has fully complied with the orders of the court. (Article 45.050(c)(2)(B), C.C.P.)
- This provision only applies to defendants under the age of 17. If a person is 17 years of age or older at the time that the offense occurred and the person fails to pay, the court may issue a *capias* pro fine for the arrest of the defendant.
- Length of Suspension or Denial
  - Article 45.050, C.C.P. provides that DPS shall suspend or deny until the child fully complies with the orders of the court.
  - DPS shall revoke or deny issuance of the driver's license of a person who is at least age 14 but younger than age 17 for default in payment of fine when reported by a court. This report must be submitted within two years from the failure to pay. The suspension or denial of driver's license is effective until the child fully complies and the court notifies DPS of the compliance. (Sections 521.201(8) and 521.294(6), T.C.)
  - Article 45.050(c)(2)(B), C.C.P. provides if the child fails to pay or violates a court order, the court must order DPS to suspend or deny issuance of a driver's license until the child fully complies.
- Form of Report
  - The order of suspension or denial of issuance of driver's license is reported to DPS on their form, DIC-81.
  - When the defendant makes a final disposition of the case, the court must report the final disposition to DPS. This report is also submitted to DPS on their form, DIC-81. When a defendant makes a final disposition on his or her case, the court must report to DPS the disposition so that the defendant can get his or her driver's license.
  - A minor whose license is suspended or revoked under this statute must pay a \$100 reinstatement fee to DPS. (Section 521.313, T.C.)
  - When the defendant makes a final disposition of the case, the court must

report the final disposition to DPS. This report is also submitted to DPS on their form DIC-81.

- A minor whose license is suspended or revoked under this statute must pay a \$100 reinstatement fee to DPS. (Section 521.313, T.C.)

#### **J. Failure to Appear for a Transportation Code Offense**

- Subsection 729.003(a), T.C. requires courts to report to DPS a person under the age of 17 charged with a traffic offense who fails to appear.
- Length of Suspension or Denial
  - DPS will deny issuance of a driver's license to any person under the age of 17 charged with a traffic offense who fails to appear unless the court files an additional report on final disposition of the case. (Section 521.201(7), T.C.)
  - DPS will revoke the driver's license of any minor charged with a traffic offense who fails to appear unless the court files an additional report on final disposition of the case. (Section 521.294, T.C.)
  - DPS may not reinstate a license until the court files an additional report on the final disposition of the case. (Section 521.306(c), T.C.)
  - A minor whose license is suspended or revoked under this statute must pay a \$100 reinstatement fee to DPS. (Section 521.313, T.C.)
- Form of Report
  - Courts must use DPS form DIC-81 to report the failure to appear of a person under the age of 17.

#### **K. Failure to Appear**

- The court may suspend or deny issuance of a driver's license of a person under the age of 17.
- When a defendant makes a final disposition on his or her case, the court must report to DPS the final disposition
- This information is also reported on the DIC-81 form. There is no requirement to submit this report in two years. Courts, however, should report as soon as possible after the failure to pay.
- Length of Suspension or Denial
  - DPS will not issue a driver's license to any person under the age of 17 charged with a traffic offense who unless the court files an additional report on final disposition of the case.
  - DPS will revoke the driver's license of any minor charged with a traffic offense who fails to appear unless the court files an additional report on final disposition of the case. (Section 521.294, T.C.)
  - DPS may not reinstate a license until the court files an additional report on the final disposition of the case. (Section 521.306(c), T.C.)
  - A minor whose license is suspended or revoked under this statute must pay a

\$100 reinstatement fee to DPS. (Section 521.313, T.C.)

- Form of Report
  - The report of the order of suspension or denial of issuance of driver’s license is made on DPS form DIC-81.
  - When the defendant makes a final disposition of the case, the court must report the final disposition to DPS.
  - This report is also submitted to DPS on their form, DIC-81.
  - A minor whose license is suspended or revoked under this statute must pay a \$100 reinstatement fee to DPS. (Section 521.313, T.C.).

## **L. Information Reported on Forms**

### **1. DIC-15**

Courts should complete the DIC-15 form with the following information:

- Alcoholic Beverage Code
  - convictions: courts have to report the order of driver’s license suspension or denial (note the date of judgment because the license suspension is effective on the 11<sup>th</sup> day after judgment);
  - acquittals of DUI: courts report the offense and acquittal in the offense section;
  - orders of deferred: courts report the offense and enter the word “deferred” after the offense in the offense section;
  - failure to complete the alcohol awareness program: enter in the offense section of the report “failure to complete alcohol awareness program” and provide the beginning and ending dates of the suspension; and
  - failure to complete community service: enter in the offense section of the report “failure to complete community service” and provide the beginning and ending dates of the suspension.
- Penal Code (Public Intoxication—defendants who are at least age 17 and under the age of 21)
  - convictions: courts have to report the order of driver’s license suspension or denial (note the date of judgment because the license suspension is effective on the 11<sup>th</sup> day after judgment);
  - orders of deferred: courts report the offense and enter the word “deferred” after the offense in the offense section;
  - failure to complete the alcohol awareness program: enter in the offense section of the report “failure to complete alcohol awareness program” and provide the beginning and ending dates of the suspension; and
  - failure to complete community service: enter in the offense section of the report “failure to complete community service” and provide the beginning and ending dates of the suspension.

- Health and Safety Code
  - failure to complete the tobacco awareness program: enter in the offense section of the report “failure to complete tobacco awareness program” and provide the beginning and ending dates of the suspension or denial.
- Education Code (Failure to Attend School)
  - court may order as a sanction upon conviction the suspension of the driver’s license for a period not to exceed 365 days; the court provides DPS with the beginning and ending dates of the suspension or denial.

Information reported on the DIC-15 form includes the following:

- name, date of birth, race, and gender;
- driver’s license number, identification number, or social security number;
- address;
- offense committed, or
  - for alcohol offenses, including public intoxication, the failure to complete the alcohol awareness program or community service;
  - for tobacco offenses, the failure to complete the tobacco awareness program; or
  - for the offense of failure to attend school, the driver’s license suspension as a sanction;
- date of offense;
- cause number; and
- dates of the suspension:
  - in the case of a conviction of an alcohol offense including public intoxication, report the judgment date since the suspension is automatically effective on the 11<sup>th</sup> day after judgment;
  - in the case of failure to complete an alcohol awareness program or community service for an alcohol offense, or a tobacco awareness program, report the suspension dates (not to exceed 180 days); and
  - in the case of failure to attend school, report the dates of the driver’s license suspension ordered by the court as a sanction; the court reports the dates of the suspension.

## **2. DIC-81**

To report the failure to appear, failure to pay, or violation of a court order of a person under the age of 17, courts must use the DIC-81 form. If the defendant appears in court and complies with all court orders, courts use the same DIC-81 form to report the final disposition.

The following information is required to be reported:

- name, date of birth, race, and gender;



- driver's license number, identification number, or social security number;
- address;
- offense committed;
- date of offense;
- whether it is failure to appear or failure to pay; and
- upon final disposition, date of final disposition.

### **3. DR-18**

Section 543.202, T.C. requires a written record of a traffic conviction, including a conviction of the penal offense of possession of alcoholic beverage in motor vehicle, or final forfeiture of a bond filed for a traffic offense be reported to DPS. The information must contain the following:

- name and address of the defendant;
- physical description, including race or ethnicity ("Race or ethnicity" means a particular descent, such as Caucasian, African, Hispanic, Asian, or Native American descent.);
- date of birth;
- defendant's driver's license number, if any, and type;
- registration number of vehicle involved;
- whether a search of the vehicle was conducted and whether consent for the search was obtained;
- date and nature of offense;
- date of hearing or trial;
- plea;
- judgment or whether bail was forfeited (final forfeiture), or the date of completion of a driving safety course or date of completion of teen court; and
- amount of fine or forfeiture of bail.

Section 543.202, T.C. requires the DR-18 report of traffic convictions of commercial drivers operating a commercial motor vehicle contain the following additional information:

- commercial driver's license number and social security number, if available;
- that the vehicle was a commercial motor vehicle;
- whether the vehicle was involved in the transporting of hazardous materials; and
- date and nature of offense, including whether the offense was a serious traffic offense as defined in Section 522.003(25), T.C. (Serious traffic offenses arise from the driving of a commercial motor vehicle for excessive speeding over 15 mph or more; reckless driving; violations of state and local traffic laws other than parking, weight, or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely.).

#### **4. DIC-21**

When a defendant is convicted of an offense charged under Section 521.453, T.C., the court must report this conviction to DPS on DPS form DIC-21. This form is used to report any offense that carries an automatic driver's license suspension upon conviction. Information that must be reported on DIC-21 includes the following:

- name;
- address of defendant;
- social security number;
- race;
- gender;
- offense committed;
- date offense committed;
- conviction date;
- beginning and ending dates of suspension [Court sets period of suspension of not less than 90 days or more than one year. If the court does not set the period, the department is required to suspend the license for one year. (Section 521.346, T.C.)];
- name and title of person certifying information on report;
- court address;
- docket number; and
- city and county.

#### **M. Addresses to Send Reports**

##### **1. Automated Reports**

Send automated reports to:

Texas Department of Public Safety  
Driver Records/Data Submission  
P.O. Box 4087  
Austin, Texas 78773-0364

##### **2. Manual Reports**

Send manual reports to:

Texas Department of Public Safety  
Driver Records/Ticket Verification  
P.O. Box 4087  
Austin, Texas 78773-0361

### **3. To Correct an Error**

To correct an error, send correction to the above address or call one of the following telephone numbers: (512) 424-2031; (512) 424-3545; (512) 424-5988. Error resolution can be done by telephone, except for the offense of failure to maintain financial responsibility. For that offense, DPS must have the correction in writing.

## **N. Contracts**

### **1. With the Department of Public Safety**

Cities may contract with DPS to deny driver's license renewal to a person who fails to appear, fails to pay, or fails to satisfy the judgment in a manner ordered by the court. (Chapter 706, T.C.)

- Offenses that may not be reported are traffic offenses with a penalty of more than \$1,000.
- If a city enters into an agreement with DPS, the court is required to collect an additional \$30 fee from defendants and remit \$20 of the fee to the state.
- A peace officer issuing a citation for a violation of a traffic law must provide a written warning that tells the violator if he or she fails to appear in court as provided by law for the prosecution of the offense, fails to pay, or fails to satisfy a judgment ordering the payment of a fine and costs in the manner ordered by the court, he or she may be denied driver's license renewal. The warning, which may be printed on the citation, is in addition to any other warning required by law.
- The court must assess an administrative fee of \$30 for each violation for which the person failed to appear unless the defendant is acquitted of the underlying traffic offense. The fee must be paid when:
  - there is an entry of a judgment on the underlying offense reported to DPS;
  - the underlying offense is dismissed;
  - bond or other security is posted to reinstate the charge for which the warrant was issued; or
  - the person who failed to pay a fine or satisfy a judgment in a manner ordered by the court must pay the fee.
- The court shall notify DPS that there is no cause to continue to deny renewal of the driver's license on payment of the fee and:
  - the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
  - the dismissal of the charge for which the warrant of arrest was issued or judgment arose;
  - the posting of a bond or the giving of other security to reinstate the charge for which the warrant was issued;
  - the payment or discharge of the fine and cost owed on an outstanding judgment of the court; or

- other suitable arrangement to pay the fine and cost within the court’s discretion.
- DPS may not continue to deny issuance of a driver’s license if DPS receives notice
  - that the person was acquitted of the charge on which the person failed to appear or that the failure to appear report or court order to pay a fine or costs was sent to DPS in error; or
  - that the case has been destroyed in accordance with the political subdivision’s records retention policy.
- The \$30 fee is accounted for in the following manner:
  - the fee shall be deposited into the city treasury;
  - the account may be interest-bearing (city may keep interest);
  - the city must report yearly on a form approved by the Comptroller to the Comptroller and DPS the amount of funds received and disbursed;
  - the city must remit \$20 to Comptroller on or before last day of calendar quarter; and
  - the city retains \$10 and deposits it in city’s general fund.





Save Time - Request Your Driver Record Online  
www.texasonline.com

**TEXAS DPS**  
APPLICATION FOR COPY  
OF DRIVER RECORD



DR-1 (Rev. 5/04)

MAIL TO: Driver Records Bureau, Texas Department of Public Safety, Box 149246, Austin, TX 78714-9246

Make CHECK or MONEYORDER Payable To:  
TEXAS DEPARTMENT OF PUBLIC SAFETY

Any questions regarding the information on this form should be directed to  
Customer Service at 512-424-2600. Allow 2-3 weeks for delivery.

Check Type of Record Desired

FEE

- 1. Name - DOB - License Status - Latest Address. \$ 4.00
- 2. Name - DOB - License Status - List of Accidents/Moving Violations in Record within Immediate Past 3 Year Period. \$ 6.00
- 2A. CERTIFIED version of #2. This Record is Not Acceptable for DDC Course. \$ 10.00
- 3. Name - DOB - License Status - List of ALL Accidents and Violations in Record. Furnished to Licensee ONLY. \$ 7.00
- 3A. Certified version of #3. Furnished to Licensee ONLY and is Acceptable for DDC Course. \$ 10.00
- Other: (Original Application, DWLS, etc.) \_\_\_\_\_ \$ \_\_\_\_\_ (If Required)

Mail Driver Record To: (Please Print or Type)

Requestor's Last Name \_\_\_\_\_ Requestor's First Name \_\_\_\_\_  
Street Address \_\_\_\_\_ Texas Driver License Number \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Daytime Telephone Number (include area code) \_\_\_\_\_

If requesting on behalf of a business, organization, or other entity, please include the following:

Name of business, organization, entity, etc. \_\_\_\_\_  
Your Title or Affiliation with above \_\_\_\_\_  
Type of business, organization, etc. (i.e., insurance provider, towing company, private investigation, firm, etc.) \_\_\_\_\_

Information Requested On:

Texas Driver License Number \_\_\_\_\_ Last Name \_\_\_\_\_  
First Name \_\_\_\_\_ Middle Name/Maiden Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Individual's Written Consent For ONE TIME Release to Above Requestor

(Requestor, if you do not meet one of the exceptions listed on the back of this form, please be advised that without the written consent of the driver license/ID card holder, the record you receive will not include personal information.)

I, \_\_\_\_\_, hereby certify that I granted access on this one occasion to my Driver License/ID Card record, inclusive of the personal information (name, address, driver identification number, etc.) to \_\_\_\_\_  
Signature of Licensee/ID Card Holder or Parent/Legal Guardian \_\_\_\_\_ Date \_\_\_\_\_

State and Federal Law Requires Requestors to Agree to the Following:

In requesting and using this information, I acknowledge that this disclosure is subject to the federal Driver's Privacy Protection Act (18 U.S.C. Section 2721 et seq.) and Texas Transportation Code Chapter 730. False statements or representations to obtain personal information pertaining to any individual from the DPS could result in the denial to release any driver record information to myself and the entity for which I made the request. Further, I understand that if I receive personal information as a result of this request, it may only be used for the stated purpose and I may only resell or redisclose the information pursuant to Texas Transportation Code §730.013. Violations of that section may result in a criminal charge with the possibility of a \$25,000 fine.

I certify that I have read and agree with the above conditions and that the information provided by me in this request is true and correct. If I am requesting this driver record on behalf of an entity, I also certify that I am authorized by that entity to make this request on their behalf. I also acknowledge that failure to abide by the provisions of this agreement and any state and federal privacy law can subject me to both criminal and civil penalties.

Signature of Requestor \_\_\_\_\_ Date \_\_\_\_\_

If you are not requesting a copy of your own record or do not have the written consent of DL/ID holder, you must provide the information requested on the reverse.









## NOTICE OF FINAL CONVICTION FOR TRAFFIC LAW VIOLATION (Misdemeanor)

Cause No. \_\_\_\_\_

Ticket No. \_\_\_\_\_

STATE OF TEXAS

\_\_\_\_\_, Texas  
First Middle Last Address City

LICENSE STATE & NO. \_\_\_\_\_  CDL SSN \_\_\_\_\_

<input type="checkbox"/> CMV - CDL						
DATE OF BIRTH	SEX	RACE	<input type="checkbox"/> PLACARDED VEHICLE	VEHICLE REGISTRATION NUMBER	STATE	YEAR

**OFFENSE COMMITTED (check one)**

- |  |  |   |   |
|--|--|---|---|
| <input type="checkbox"/> SPEEDING<br>_____POSTED _____ALLEGED<br><input type="checkbox"/> RAN RED LIGHT<br><input type="checkbox"/> RAN STOP SIGN<br><input type="checkbox"/> FAIL YIELD RIGHT OF WAY<br><input type="checkbox"/> ILLEGAL TURN | <input type="checkbox"/> WRONG WAY ON ONE-WAY STREET<br><input type="checkbox"/> DRIVING ON WRONG SIDE OF ROAD<br><input type="checkbox"/> NO CLASS C LICENSE<br><input type="checkbox"/> NO CLASS B LICENSE<br><input type="checkbox"/> NO CLASS A LICENSE<br><input type="checkbox"/> NO CLASS M LICENSE<br><input type="checkbox"/> OTHER VIOLATION _____ | <input type="checkbox"/> VIOLATED LICENSE RESTRICTION<br>CODE _____<br><input type="checkbox"/> VIOLATED LICENSE ENDORSEMENT<br>CODE _____<br><input type="checkbox"/> NO LIABILITY INSURANCE | <b>SERIOUS TRAFFIC VIOLATIONS<br/>         (IN COMMERCIAL VEHICLE ONLY)</b><br><input type="checkbox"/> SPEEDING 15 OR OVER<br>_____POSTED _____ALLEGED<br><input type="checkbox"/> RECKLESS DRIVING<br><input type="checkbox"/> IMPROPER LANE CHANGE<br><input type="checkbox"/> FOLLOWING TOO CLOSELY |
|--|--|---|---|

DATE COMPLETED DRIVING SAFETY COURSE \_\_\_\_\_  (Code: 3400)

Date violation committed \_\_\_\_\_ Date Convicted \_\_\_\_\_

Plea:  Guilty  Not Guilty  Nolo Contendere      Judgement:  Guilty  Forfeited Bond Amount \$ \_\_\_\_\_

Arrested By Officer:

City  County  State

Court:  Municipal  Justice of the Peace, Precinct \_\_\_\_\_ Place \_\_\_\_\_ City \_\_\_\_\_, Texas  Other Court \_\_\_\_\_

Search of Vehicle:  Yes  No      Consent for Search:  Yes  No      County: \_\_\_\_\_

CERTIFIED AS TRUE AND CORRECT:

DR-18 (Rev. 1/02)

\_\_\_\_\_  MAGISTRATE  CLERK

ADDED 8/03



**NOTICE OF CONVICTION AND SUSPENSION/DISQUALIFICATION**  
PLEASE PRINT OR TYPE

NAME \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST) (SO. SEC. NO.)

ADDRESS \_\_\_\_\_

DRIVER LICENSE # \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_ RACE \_\_\_\_\_ SEX \_\_\_\_\_  
ID # OR NONE

OFFENSE COMMITTED \_\_\_\_\_

DATE OFFENSE COMMITTED \_\_\_\_\_ DISPOSITION DATE \_\_\_\_\_

TRANSPORTING HAZARDOUS MATERIAL \_\_\_\_\_ NO \_\_\_\_\_ YES

EMPLOYER \_\_\_\_\_  
(IF CONVICTED OF VIOLATING OUT OF SERVICE ORDER)

NOTE: COURT MUST PROVIDE SUSPENSION OR DISQUALIFICATION DATES

BEGINNING DATE \_\_\_\_\_ ENDING DATE \_\_\_\_\_

CERTIFIED BY \_\_\_\_\_ TITLE \_\_\_\_\_  
SIGNATURE

COURT \_\_\_\_\_ CAUSE # \_\_\_\_\_ COUNTY \_\_\_\_\_

MAIL TO: DRIVER IMPROVEMENT & CONTROL  
TEXAS DEPARTMENT OF PUBLIC SAFETY  
PO BOX 4087  
AUSTIN TX 78773-0001

DIC-15 (REV. 3/96)

ADDED 8/03



**NOTICE OF SUSPENSION-VIOLATION OF LICENSE OR CERTIFICATE PROVISION  
ARTICLE 6687B, SECTION 32 AND 32A, V.T.C.S.**

(PRINT OR TYPE)

NAME \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST) (SO. SEC. NO.)

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_, TEXAS \_\_\_\_\_  
(Zip Code)

DRIVER LICENSE # \_\_\_\_\_ DATE OF \_\_\_\_\_  
ID # OR NONE \_\_\_\_\_ BIRTH \_\_\_\_\_ RACE \_\_\_\_\_ SEX \_\_\_\_\_

OFFENSE COMMITTED \_\_\_\_\_

DATE OFFENSE COMMITTED \_\_\_\_\_ DISPOSITION DATE \_\_\_\_\_

TRANSPORTING HAZARDOUS MATERIAL \_\_\_\_\_ NO \_\_\_\_\_ YES

EMPLOYER \_\_\_\_\_  
(IF CONVICTED OF VIOLATING OUT OF SERVICE ORDER)

NOTE: Court must indicate beginning and ending dates of suspension.

DRIVER LICENSE OR OPERATING PRIVILEGE SUSPENDED:

BEGINNING DATE \_\_\_\_\_ ENDING DATE \_\_\_\_\_

CERTIFIED BY \_\_\_\_\_ TITLE \_\_\_\_\_  
SIGNATURE \_\_\_\_\_

COURT \_\_\_\_\_ PRECINCT \_\_\_\_\_ PLACE \_\_\_\_\_

CAUSE # \_\_\_\_\_ CITY \_\_\_\_\_ COUNTY \_\_\_\_\_

(See Reverse Side)

(FORMERLY DL-21) DIC-21 (REV. 10/90)

ADDED 8/03





STATE OF



**TEXAS**  
Nonresident  
Violator Compact

CITATION NO.		DATE OF VIOLATION		LOCATION OF VIOLATION		SECTION VIOLATED				
DESCRIPTION OF VIOLATION					FINE AND COST		TRIAL DATE:			
DRIVER'S LICENSE NO.		STATE	DATE OF BIRTH		<b>C O U R T  I N F O</b>					
NAME	LAST	FIRST	MIDDLE	SEX				NAME OF COURT		
STREET ADDRESS								MAILING ADDRESS		
CITY	STATE		ZIP CODE					CITY	STATE	ZIP CODE
REGIS. (TAG) NO	STATE	YEAR	MAKE	MODEL				TELEPHONE AREA CODE      NUMBER		
					AUTHORIZED BY		DATE			

**DEFENDANTS NOTICE**

Copies of form

1. Original sent to defendant  
Hold in pending file for 15 days
2. 2<sup>nd</sup> and 3<sup>rd</sup> copies are mailed to Texas Department of Public Safety to address on notice if payment not received, Department of Public Safety will notify defendant's home state.
3. 5<sup>th</sup> and 6<sup>th</sup> copies of the notice are held in the court file. If at any time beyond this point in the process the defendant resolves the case with the court it is imperative that the court complete the 4<sup>th</sup> and 5<sup>th</sup> copies of the notice "Defendants Receipt" and "Notice of Withdrawal of Suspension". The receipt should be mailed to the defendant and the notice of withdrawal of suspension to Texas Department of Public Safety Department of Public Safety will notify home state of payment being received.

ADDED 8/03



MEMBER JURISDICTIONS OF  
NONRESIDENT VIOLATOR COMPACT

Alabama  
Arizona  
Arkansas  
Colorado  
Connecticut  
Delaware  
District of Columbia  
Florida  
Georgia  
Hawaii  
Idaho

Illinois  
Indiana  
Iowa  
Kansas  
Kentucky  
Louisiana  
Maine  
Maryland  
Massachusetts  
Minnesota  
Mississippi  
Missouri

Nebraska  
Nevada  
New Hampshire  
New Jersey  
New Mexico  
New York  
North Carolina  
North Dakota  
Ohio  
Oklahoma

Pennsylvania  
Rhode Island  
South Carolina  
South Dakota  
Tennessee  
Texas  
Utah  
Vermont  
Virginia  
Washington  
West Virginia  
Wyoming

ADDED 8/03



FUNDED BY A GRANT FROM THE  
TEXAS COURT OF CRIMINAL APPEALS

## **TEXAS MUNICIPAL COURTS EDUCATION CENTER**

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

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# **NEW LEGISLATION**

**Presented by**

**Margaret Robbins  
Program Director  
TMCEC**



**Legislative Update**

**Presented by  
Margaret Robbins  
Program Director, TMCEC**

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**Court costs**

- **HB 1267**
  - Indigent Defense Fund - \$2
- **SB 600**
  - Increased Judicial Supplement Fund to \$6
  - City portion of 0.60 cents stays same

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**Compliance Dismissals – HB1623**

- **Requirement to have to license plates**
  - Remedied before 1<sup>st</sup> court appearance
  - Court may dismiss if defendant pays \$10 fee
  - Registration must have been current
  - Registration insignia was attached to the car before defendant's 1<sup>st</sup> court appearance

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**Compliance Dismissals – HB1623**

- **Expired Registration**
  - Defendant must remedy within 20 working days after offense or before court appearance whichever is later
  - Administrative fee cannot exceed \$20

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**Compliance Dismissals – HB1623**

- **Court may dismiss offense the charges of attaching to or displaying a license plate or registration insignia that:**
  - Is assigned to other registration period
  - Parts of plate are blurred or obscured
- **Defendant must have remedied defect by first court appearance**
- **Court must assess \$10 fee**

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**Compliance Dismissals – HB1623**

- **Expired Driver's License**
  - Defendant must remedy defect within 20 working days or before court appearance, whichever is later
  - Court may assess up to \$20 fee

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**Compliance Dismissals – HB1623**

- **Failure to Change DL Address**
  - Defendant must remedy defect not later than 20<sup>th</sup> working days after date of offense and pay \$20 administrative fee.
  - Court may dismiss
  - Court may waive fee

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**Compliance Dismissals – HB1623**

- **Violation of DL endorsement**
  - Endorsement was imposed because of physical condition that was surgically or otherwise medically corrected before date of offense or in error, and that is established by defendant
  - DPS removes the restriction or endorsement before defendant 1<sup>st</sup> court appearance
  - Defendant pays \$10 fee
  - Court may dismiss

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**Compliance Dismissals – HB1623**

- **Equipment violations under Chapter 547 not involving CMV**
  - Defendant remedies defect before 1<sup>st</sup> court appearance and pays \$10 fee
  - Court may dismiss

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**Compliance Dismissals – HB1623**

- **Expired inspection certificate**
  - Defendant must remedy the defect 20 working days after the offense or before the defendant's court appearance, whichever is later.
  - The administrative fee cannot exceed \$20

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**Compliance Dismissals – HB1623**

- **Expired boat certificate of number**
  - Defendant must remedy defect within 10 working days after date of offense
  - Defendant must pay \$10 fee
  - Certificate of number cannot be expired more than 60 days
  - Court may dismiss

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**HB 1623**

- **Driving While License Invalid**
  - Class C misdemeanor
  - If person previously convicted – Class A
  - If license suspended as the result of DWI – Class B

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**Restitution – HB 485**

- **Article 45.041, C.C.P**
  - **No limit on restitution requirement unless offense is issuance of bad check**
  - **If offense issuance of bad check, limit on restitution is \$5,000**
- **Peace officers may collect restitution for issuance of bad check if officer executed warrant against person for offense**

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**DSC – HB 586**

- **Spouses and dependant children of persons in the military are eligible for DSC**
- **Persons speeding more than 95 miles over the posted limit are not eligible for DSC**

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**DSC – SB 1083**

- **Court may obtain defendant's driving record on line electronically when defendant's requests DSC**
- **Defendant must pay \$10**
- **Court must sent \$10 to state**

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**Deferred Disposition – HB 2267**

- **Judge may allow**
  - Court costs to be paid in installments
  - Court costs to be paid by performing community service
  - Court costs to be paid by both of the above
  - During deferral period

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**Deferred Disposition – HB 2267**

- **Court required to do show cause hearing**
  - If defendant fails to comply with terms of deferred
  - Court may allow another period of time for defendant to present evidence of compliance

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**Speed Cameras – HB 922**

- **Automated traffic control system to enforce speed**
  - City prohibited from using to enforce speed limits

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**Red Light Cameras – HB 1052**

- **Warning Signs required**
  - 100 feet from intersection
  - If city does not have signs, may not impose penalty

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**Red Light Cameras – HB 1623 & SB 119**

- **Sets Rules for using red light cameras**
- **Civil Penalty**
  - Maximum \$75
  - Late fee: maximum \$25
  - 50% of penalty goes to state
- **Municipal court has exclusive jurisdiction over appeal**

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**Oaths – SB 397**

- **Municipal Judges and Clerks**
  - Authority to administer any oath

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## LEGISLATIVE UPDATE

### **HB 323**

Effective: 9/1/2007

Amends Section 54.701, Transportation Code, to require three-point seatbelts on buses that transport school children. Requirement applies to buses purchased on or after September 1, 2010.

### **HB 335**

Effective: 9/1/2007

A court reporter must furnish a transcript not later than the 120<sup>th</sup> day after the date of the application for the transcript is received and the transcript fee is paid or the person establishes indigence as provided by Rule 20, Texas Rules of Appellate Procedure.

### **HB 485**

Effective: 9/1/2007 (Applies only to a warrant executed by a peace officer on or after 9/1/2007; Applies only to a judgment pronounced on or after the 9/1/2007.)

Amends Section 32.41, Penal Code to allow peace officers to collect restitution if a peace officer of that agency had executed a warrant against the person charged with issuance of bad check. This section of the Act applies only to a warrant executed by a peace officer on or after the effective of the Act.

Amends Article 45.041, Code of Criminal Procedure, to remove the \$500 limitation amount that municipal courts may require as restitution in its judgment. Now it is unlimited except for the offense of issuance of bad check which will be limited to \$5,000.

### **HB 586**

Effective 9/1/2007

Amends Article 45.0522(b) and (c), Code of Criminal Procedure to allow the spouse or depend child of a member of military to be eligible to take a driving safety course.

Defendant cannot be speeding more than 95 miles per hour over the posted limit.

### **HB 922**

Effective: 9/1/2007

Adds Section 542.2035 to the Transportation Code to prohibit a municipality from implementing or operating an automated traffic control system that enforces compliance with posted speed limits. An automated traffic control system means a photographic device, radar device, laser device, or other electrical or mechanical device designed to record the speed of a motor vehicle and obtain one or more photographs or other recorded

images of the vehicle, the license plate attached to the vehicle, or the operator of the vehicle.

**HB 1052**

Effective 9/1/2007

Adds Section 544.012 to the Transportation Code requiring warning signs before intersection at which a municipality uses photographic traffic monitoring system to enforce compliance with a traffic-control signal. The sign must be at least 100 feet from the intersection or located according to standards established in the manual adopted by the Texas Transportation Commission under Section 544.001, be easily readable to any operator approaching the intersection, clearly indicate the presence of a photographic monitoring system that records violations that may result in the issuance of a notice of violation and the imposition of a monetary penalty. If the municipality fails to comply with sign requirement, the municipality may not impose a civil or administrative penalty against the driver or the owner of the vehicle.

**HB 1204**

Effective 9/1/2007

Adds Subsection (a-1) to Section 61.003, Government Code to provide that the county must provide a letter with a blank place for prospective jurors to enter an amount of the daily reimbursement that they may want to donate.

**HB 1237**

Effective 9/1/2007

Adds Section 552.1176, Government Code relating to the confidentiality of certain personal information maintained by the State Bar. The personal information is confidential if the attorney notifies the State Bar that he or she wants the information confidential.

**HB 1267**

Effective: 9/01/07 (Effective on offenses that occur on or after 9/1/2007)

Adds Section 133.107, Local government Code providing for a \$2 fee to be used to fund indigent defense representation through the fair defense account established under Section 71.058, Government Code. The fee is to be collected upon conviction of any offense, other than an offense related to a pedestrian or the parking of a motor vehicle.

**HB 1380**

Effective 9/1/2007

Amends Article 102.017, Code of Criminal Procedure to provide that money deposited in the building security fund may be used only for security personnel, services, and item



related to buildings that house the operations of the court. The items included were not changed from the current law.

Any buildings housing district, county and justice courts were added.

### **HB 1623**

Effective: 9/1/2007

Amends Section 502.404, Transportation Code by adding subsections (f) and (g) regarding dismissing the offense of not having two license plates front and rear if the defendant remedies the defect before the first court appearance and pays a \$10 administrative fee, the court may dismiss the charge if:

- The registration for the vehicle is current during the period the offense was committed; and
- The registration insignia was attached to the car before the defendant's first court appearance.

Amends Section 502.407(b), Transportation Code, which provides authority for a judge to dismiss the charge expired motor vehicle registration, to give the defendant 20 working days after the offense or before the defendant's court appearance, whichever is later to obtain current vehicle registration. The administrative fee is amended to not exceed \$20 when the charge is dismissed.

Amends Section 502.409, Transportation Code, allowing a court to dismiss the charges of attaching to or displaying in a motor vehicle a number plate or registration insignia that:

- Is assigned for a registration period other than the registration period in effect;
- Has letters, numbers, or other identification marks that because of blurring or reflective mater are not plainly visible at all time during daylight;
- Has an attached illuminated device or sticker, decal emblem, or other insignia that is not authorized by law and that interferes with the readability of the letters or numbers on the plate or the name of the state in which the vehicle is registered ; or
- Has a coating, covering, or protective material that distorts angular visibility or detectability; or alters or obscures the letters or numbers on the plate, the color of the plate, or another original design feature of the plate.

The defendant must remedy the defect before the first court appearance. The court may assess an administrative fee not to exceed \$10.

Amends Section 521.026, Transportation Code to give the defendant 20 working days after the offense or before the defendant's court appearance, whichever is later to obtain current driver's license. The administrative fee is amended to not exceed \$20 when the charge is dismissed.

Section 521.054, Transportation Code, which requires drivers to change their address on their drivers' licenses within 30 days of the change, is amended to allow the court to dismiss a charge for a violation of this statute if the defendant remedies the defendant not later than the 20<sup>th</sup> working day after the date of the offense and pays an administrative fee not to exceed \$20. The court may waive the fee if the waiver is in the interest of justice.

Amends Section 521.221, Transportation Code to allow the court to dismiss a charge for a violation of a special endorsement if:

- Driver's license endorsements was imposed because of a physical condition that was surgically or otherwise medically corrected before the date of the offense; or in error and that is established by the defendant;
- The Department of Public Safety removes the restriction or endorsement before the defendant's first court appearance; and
- The defendant pays as administrative fee not to exceed \$10.

Amends Section 521.457 (f) and adds subsection (f-1), Transportation Code changing driving while license invalid from a Class A misdemeanor to a Class C misdemeanor unless it is shown on the trial of an offense that the person has been previously convicted of driving while license invalid, then the offense is a Class A misdemeanor. If it is shown on the trial of the offense of driving while license invalid that license of the person had previously been suspended as the result of involving the operation of a motor vehicle while intoxicated, the offense is a Class B misdemeanor.

Adds Section 542.405 and 542.406 to the Transportation Code to regulate a municipality's authority regarding civil enforcement of red light cameras. The civil or administrative penalty may not exceed \$75. A late payment penalty may not exceed \$25. Not later than the 60<sup>th</sup> day after the end of a city's fiscal year, after deducting amounts the city is authorized to retain, the city must send 50 percent of the revenue derived from the civil or administrative penalties to the State Comptroller. The city must use the remainder of the money to fund traffic safety program, including pedestrian safety program, public safety program, intersection improvements, and traffic enforcement. Before figuring out the 50 percent to send to the State Comptroller, the city may retain an amount necessary to cover the costs of:

- Purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system;
- Installing the photographic traffic signal enforcement system at sites in the local authority, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs;
- Operating the photographic traffic signal enforcement system in the local authority, including the costs of creating distributing, and delivering violation notices, review of violations conducted by employees of the local authority, the processing of fine payments and collections, and the costs associated with administrative adjudications and appeals; and
- Maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

The State Comptroller has the authority to audit funds collected by red light traffic cameras. If the Comptroller determines that city retained more than the amounts authorized or failed to deposit amounts as required, the comptroller may impose a penalty on the city equal to twice the amount the city retained in excess of the amount authorized to keep or failed to deposit.

Amends Section 547.004, Transportation Code by adding Subsections (c) and (d). The court may dismiss a charge under Chapter 547 if the offense does not involve a commercial motor vehicle, the defendant remedies the defect before the first court appearance and pays an administrative fee not to exceed \$10. Chapter 547 is regarding vehicle equipment requirements.

Amends Section 548.605(b), Transportation Code regarding dismissal of expired inspection certification to give the defendant 20 working days after the offense or before the defendant's court appearance, whichever is later to obtain a current inspection certificate. The administrative fee is amended to not exceed \$20.

Amends Section 31.127, Parks and Wildlife Code by adding subsection (f) to allow a court to dismiss a charge or operating a vessel with an expired certificate of number under Section 31.021 if the defendant remedies the defect not later than the 10<sup>th</sup> working day after the date of the offense and pay an administrative fee not to exceed \$10 and the certificate of number had not been expired for more than 60 days.

Amends Section 133.004, Local Government Code, by adding the portion of the civil or administrative fees from the red light cameras to the list of civil fees that are subject to the requirements of Chapter 133.

Adds Chapter 782 to the Health and Safety Code regarding regional emergency medical services.

## **HB 2267**

Effective 9/1/2007

Amends Article 45.051, Code of Criminal Procedure by adding subsection (a-1), (c-1), and (c-2) and amending subsection (d) and (d-1). The judge granting deferred disposition to a defendant charged with one or more offenses allow the defendant to pay the court costs in installments during the defendant's period of probation or allow the defendant to discharge all or part of the court costs by performing community service under Article 45.049, allow the defendant to pay part of the court costs through an installment agreement and part of the court costs by performing community service.

If the defendant fails to present the court with satisfactory evidence of payment of the court costs or any other required term of the order of deferred, the court shall notify the defendant in writing of the failure and require the defendant to appear for a show cause hearing to show cause why the order of deferral should not be revoked.

On a showing of good cause the judge may give the defendant additional time to present the court evidence of compliance of the terms of the order of the deferred. If on the date of a show cause hearing or, if applicable by the conclusion of an additional period of time allowed by the judge to present evidence, the defendant fails to do so, the judge may impose the fine or impose a lesser fine. If the defendant is under the age of 25, the judge may impose the fine but may not reduce the fine.

**SB 369**

Effective 9/1/2007

Amends Section 502.409, Transportation Code relating to an offense involving a motor vehicle with an altered or obscured license plate. It is an offense if the blurring or reflective matter significantly impairs the readability of the name of the state in which the vehicle is registered or the letters or numbers of the license plate number not an original design feature of the plate.

**SB 397**

Effective Immediately (after June 17)

Amends Section 602.002(1), Government Code providing authority for municipal judges and clerks to administer oaths.

**SB 560**

Effective 9/1/2007

Amends Section 61.001, Government Code to provide that a person who reports for jury service in a municipal court is not entitled to reimbursement under Chapter 61, but the municipality may provide reimbursement for expenses to the person in an amount to be determined by the municipality.

**SB 600**

Effective 9/1/2007 (Effective for offenses committed on or after 9/1/2007)

Amends Section 133.105, Local Government Code to provide that the judicial supplement fund is \$6. The city still retains sixty cents of the costs.

**SB 1083**

Effective 9/1/2007

Amends subsection (c-1), Article 45.0511, Code of Criminal Procedure to allow the judge to require the defendant to pay a \$10 fee for the court to request a copy of the defendant's driving record through the TexasOnline. The clerk is required to forward the fees to the State Comptroller who shall credit the fees to the Texas Department of Public Safety.

**SB 1119**

Effective 9/1/2007

Adds Chapter 707 to Subtitle I of the Transportation Code regarding photographic traffic signal enforcement systems that work in conjunction with an electrically operated traffic-control signal. The Act provides definitions, rules, authority to provide civil penalties, amount of civil penalty, and required ordinance provisions. The civil penalty may not be

more than \$75. The late penalty cannot be more than \$25. Fifty percent of the revenue must be sent to the State Comptroller after covering the costs of the photographic equipment and the operation of the equipment.

The municipal court has exclusive appellate jurisdiction of cases arising under Chapter 707, Transportation Code.

FUNDED BY A GRANT FROM THE  
TEXAS COURT OF CRIMINAL APPEALS

## **TEXAS MUNICIPAL COURTS EDUCATION CENTER**

1609 SHOAL CREEK BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701  
TELEPHONE (512) 320-8274  
1-800-252-3718  
FAX (512) 320-0996

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# **COURT SECURITY**

**Presented by**

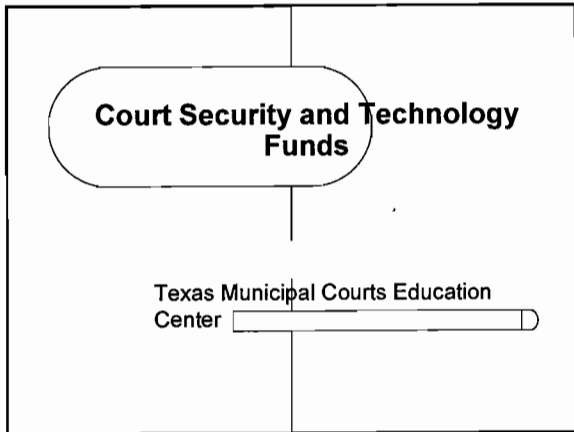
**Ryan K. Turner**  
**General Counsel and Director of Education**  
**TMCEC**

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

- Determine the provisions necessary for an court security ordinance;
- Identity how funds collected under a properly enacted court security ordinance may be used; and,
- Identify and understand rulings in key cases and Texas Attorney General Opinions regarding appropriate court security expenditures.








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**Objectives**

- Identify the statutory basis for these two funds.
- Examine the necessary ordinances and money-collection methods for the funds.
- Explore the many ways that money collected through the Court Security and Technology Funds may be used.

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**Court Security Fund**

Let's break down § 102.017 C.C.P.

- (b) "The governing body of a 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 security fee as a cost of the court."
- (c) A person is considered convicted if: (1) a sentence is imposed on the person, or (3) the court defers final disposition of the person's case.

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**1997 AG-Letter Op. 97-025**

- What constitutes a "trial" for purposes of collecting the security fee from defendants "convicted in a trial?"
- Trial: a judicial examination and determination of issues between parties to action. Black's Law Dictionary 1504 (6th ed. 1990).
- In Texas, criminal cases define "trial" within the context of the particular statute or constitutional provision at issue.

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- For example, a defendant charged with a misdemeanor punishable by fine only may make a plea of guilty or nolo contendere *by mail* to the court. Code Crim. Proc. art. 27.14(b).
- In a misdemeanor case arising out of a moving traffic violation punishable by fine only, *payment of the fine* by the defendant constitutes a finding of guilty in open court, as though the defendant has pleaded nolo contendere. *Id.* art. 27.14(c).
- In both cases, a judgment and sentence may be rendered in the absence of the defendant. *Id.* art. 42.14

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- While a plea and conviction by mail do not involve a trial before a judge or jury, and do not require appearance in court, they involve a judicial finding that the defendant is guilty of an offense that comports with the ordinary meaning of "trial."
- BUT appearance in open court at a pre-trial hearing, arraignment, or docket call, without a conviction, does NOT fall within the statute's definition of "convicted."

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**Court Security Fund**

(d) The clerks shall collect the costs and pay them to the municipal treasurer or to any other official who discharges the duties commonly delegated to the treasurer, for deposit in a fund to be known as the municipal court building security fund.

*\*Delegated funds may be put in an interest-bearing account, but the interest must be used for the same purpose as the money was originally designated.\**

(e) The municipal court building fund shall be administered by or under the direction of the governing body of the municipality.

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**Court Security Fund**

(d) A fund designated by this subsection may be used only to finance security personnel for a municipal court, or to finance items when used for the purpose of providing security services for buildings housing a municipal court, including:

- (1) the purchase or repair of X-ray machines and conveying systems;
- (2) handheld metal detectors;
- (3) walkthrough metal detectors;
- (4) identification cards and systems;

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- (5) electronic locking and surveillance equipment;
- (6) bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
- (7) signage;
- (8) confiscated weaponry inventory and tracking systems;
- (9) locks, chains, alarms, or similar security devices;
- (10) the purchase or repair of bullet-proof glass; and
- (11) continuing education on security issues for court personnel and security personnel.

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**How May the Fund be Used?**

- The Code Construction Act, Sec. 311.005(13), G.C., says that "including" is a term of enlargement, not limitation, so things not on this list are not necessarily excluded.

Sec. 311.023 allows the court to consider the object sought to be attained in construing a statute.

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**1998 AG-Opinion JC-0014**

- Clip-on microphones for county deputy sheriffs' portable radios do not constitute "security hardware" under Code of Criminal Procedure article 102.017(d)(9):
- The old statute enumerated the list "specifically and narrowly" to "only" the "following items," whereas the new version expands it.

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**1998 AG-Opinion Letter 98-026**

- It is not a function of the county attorney to provide courthouse security, so the county attorney's contracted security officer is not a legal function of his position and the security fund is off limits.

'Contract security personnel' does not describe an employee with benefits.

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**2002 AG-Opinion JC-0476**

- Article 102.017 does not empower the Commissioners Court to establish a security force for the courthouse even though 102.017(d)(6) permits them to use the fund to pay for peace officers and contract security personnel who provide "appropriate security services."
- The use was prohibited even though it titled its force members "bailiffs," one of the categories of security personnel whose payment is permissible.

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**Let's use this money!**

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**Architectural Elements-Exterior**

- Building security and glass
- Grounds: don't provide items that could be used by intruders to gain building access
- Parking: provide cameras, a separate lot for employees and citizens, reserved spaces by numbers, direct court access for judges and court employees
- Lighting: light entire perimeter to discourage and observe unlawful entry
- Entrance: screen visitors, use security cameras, ID card access for authorized personnel
- Landscape: don't provide places for intruders to conceal themselves

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### Architectural Elements-Interior

- Entrance: metal detectors, large bag searches
- Foot traffic: public areas and lobbies should be routinely searched
- Doors: exterior doors with cylinder locks, deadbolts, or electronic locks
- Restrooms: routinely searched
- Lighting
- Window: drop boxes can be dangerous due to harmful items being placed in them, bulletproof glass, security cameras, vault for collections

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### Interior continued

- Panic buttons: for the bench, bailiff's station, chambers, and clerk's window
- Courtroom: secured and locked when not in use, emergency lighting, separation of judge's area from spectator area by a barrier
- Alarm system: maintain an emergency power source, intrusion alarms, fire alarms, smoke detectors, sprinkler systems, and fire extinguishers
- Security plan: keep a written security manual on file.

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### Crime Prevention through Environmental Design

- **CPTED:** by proper design and management of buildings and urban space, criminal activity can be deterred.
- National Crime Prevention Council  
1700 K Street NW, 2<sup>nd</sup> Floor  
Washington, D.C., 20006-3817
- Contact Terry Modglin, Director, Municipal Initiatives, for more information 202/466-6272 ext. 129

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### Operational Elements

- Participation: involve everyone in security
- Continuing Education: your registration fees next year can come out of the court security fund
- Policies: how will handle courtroom issues, jury issues
- Personnel providing appropriate security services

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### Technological Elements

- Closed circuit television
- X-Ray machines
- Walk-through metal detectors
- Handheld metal detectors
- ID card access
- Emergency alarms

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### Technology Fund

Art. 102.0172 C.C.P.

- (a) The governing body of a municipality **by ordinance** may create a municipal court technology fund and may require a defendant **convicted** of a misdemeanor offense in a municipal court or municipal court of record to pay a technology fee not to exceed \$4 as a cost of court.
- (b) Convicted means (1) a sentence is imposed on the person; (2) *the person is placed on community supervision, including deferred adjudication community supervision*; or (3) the court defers final disposition of the person's case.

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**Technology Fund**

(c) The municipal court clerk shall collect the costs and pay the funds to the municipal treasurer, or to any other official who discharges the duties commonly delegated to the municipal treasurer, for deposit in a fund to be known as the municipal court technology fund.

(e) The municipal court technology fund shall be administered by or under the direction of the governing body of the municipality.

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**Technology Fund**

(d) A fund designated by this article may be used only to finance the purchase of or to maintain technological enhancements for a municipal court or municipal court of record, including:

- (1) computer systems;
- (2) computer networks;
- (3) computer hardware;
- (4) computer software;
- (5) imaging systems;
- (6) electronic kiosks;
- (7) electronic ticket writers;
- (8) docket management systems.

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**Technology Fund**

- Does it increase the technological capacity of the court?
  
- Don't forget the small stuff! Copy machines, telephone systems, answering machines, handsfree devices, wireless and internet services, printers, scanners, fax machines.

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**133.105 Support of Court-Related Purposes**

- For offenses other than pedestrian or parking offenses, there is a \$4 fee for the support of the judiciary.
- The treasurer deposits 60 cents into the general fund of the municipality to promote the efficient operation of the municipal court and the investigation, prosecution, and enforcement of offenses within its jurisdiction.
- The other \$3.40 goes to the comptroller's judicial fund.
- Effective Dec. 1, 2005!

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**Remember**

- 1) Use the lists as guidelines.
- 2) Reacquaint yourself periodically with some of the less-obvious uses of these funds.
- 3) The Newspaper Test: How would this look to the local media?

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**TMCEC NOTE: This sample ordinance is provided for the benefit of city attorneys and prosecutors. Drafting an ordinance is a legislative function. Accordingly, members of the judiciary should not engage in such an activity.**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE PROVIDING FOR A “MUNICIPAL COURT BUILDING SECURITY FUND” PROVIDING FOR ASSESSMENT AND COLLECTION OF A MUNICIPAL COURT BUILDING SECURITY FEE: PROVIDING FOR SEVERABILITY: PROVIDING FOR PUBLICATION AND EFFECTIVE DATE: AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.**

**Whereas** the 74<sup>th</sup> Legislature of the State of Texas, meeting in Regular Session, passed Senate Bill 349, which *inter alia*, amended Article 102.017 of the Code of Criminal Procedure to provide for (i) the establishment of a Municipal Court Building Security Fund and (ii) the assessment and collection of a Municipal Court Building Security Fee;

**Whereas**, Governor George W. Bush approved Senate Bill 349 after passage thereof,

**Whereas**, Senate Bill 349 took effect on or about September, 1995; and

**Whereas**, on the \_\_\_\_ day of the month of \_\_\_\_\_ in the year 200\_\_, the (insert name of governing body: City Council, Board of Alderman, or City Commission) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas called for public hearings on the establishment of a “Municipal Court Building Security Fund” and the imposition of a Municipal Court Building Security Fee as set forth in Article 102.017, as amended, of the Code of Criminal Procedure;

NOW, THEREFORE, BE IT ORDAINED BY THE (insert name of governing body: City Council, Board of Alderman, or City Commission) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) OF \_\_\_\_\_, TEXAS

SECTION 1: That Chapter \_\_\_\_\_, Section \_\_\_\_\_, of the Code of Ordinances, (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas to read as follows:

A. Municipal Court Building Security Fund.

1. There is hereby created and established a Municipal Court Building Security Fund (the “Fund”) pursuant to Article 102.017 of the Code of Criminal Procedure.
2. The Municipal Court of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas (the “Municipal Court”) is hereby authorized and required to assess a Municipal Court Building Security Fee (the “Fee”) in the amount of \$3.00 against all Defendants convicted of a misdemeanor offense by the Municipal Court. Each misdemeanor conviction shall be subject to a separate assessment of the Fee.
3. A person is considered to have been convicted in a case if:
  - judgment, sentence, or both are imposed on the person;
  - the person receives deferred disposition; or
  - the Court defers final disposition or imposition of the judgment and sentence.
4. The Municipal Court Clerk is hereby authorized and required to collect the Fee and to pay same to the treasury of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas. All Fees so collected and paid over to the treasury of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas shall be segregated in the Fund.
5. The Fund shall be used only for the purpose of financing the purchase of security devices and/or services for the building or buildings housing the Municipal Court of the City of \_\_\_\_\_, Texas. “Security devices and/or services” shall include any and all items described in Article 102.017(d) of the Code of Criminal Procedure.

**SAMPLE ORDINANCE – MUNICIPAL COURT BUILDING SECURITY FUND (Page 2 of 2)**

- 6. The Fund shall be administered by or under the direction of the City Council of the (insert name of governing body: City Council, Board of Alderman, or City Commission) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas.

SECTION 2: If any provision, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid (for any reason unenforceable), the validity of the remaining portions of this ordinance or the application to such other persons or sets of circumstances shall not be affected thereby, it being the intent of the (insert name of governing body: City Council, Board of Alderman, or City Commission) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reason of unconstitutionality or invalidity of any other portion or provision.

SECTION 3: All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of the conflict.

SECTION 4: This ordinance shall be published and become effective in accordance with state law.

READ, CONSIDERED, PASSED, AND APPROVED ON FIRST READING by the (insert name of governing body: City Council, Board of Alderman, or City Commission) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas at a regular meeting the \_\_\_ day of 200\_\_\_, at which a quorum was present.

READ, CONSIDERED, PASSED, AND APPROVED ON SECOND AND FINAL READING by the (insert name of governing body: City Council, Board of Alderman, or City Commission) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas at a regular meeting the \_\_\_ day of 200\_\_\_, at which a quorum was present.

PASSED, APPROVED, and ADOPTED on the \_\_\_ day of \_\_\_\_\_, 200\_\_\_.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Secretary

## CODE OF CRIMINAL PROCEDURE

### CHAPTER 102. COSTS PAID BY DEFENDANTS

#### SUBCHAPTER A. GENERAL COSTS

Art. 102.017. COURT COSTS; COURTHOUSE SECURITY FUND; MUNICIPAL COURT BUILDING SECURITY FUND; JUSTICE COURT BUILDING SECURITY FUND. (a) A defendant convicted of a felony offense in a district court shall pay a \$5 security fee as a cost of court.

(b) A defendant convicted of a misdemeanor offense in a county court, county court at law, or district court shall pay a \$3 security fee as a cost of court. A defendant convicted of a misdemeanor offense in a justice court shall pay a \$4 security fee as a cost of court. The governing body of a 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 security fee as a cost of court.

(c) In this article, a person is considered convicted if:

- (1) a sentence is imposed on the person;
- (2) the person receives community supervision, including deferred adjudication; or
- (3) the court defers final disposition of the person's case.

(d) Except as provided by Subsection (d-1), the clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to the county or municipal treasurer, as appropriate, 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, as appropriate. A fund designated by this subsection may be used only to finance security personnel for a district, county, justice, or municipal court, as appropriate, or 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:

- (1) the purchase or repair of X-ray machines and conveying systems;
- (2) handheld metal detectors;
- (3) walkthrough metal detectors;
- (4) identification cards and systems;
- (5) electronic locking and surveillance equipment;
- (6) bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
- (7) signage;

(8) confiscated weapon inventory and tracking systems;  
(9) locks, chains, alarms, or similar security devices;  
(10) the purchase or repair of bullet-proof glass; and  
(11) continuing education on security issues for court personnel and security personnel.

(d-1)(1) This subsection applies only to a justice court located in a county in which one or more justice courts are located in a building that is not the county courthouse.

(2) The county treasurer shall deposit one-fourth of the cost of court collected under Subsection (b) in a justice court described by Subdivision (1) into a fund to be known as the justice court building security fund. A fund designated by this subsection may be used only for the purpose of providing for a justice court located in a building that is not the county courthouse security services as described by Subsection (d).

(e) The courthouse security fund and the justice court building security fund shall be administered by or under the direction of the commissioners court. The municipal court building fund shall be administered by or under the direction of the governing body of the municipality.

Added by Acts 1993, 73rd Leg., ch. 818, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 764, Sec. 2, eff. Aug. 28, 1995; Subsecs. (a), (b), (d) amended by Acts 1997, 75th Leg., ch. 12, Sec. 1, eff. Sept. 1, 1997; Subsec. (d) amended by Acts 1999, 76th Leg., ch. 110, Sec. 1, eff. May 17, 1999; Subsec. (d) amended by Acts 2005, 79th Leg., ch. 83, Sec. 2, eff. Sept. 1, 2005; Art. heading amended by Acts 2005, 79th Leg., ch. 1087, Sec. 1, eff. Sept. 1, 2005; Subsecs. (b), (d), (e) amended by Acts 2005, 79th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2005; Subsec. (d-1) added by Acts 2005, 79th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2005.

FUNDED BY A GRANT FROM THE  
TEXAS COURT OF CRIMINAL APPEALS

## **TEXAS MUNICIPAL COURTS EDUCATION CENTER**

1609 SHOAL CREEK BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701  
TELEPHONE (512) 320-8274  
1-800-252-3718  
FAX (512) 320-0996

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# **COURT TECHNOLOGY & THE COURT TECHNOLOGY FUND**

**Presented by**

**Ryan K. Turner**  
**General Counsel and Director of Education**  
**TMCEC**

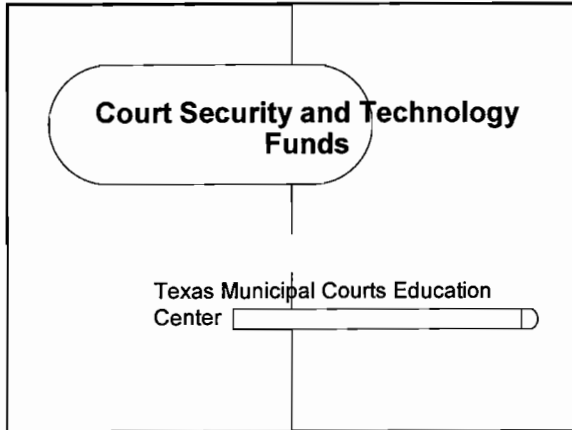
By the end of the session, judges will be able to:

- Describe the provisions of the Code of Criminal Procedure relating to the technology fund;
- Identify and understand rulings in key cases and Texas Attorney General Opinions regarding appropriate technology fund expenditures; and,
- Determine appropriate expenditures for funds collected under a properly enacted ordinance under the provisions of the Code.

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







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**Objectives**

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- Examine the necessary ordinances and money-collection methods for the funds.
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- (c) A person is considered convicted if: (1) a sentence is imposed on the person, or (3) the court defers final disposition of the person's case.

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- In Texas, criminal cases define "trial" within the context of the particular statute or constitutional provision at issue.

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- For example, a defendant charged with a misdemeanor punishable by fine only may make a plea of guilty or nolo contendere *by mail* to the court. Code Crim. Proc. art. 27.14(b).
- In a misdemeanor case arising out of a moving traffic violation punishable by fine only, *payment of the fine* by the defendant constitutes a finding of guilty in open court, as though the defendant has pleaded nolo contendere. *Id.* art. 27.14(c).
- In both cases, a judgment and sentence may be rendered in the absence of the defendant. *Id.* art. 42.14

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- While a plea and conviction by mail do not involve a trial before a judge or jury, and do not require appearance in court, they involve a judicial finding that the defendant is guilty of an offense that comports with the ordinary meaning of "trial."
- BUT appearance in open court at a pre-trial hearing, arraignment, or docket call, without a conviction, does NOT fall within the statute's definition of "convicted."

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**Court Security Fund**

(d) The clerks shall collect the costs and pay them to the municipal treasurer or to any other official who discharges the duties commonly delegated to the treasurer, for deposit in a fund to be known as the municipal court building security fund.

\*Delegated funds may be put in an interest-bearing account, but the interest must be used for the same purpose as the money was originally designated.\*

(e) The municipal court building fund shall be administered by or under the direction of the governing body of the municipality.

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**Court Security Fund**

- (d) A fund designated by this subsection may be used only to finance security personnel for a municipal court, or to finance items when used for the purpose of providing security services for buildings housing a municipal court, including:
  - (1) the purchase or repair of X-ray machines and conveying systems;
  - (2) handheld metal detectors;
  - (3) walkthrough metal detectors;
  - (4) identification cards and systems;

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- (5) electronic locking and surveillance equipment;
- (6) bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
- (7) signage;
- (8) confiscated weaponry inventory and tracking systems;
- (9) locks, chains, alarms, or similar security devices;
- (10) the purchase or repair of bullet-proof glass; and
- (11) continuing education on security issues for court personnel and security personnel.

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**How May the Fund be Used?**

- The Code Construction Act, Sec. 311.005(13), G.C., says that "including" is a term of enlargement, not limitation, so things not on this list are not necessarily excluded.

Sec. 311.023 allows the court to consider the object sought to be attained in construing a statute.

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**1998 AG-Opinion JC-0014**

- Clip-on microphones for county deputy sheriffs' portable radios do not constitute "security hardware" under Code of Criminal Procedure article 102.017(d)(9).
- The old statute enumerated the list "specifically and narrowly" to "only" the "following items," whereas the new version expands it.

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**1998 AG-Opinion Letter 98-026**

- It is not a function of the county attorney to provide courthouse security, so the county attorney's contracted security officer is not a legal function of his position and the security fund is off limits.

'Contract security personnel' does not describe an employee with benefits.

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**2002 AG-Opinion JC-0476**

- Article 102.017 does not empower the Commissioners Court to establish a security force for the courthouse even though 102.017(d)(6) permits them to use the fund to pay for peace officers and contract security personnel who provide "appropriate security services."
- The use was prohibited even though it titled its force members "bailiffs," one of the categories of security personnel whose payment is permissible.

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**Let's use this money!**

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**Architectural Elements-Exterior**

- Building security and glass
- Grounds: don't provide items that could be used by intruders to gain building access
- Parking: provide cameras, a separate lot for employees and citizens, reserved spaces by numbers, direct court access for judges and court employees
- Lighting: light entire perimeter to discourage and observe unlawful entry
- Entrance: screen visitors, use security cameras, ID card access for authorized personnel
- Landscape: don't provide places for intruders to conceal themselves

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## Architectural Elements-Interior

- Entrance: metal detectors, large bag searches
- Foot traffic: public areas and lobbies should be routinely searched
- Doors: exterior doors with cylinder locks, deadbolts, or electronic locks
- Restrooms: routinely searched
- Lighting
- Window: drop boxes can be dangerous due to harmful items being placed in them, bulletproof glass, security cameras, vault for collections

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## Interior continued

- Panic buttons: for the bench, bailiff's station, chambers, and clerk's window
- Courtroom: secured and locked when not in use, emergency lighting, separation of judge's area from spectator area by a barrier
- Alarm system: maintain an emergency power source, intrusion alarms, fire alarms, smoke detectors, sprinkler systems, and fire extinguishers
- Security plan: keep a written security manual on file.

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## Crime Prevention through Environmental Design

- CPTED: by proper design and management of buildings and urban space, criminal activity can be deterred.
- National Crime Prevention Council  
1700 K Street NW, 2<sup>nd</sup> Floor  
Washington, D.C., 20006-3817
- Contact Terry Modglin, Director, Municipal Initiatives, for more information 202/466-6272 ext. 129

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**Operational Elements**

- Participation: involve everyone in security
- Continuing Education: your registration fees next year can come out of the court security fund
- Policies: how will handle courtroom issues, jury issues
- Personnel providing appropriate security services

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**Technological Elements**

- Closed circuit television
- X-Ray machines
- Walk-through metal detectors
- Handheld metal detectors
- ID card access
- Emergency alarms

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**Technology Fund**

Art. 102.0172 C.C.P.

- (a) The governing body of a municipality **by ordinance** may create a municipal court technology fund and may require a defendant **convicted** of a misdemeanor offense in a municipal court or municipal court of record to pay a technology fee not to exceed \$4 as a cost of court.
- (b) Convicted means (1) a sentence is imposed on the person; (2) *the person is placed on community supervision, including deferred adjudication community supervision*; or (3) the court defers final disposition of the person's case.

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**Technology Fund**

(c) The municipal court clerk shall collect the costs and pay the funds to the municipal treasurer, or to any other official who discharges the duties commonly delegated to the municipal treasurer, for deposit in a fund to be known as the municipal court technology fund.

(e) The municipal court technology fund shall be administered by or under the direction of the governing body of the municipality.

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**Technology Fund**

(d) A fund designated by this article may be used only to finance the purchase of or to maintain technological enhancements for a municipal court or municipal court of record, including:

- (1) computer systems;
- (2) computer networks;
- (3) computer hardware;
- (4) computer software;
- (5) imaging systems;
- (6) electronic kiosks;
- (7) electronic ticket writers;
- (8) docket management systems.

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**Technology Fund**

- Does it increase the technological capacity of the court?
- Don't forget the small stuff! Copy machines, telephone systems, answering machines, handsfree devices, wireless and internet services, printers, scanners, fax machines.

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**133.105 Support of Court-Related Purposes**

- For offenses other than pedestrian or parking offenses, there is a \$4 fee for the support of the judiciary.
- The treasurer deposits 60 cents into the general fund of the municipality to promote the efficient operation of the municipal court and the investigation, prosecution, and enforcement of offenses within its jurisdiction.
- The other \$3.40 goes to the comptroller's judicial fund.
- Effective Dec. 1, 2005!

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**Remember**

- 1) Use the lists as guidelines.
- 2) Reacquaint yourself periodically with some of the less-obvious uses of these funds.
- 3) The Newspaper Test: How would this look to the local media?

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**TMCEC NOTE: This sample ordinance is provided for the benefit of city attorneys and prosecutors. Drafting an ordinance is a legislative function. Accordingly, members of the judiciary should not engage in such an activity.**

ORDINANCE NO. \_\_\_\_\_

**An ordinance of the** (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas, **establishing a Municipal Court Technology Fund; providing for the assessment and collection of a municipal court technology fee; providing for severability; providing for publication and effective date; providing for expiration date.**

**Whereas**, Article 102.0172 of the Code of Criminal Procedure provides for the establishment of a Municipal Court Technology Fund.

**Be it Ordained by the** (insert name of governing body: City Council, Board of Alderman, or City Commission) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas:

**Section 1: Establishment of Municipal Court Technology Fund**

- A. There is hereby created and established a Municipal Court Technology Fund, here-in-now known as the Fund, pursuant to Article 102.0172 of the Code of Criminal Procedure.
- B. The Fund may be maintained in an interest bearing account and may be maintained in the general revenue account.

**Section 2: Establishment of Amount of the Fee and Assessment and Collection**

- A. The fee shall be in the amount of (up to four dollars).
- B. The fee shall be assessed and collected from the Defendant upon conviction for a misdemeanor offense in the Municipal Court as a cost of court. A Defendant is considered convicted if:
  - (1) judgment, sentence, or both are imposed on the person;
  - (2) the person is placed on deferred disposition; or
  - (3) the court defers final disposition or imposition of the judgment and sentence.
- C. The fee shall be collected on conviction for an offense committed on or after September 1, 1999 (or for convictions on offenses committed on or after ordinance is adopted).\*
- D. The Clerk of the Court shall collect the fee and pay the fee to the municipal treasurer or (other official who discharges or performs the duties of the treasurer) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas, who shall deposit the fee into the Municipal Court Technology Fund.

**Section 3: Designated Use of the Fund and Administration**

- A. The Fund shall be used only for the purpose of financing the purchase of or to maintain technology enhancements for the Municipal Court of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas. "Technology enhancements" shall include any and all items described in Article 102.0172 of the Code of Criminal Procedure.

\* Fee may only be assessed and collected on offenses occurring on or after September 1, 1999. The fee may not be assessed or collected retroactively if Fund is established at a later date than September 1, 1999.

- B. The Fund shall be administered by or under the direction of the (insert name of governing body: City Council, Board of Alderman, or City Commission) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas.

**Section 4. Severability**

If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of same to any person or set circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance of the application thereby shall remain in effect, it being the intent of the (insert name of governing body: City Council, Board of Alderman, or City Commission) of the (insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reason of unconstitutionality or invalidity of any portion or provision.

**Section 5. Repealing Conflict**

All ordinances and parts of ordinances in conflict with the ordinance are hereby repealed to the extent of conflict with this ordinance.

**Section 6. Publishing and Effective Date**

This ordinance shall be published in accordance with the requirement of publishing all ordinances and becomes effect in accordance with state law upon passage, but no earlier that September 1, 1999.

**Section 7. Administration of Fund**

The purpose of the use of any funds remaining in the fund shall continue to be used and administered as required by this ordinance and for that purpose this ordinance remains in effect.

**Passed, Approved, and Adopted on this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.**

Attest:

(insert type of entity that the municipality is known as, such as City, Town, or Village) of \_\_\_\_\_, Texas

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

Art. 102.0172. COURT COSTS; MUNICIPAL COURT TECHNOLOGY FUND. (a) The governing body of a municipality by ordinance may create a municipal court technology fund and may require a defendant convicted of a misdemeanor offense in a municipal court or municipal court of record to pay a technology fee not to exceed \$4 as a cost of court.

(b) In this article, a person is considered convicted if:

- (1) a sentence is imposed on the person;
- (2) the person is placed on community supervision, including deferred adjudication community supervision; or
- (3) the court defers final disposition of the person's case.

(c) The municipal court clerk shall collect the costs and pay the funds to the municipal treasurer, or to any other official who discharges the duties commonly delegated to the municipal treasurer, for deposit in a fund to be known as the municipal court technology fund.

(d) A fund designated by this article may be used only to finance the purchase of or to maintain technological enhancements for a municipal court or municipal court of record, including:

- (1) computer systems;
- (2) computer networks;
- (3) computer hardware;
- (4) computer software;
- (5) imaging systems;
- (6) electronic kiosks;
- (7) electronic ticket writers; and
- (8) docket management systems.

(e) The municipal court technology fund shall be administered by or under the direction of the governing body of the municipality.

(f) Repealed by Acts 2003, 78th Leg., ch. 502, Sec. 2, eff. Sept. 1, 2003.

Added by Acts 1999, 76th Leg., ch. 285, Sec. 1, eff. Sept. 1, 1999; Subsec. (d) amended by Acts 2003, 78th Leg., ch. 502, Sec. 1, eff. Sept. 1, 2003; Subsec. (f) repealed by Acts 2003, 78th Leg., ch. 502, Sec. 2, eff. Sept. 1, 2003.

Art. 102.0173. COURT COSTS; JUSTICE COURT TECHNOLOGY FUND. (a) The commissioners court of a county by order shall create a justice court technology fund. A defendant convicted of a misdemeanor offense in justice court shall pay a \$4 justice court technology fee as a cost of court for deposit in the fund.

(b) In this article, a person is considered convicted if:

- (1) a sentence is imposed on the person; or
- (2) the court defers final disposition of the person's case.
- (c) The justice court clerk shall collect the costs and pay the funds to the county treasurer, or to any other official who discharges the duties commonly delegated to the county treasurer, for deposit in a fund to be known as the justice court technology fund.
- (d) A fund designated by this article may be used only to finance:
  - (1) the cost of continuing education and training for justice court judges and clerks regarding technological enhancements for justice courts; and
  - (2) the purchase and maintenance of technological enhancements for a justice court, including:
    - (A) computer systems;
    - (B) computer networks;
    - (C) computer hardware;
    - (D) computer software;
    - (E) imaging systems;
    - (F) electronic kiosks;
    - (G) electronic ticket writers; and
    - (H) docket management systems.
- (e) The justice court technology fund shall be administered by or under the direction of the commissioners court of the county.
- (f) Repealed by Acts 2005, 79th Leg., ch. 240, Sec. 3.

Added by Acts 2001, 77th Leg., ch. 977, Sec. 1, eff. Sept. 1, 2001. Subsecs. (a), (d) amended by Acts 2005, 79th Leg., ch. 240, Sec. 1, eff. Sept. 1, 2005; Subsec. (f) repealed by Acts 2005, 79th Leg., ch. 240, Sec. 3, eff. Sept. 1, 2005.

FUNDED BY A GRANT FROM THE  
TEXAS COURT OF CRIMINAL APPEALS

## **TEXAS MUNICIPAL COURTS EDUCATION CENTER**

1609 SHOAL CREEK BOULEVARD, SUITE 302 AUSTIN, TEXAS 78701  
TELEPHONE (512) 320-8274  
1-800-252-3718  
FAX (512) 320-0996

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# **OPEN RECORDS: RULE 12 & THE TEXAS PUBLIC INFORMATION ACT**

**Presented by**

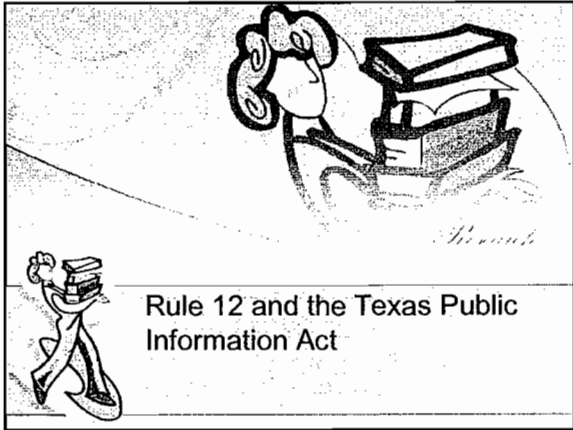
**Ryan Kellus Tuner  
General Counsel & Director of Education  
TMCEC**

By the end of this session, judges will be able to:

- Identify whether a request for a record is governed by (1) the Public Information Act; (2) Rule 12 of the Texas Rules of Judicial Administration; or (3) the common law right of access to court documents;
- Distinguish between records to which access must be granted and records to which access need not be granted;
- Describe the costs that should be assessed for access to and/or the copying of records; and,
- Define “judicial records” as Rule 12 of the Texas Rules of Judicial Administration defines the term.







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The Case of the Helpful Judge...

- "You did beautifully. Really. We both know you would out-prepare the other side. And you did. It showed through on the presentation. Presentation of the law was a killer."
- Married judge to female attorney with a case in his court.

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The Story Continues....

- "Those guys are so bad, who knows what they are capable of????!!!" a reference to the opposing attorneys.
- Female attorney to the married judge

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### And Continues...

- "I used to think that (one of the opposing attorneys) was sometimes a partial idiot; now he may have proven himself to be a COMPLETE one."

• Married judge to female attorney.

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### And Contains Attachments!

- With notes such as:
  - "Hoping and anticipating that you might be wanting this and interested in it."
  - "I would like to specially request time tomorrow for something special." Finishing this one with a smiley face, the judge added: "Hope you are amenable."



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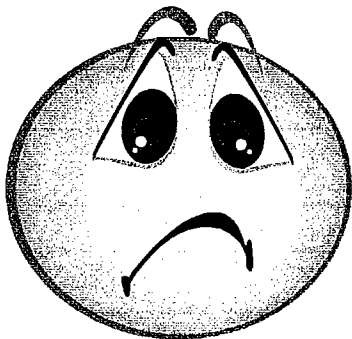
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## Rule 12

- Effective April 1, 1999 – Rules of Judicial Administration
- Designed to define public access to judicial records.
- Does NOT apply to records pertaining to the court’s adjudicative function, which are cases filed in the court.

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## What Does This Mean?

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## What is a “Judicial Record?”

- *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.

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## Requests

- Must be in Writing
- Must Include Sufficient Information to Reasonably Identify Record Requested
- Sent to the Records Custodian

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## Time for Inspection

- As soon as practicable – and not more than 14 days – after actual receipt of a request.

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## Applicability

- Does NOT apply to:
  - Records or information to which access is controlled by: a state or federal court rule, including a rule of civil or criminal procedure; a rule of appellate procedure; a rule of evidence; a rule of administration; a state or federal court order; the Code of Judicial Conduct; Chapter 552 of the Government Code.

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## Applicability

- Does NOT apply to:
  - Records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by: a state or federal court rule, including a rule of civil or criminal procedure, appellate procedure, or evidence; or common law, court order, judicial decision, or another provision of law.
  - Elected officials other than judges.

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## Exemptions

- Judicial Work Product (and drafts)
- Security Plans
- Personnel Information
- Home Address and Family Information
- Applicants for Employment/Volunteers
- Internal Deliberation

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## Exemptions

- Judicial Calendar Information
- Information Confidential Under Law
- Litigation/Settlement Negotiations
- Investigations of Character or Conduct
- Examinations
- Court Law Library Information

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## Public Information Act

- Government Code Chapter 552
- Judicial Exclusion under the Act.
- Access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules. 552.0035

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- **Q: Are judicial officials and employees required to obtain open government training?**
- **A:** Judicial officials and judicial employees do not need to attend Public Information Act training, but may be responsible for completing Open Meetings Act training.
- Judicial officials and employees do not need to obtain training regarding the Public Information Act because public access to information maintained by the court system is governed by Rule 12 of the Judicial Administration Rules of the Texas Supreme Court and by other applicable laws and rules. (see Govt. Code 552.0035). However, if a judge or judicial employee serves as a member of a governmental body subject to the Open Meetings Act, we advise that they should comply with the Open Meetings Act training requirements. If you are unsure if the open government training requirement applies to you, please consult with the Office of the Attorney General or the Office of Court Administration.

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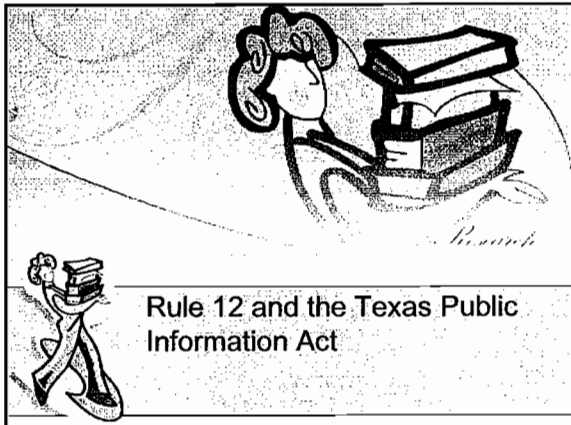
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## RULE 12

### 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 30<sup>th</sup> 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.





## Before the Presiding Judges of the Administrative Judicial Regions

### Per Curiam Rule 12 Decision

**APPEAL NO.:** 00-001

**RESPONDENT:** J. B. Marshall, Jr., Presiding Judge, Pflugerville Municipal Court

**DATE:** February 4, 2000

**SPECIAL COMMITTEE:** Judge Pat McDowell, Judge Olen Underwood, Judge B. B. Schraub, Judge Darrell Hester, Judge Ray D. Anderson

The applicant is an individual who has requested that the Pflugerville Municipal Court allow him to view traffic citations for research he is conducting regarding "how the city of Pflugerville does business regarding traffic citations." The presiding judge of the municipal court has refused access to the traffic citation records on the ground that they are exempt under the provisions of Rule 12.5(d) of the Rules of Judicial Administration. The applicant has filed a petition for review of this denial of access.

The threshold issue in a Rule 12 appeal is whether the records are "judicial records," which are defined by Rule 12.2(d) as follows:

"*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."

Traffic citation records pertain to the municipal court's adjudicative function and are created, produced, and filed in connection with matters that are or have been before the municipal court. Thus, they are not judicial records within the meaning of Rule 12, and we cannot decide the question of whether they are exempt from disclosure. Accordingly, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested record. Nevertheless, we will explain the duties of a court in relation to public access to case records of this type.

As previously discussed, Rule 12 is a new rule designed to define public access to judicial records, which are those records *not* related to a court's adjudicative function. Other records, which *are* related to a court's adjudicative function, are subject to other rules or laws. For purposes of this discussion, we will call those records "court records."

Rule 76a of the Texas Rules of Civil Procedure governs public access to civil court records. It provides that civil court records "are presumed to be open to the general public." They may be sealed only upon a showing of "a specific, serious and substantial interest which clearly outweighs . . . this presumption of openness; [and] any probable adverse effect that sealing will have upon the general public health or safety; [and that] no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted."

Public access to criminal court records, such as those at issue here, are governed by common law and constitutional law. The common law right to public access was articulated by the United States Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978), as follows:



"It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents. In contrast to the English practice, . . . American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies . . ."

The constitutional law relating to public access to criminal court records was summarized by the court in *Express-News Corp. v. MacRae*, 787 S.W.2d 451, 452 (Tex. App.-San Antonio 1990), as follows:

"The public's right to public trials under the First and Fourteenth Amendments to the United States Constitution includes a presumption that judicial records will be open to inspection by the press and public. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978). This presumption of openness may be overcome by a countervailing interest, such as the defendant's right to a fair trial, but the reason for closure or sealing must be apparent and clearly articulated. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 581, 100 S.Ct. 2814, 2829-30 (1980); *Houston Chronicle Publishing Co. v. Hardy*, 578 S.W.2d 495, 499 (Tex. App.-Corpus Christi, 1984), *cert. denied*, 470 U.S. 1052, 105 S.Ct. 1754 (1985)."

In *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992), the court conditionally granted a writ of mandamus against a trial court which had prohibited a newspaper from publishing the identity of a rape victim which had already been disclosed in an indictment, a motion in limine, and a charge to the jury. The court held that once they are filed with the court, court records become public records.

Although court records are not records covered by the Public Information Act (formerly "Open Records Act"), Texas Government Code §552.001 *et seq.*, several attorney general open records letters have discussed the issue, and found a right to public access. OR99-1825 (traffic citations are subject to disclosure under common-law right to copy and inspect court records and statutory law governing municipal courts); OR99-2611 (personal information such as place of employment, work and home telephone numbers of the accused which are found in traffic citations maintained by police department are not exempt from disclosure); OR99-0766 (traffic citations maintained by city are subject to Public Information Act); OR99-3698 (distinguishing between records maintained solely by municipal court and those also maintained by city).

For the reasons stated, this review committee can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.



## Before the Presiding Judges of the Administrative Judicial Regions

### Per Curiam Rule 12 Decision

**APPEAL NO.:** 02-003

**RESPONDENT:** Michael O=Neal, Administrative Judge of the Municipal Court for the City of Dallas

**DATE:** June 28, 2002

**SPECIAL COMMITTEE:** Judge John Ovard, Judge B. B. Schraub, Judge Darrell Hester, Judge Kelly Moore,  
Judge David Peoples

The applicant requested Aall records intended to instruct, assist or guide judges in the exercise of their contempt power@ from the administrative judge of the municipal court of the City of Dallas. The judge never responded to the request for records or to our letter informing him of the filing of the petition for review and of his right to file a response.

Rule 12.2(d) and (e) define a judicial record and a records custodian as follows:

AJudicial 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. . . .

ARecords custodian means the person with custody of a judicial record . . . . 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.@

We have been given no assistance in this matter by the administrative municipal judge. The requested records appear to be judicial records related to the administration of the Dallas municipal court with its many individual judges. Accordingly, pursuant to Rule 12.9(j), we grant the petition.



## **Before the Presiding Judges of the Administrative Judicial Regions**

### **Per Curiam Rule 12 Decision**

**APPEAL NO.:** 02-004

**RESPONDENT:** Lawrence Dee Shipman, Judge of the 211<sup>th</sup> Judicial District Court

**DATE:** November 6 , 2002

**SPECIAL COMMITTEE:** Judge John Ovard, Judge B. B. Schraub, Judge Darrell Hester, Judge Jeff Walker,  
Judge Olen Underwood

The applicant requested from Judge Lawrence Dee Shipman copies of the oaths of office and anti-bribery statements signed in accordance with Article XVI, Section 1 of the Texas Constitution. He also asked why a judge other than Judge Shipman conducted a hearing in a particular case. Through the district attorney, Judge Shipman replied that he was not the custodian of records for the copies requested and that they were in the custody of the Secretary of State. He also replied that his reasons for not conducting the hearing were exempt from disclosure under Rule 12.5(a). The applicant filed this petition for review and requested expedited review on the ground that he needs the records in order to determine whether Judge Shipman was disqualified to act as a judge in a case involving his client, and that the client is scheduled to be executed on November 21, 2002.

We grant the request for expedited review.

Pursuant to Article XVI Section 1 of the Texas Constitution, the sworn statements of district judges are filed and maintained with the Secretary of State. Pursuant to 1 Texas Administrative Code Section 73.71, the oaths of office of district judges also are filed and maintained by the Secretary of State. Judge Shipman told the applicant that he did not have custody of the records requested and that he could obtain copies from the Statutory Documents Section of the Secretary of State's Office. He gave the name, phone number, and address of a contact person in that office. Judge Shipman satisfied his duties under Rule 12, and we therefore deny the petition for review regarding these documents.

Regarding the request to provide the reasons for Judge Shipman's recusal or disqualification in a particular case, this is not a request for records, but is a request for reasons. If it were a request for records, it would be a request for records pertaining to the court's adjudicative function, and would therefore not be a request for judicial records within the definition of Rule 12.2(d). Accordingly, we deny the petition for review regarding the reasons for Judge Shipman's decision.





## Before the Presiding Judges of the Administrative Judicial Regions

### Per Curiam Rule 12 Decision

**APPEAL NO.:** 02-005

**RESPONDENTS:** J. B. Marshall, Jr. and Diana Jean Orton, Pflugerville Municipal Court Judges; and Jerry B. Jennison and Guillermo C. Serna, Tom Green County Justices of the Peace

**DATE:** December 23, 2002

**SPECIAL COMMITTEE:** Judge John Ovard, Judge B. B. Schraub, Judge Darrell Hester, Judge Stephen B. Ables, Judge Dean Rucker

The applicant requested from the Pflugerville municipal court and from the Tom Green County Justice of the Peace courts the names, addresses, and completion dates of individuals who have received citations for moving violations and who have already been granted permission to attend a defensive driving course for a certain time period. The courts either responded that the information was not subject to the Public Information Act or that portions of the information requested were exempt from disclosure under Rule 12.5(d).

While the records are in the custody of the courts, they are records relating to cases pending in those courts. Thus, they are not subject to the Public Information Act, and they are not subject to Rule 12 of the Rules of Judicial Administration. *Rule 12 Decision 00-001*. Public access to criminal court records, such as those at issue here, are governed by common law and constitutional law, and such law dictates a presumption of openness. *Id.* Generally, traffic citations are subject to disclosure under the common-law right to copy and inspect court records. *Office of the Attorney General OR99-3698*. However, this committee has no power to enforce any right to access not governed by Rule 12.

Because these records are records related to cases in the respondent courts, they are not judicial records subject to Rule 12, and we accordingly deny the petition for review.



**Before the Presiding Judges of the Administrative Judicial Regions**

**Supplemental Per Curiam Rule 12 Decision**

**APPEAL NO.:** 03-002

**RESPONDENTS:** Elaine M. Timberlake, City of Houston Municipal Court Judge

**DATE:** August 18, 2003

**SPECIAL COMMITTEE:** Judge John Ovard, Judge B. B. Schraub, Judge Darrell Hester, Judge Olen Underwood, Judge Jeff Walker

After our first decision was issued in this matter, the Respondent raised the issue that the complainants' home addresses, home or personal telephone numbers, social security numbers, and family member information were contained in the requested complaint records. The Respondent alleged that those portions of the record were exempt from disclosure under Rule 12.5(d), and requested that they be allowed to deny access to those exempt portions by redacting them.

We agree that the portions of the requested records that reflect any person's home address, home or personal telephone number, social security number, or family members are exempt from disclosure under Rule 12.5(d). Accordingly, we reaffirm our earlier decision granting the petition for access to the complaint records. However, the municipal court should produce those records only after redacting information that reflects any person's home address, home or personal telephone number, social security number, or family members.



## Before the Presiding Judges of the Administrative Judicial Regions

### Per Curiam Rule 12 Decision

**APPEAL NO.:** 03-003

**RESPONDENT:** City Secretary for City of Richardson Municipal Courts

**DATE:** August 18, 2003

**SPECIAL COMMITTEE:** Judge John Ovard, Judge B. B. Schraub, Judge Darrell Hester, Judge Stephen B. Ables, Judge Dean Rucker

The applicant requested access to “all court or case records, judicial records, and public records (for the last five years) of misdemeanor convictions, if any stemming from violations of the City of Richardson Parks Department rules and regulations held by the City of Richardson Municipal Court.” The city agreed to provide copies of the records with confidential information redacted, provided the requester paid the costs of the copying and redacting. The requester filed this petition for review under Rule 12 of the Rules of Judicial Administration.

When records of misdemeanor convictions are in the custody of the municipal court, they are records pertaining to the municipal court’s adjudicative function and are created, produced, and filed in connection with matters that are or have been before the municipal court. As such, they are not judicial records within the definition of Rule 12.2(d). *See* Rule 12 Decisions 00-001; 02-002, and 02-005. Accordingly, we deny the petition for review.



**Before the Presiding Judges of the Administrative Judicial Regions**

**Per Curiam Rule 12 Decision**

**APPEAL NO.:** 03-004

**RESPONDENT:** Cam McCabe, City of Tyler Municipal Court Administrator

**DATE:** August 18, 2003

**SPECIAL COMMITTEE:** Judge John Ovard, Judge B. B. Schraub, Judge Darrell Hester, Judge Kelly G. Moore, Judge David Peebles

The applicant requested from the Tyler municipal court the names and addresses of individuals who have signed up to take a defensive driving course for ticket dismissal. The court responded that the addresses were exempt from disclosure under Rule 12.5(d), so that the court was prohibited from voluntarily providing the information under Rule 12.4(b). The applicant filed this petition for review. The court has informed this committee that it wants to disclose the information, but believes it is prohibited from doing so by the cited provisions of Rule 12.

The records requested in this matter are records relating to cases pending in the municipal court. Case records are not subject to the Public Information Act, and they are not subject to Rule 12 of the Rules of Judicial Administration. *Rule 12 Decisions 00-001; 02-005.*

Because the records are not judicial records subject to Rule 12, we deny the petition for review.





**Before the Presiding Judges of the Administrative Judicial Regions****Per Curiam Rule 12 Decision**

**APPEAL NO.:** 03-006

**RESPONDENT:** Louie Ditta, Justice of the Peace, Harris County

**DATE:** October 21, 2003

**SPECIAL COMMITTEE:** Judge John Ovard, Judge B. B. Schraub, Judge Darrell Hester, Judge Dean Rucker, Judge Stephen Ables

On September 2, 2003, the applicant requested copies of documents from the Respondent, who had been acting as the administrative judge for the Harris County justices of the peace. The documents she requested were: (1) the signed and filed oaths of office for two visiting judges to Precinct 5 Place 1 for 2003, and (2) "listed appointments for visiting/special judges for 2003, and all bonds and oaths of office for the same, which should have been filed with Commissioner's Court Clerk." On September 3, Judge Ditta responded that the request for copies of the oaths of office for the Precinct 5 Place 1 visiting judges had been forwarded to Judge Russ Ridgeway, who was the current justice of the peace for that court. Judge Ditta also responded that the request for copies of the appointments for special judges for 2003 "must be directed to each Justice of the Peace."

The applicant filed her Rule 12 appeal on September 15. On September 23, Judge Ridgeway sent a response to the applicant stating that the oaths of office for the two special judges who had served Precinct 5 Place 1 would be made available for viewing at the court during normal business hours, and that he had waived the charge for copies of the records, which totaled 25 pages. On September 26, Judge Ditta sent his response to the Rule 12 appeal. He stated that because the request about all special judges for 2003 was unclear, he had directed the applicant to make further requests relative to the sixteen justices of the peace in Harris County to those particular justices, as each judge was required to maintain the records of his or her office.

After reviewing the petition for review, the responses of Judge Ditta and Judge Ridgeway, the applicant's reply to those responses, and all the supporting documents, we conclude that the applicant has not been denied access to the requested records. Judge Ditta complied with Rule 12 when he forwarded the request for documents about Precinct 5 Place 1 to the custodian of those documents, and that custodian has granted the access to the documents required by Rule 12.4(a). Judge Ditta's initial response to the applicant about the other "listed appointments" and oaths of office was cursory, but it was adequate to comply with the requirements of Rule 12.6(f). Accordingly, we deny the petition for review.

