

## CITATIONS & COMPLAINTS

NICHOLS, JACKSON, DILLARD, HAGER & SMITH LLP  
ATTORNEYS AT LAW

Joe Gorfida, Jr.

[jgorfida@njdhs.com](mailto:jgorfida@njdhs.com)

Main Office: (214) 965-9900

Direct Dial: (214) 665-3323

TEXAS MUNICIPAL COURTS  
EDUCATION CENTER

Regional Judges Seminar  
November 28, 2012

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## CHARGING INSTRUMENTS

### TWO PRIMARY METHODS

- ◆ Citations
- ◆ Complaints



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## CHARGING INSTRUMENTS

### COMPLAINTS & CITATIONS

- ◆ Fundamental right to have notice of specific charges
- ◆ Constitutional right
- ◆ Dismissal if not met

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## WHAT IS A CITATION?

- ◆ An order, issued by the police, to appear before a magistrate or a judge at a later date.  
(Written Notice to Appear – TCCP §543.005)
- ◆ Devices of efficiency that save the government money and countless individuals the experience of being arrested, booked, incarcerated, and released on bail.
- ◆ "Arrest & Release"

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## NOTICE TO APPEAR REQUIRED (TCCP § 543.004)

- ◆ Speeding
- ◆ Open Container



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## WHO CAN ISSUE A CITATION?

- ◆ Texas statutory law only authorizes "peace officers" to issue citations



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**WHAT IF PERSON REFUSES TO SIGN  
WRITTEN PROMISE TO APPEAR?**

*Berrett v. State*, 152 SW3d 600 (Tex. App. – Houston [1<sup>st</sup> Dist.] 2004, pet. ref'd.)

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**CHARACTERISTICS OF CITATIONS**

- ◆ Date
- ◆ Name
- ◆ Offense
- ◆ Offense Location
- ◆ Signed by Officer
- ◆ Signed by Defendant
- ◆ Due Date



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**“HELPFUL” CITATION INFORMATION**

“Helpful” for Court or Defendant:

- ◆ Defendant's Signature
- ◆ Juvenile Address Obligation
- ◆ Instructions for Appearing by Mail
- ◆ Plea Options
- ◆ Fine Amounts

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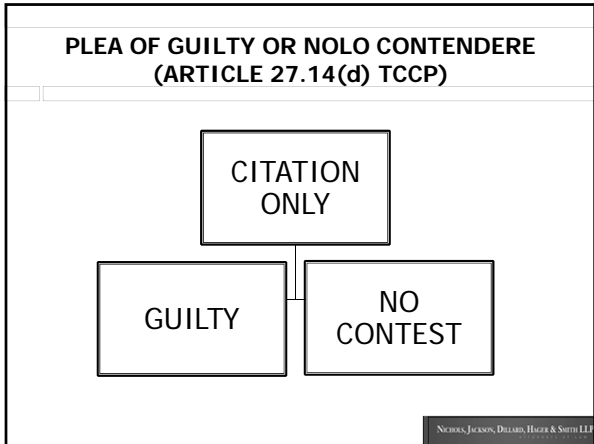
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**WHAT IS A COMPLAINT?**

- ◆ A sworn allegation charging the accused with the commission of an offense.
- ◆ Affords the defendant the ability to provide a defense to the alleged charges. (*Kindley v. State*, 879 SW2d 261 (Tex. App. – Austin 1982, pet. ref'd.)

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**WHEN MUST A COMPLAINT BE FILED?  
(ARTICLE 27.14(d) TCCP)**

- ◆ When “not guilty” plea entered; or
- ◆ Defendant fails to appear (added in 2009)

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## WHO CAN FILE A COMPLAINT

- ◆ Police
- ◆ City Employee
- ◆ Citizen



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## CHARACTERISTICS OF COMPLAINTS

- ◆ Date
- ◆ Name
- ◆ Offense Charged
- ◆ Offense Location
- ◆ Signed by Officer
- ◆ Sworn to by Official



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## COMPLAINT REQUIREMENTS

- ◆ Name of the Accused
- ◆ That Accused Committed the Offense
- ◆ Committed in the Territorial Limits of the City
- ◆ Date of Offense
- ◆ That the Affiant has Good Reason and, Does Believe, that the Accused has Committed the Offense

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MAY A PEACE OFFICER ISSUE A CITATION FOR THE OFFENSE OF PUBLIC INTOXICATION? (ARTICLE 14.06(b) TCCP)

- Yes       No



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**WHEN IS DEFENDANT ENTITLED TO COMPLAINT?**

Defendant is entitled to notice of a Complaint not later than the day before the date of any proceeding in the prosecution of Defendant under the Complaint.



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A Citation can serve as a Complaint

- True  
 False



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**WHO IS RESPONSIBLE FOR WORDING IN THE COMPLAINT?**



JUDGE



CLERK



PROSECUTOR

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Preparation of the Complaint is a ministerial duty – typically done by the Clerk.



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**REQUIREMENTS OF COMPLAINT  
ARTICLE 45.019 TCCP**

- ◆ Complaint shall begin with "In the name and by the Authority of the State of Texas."
- ◆ Complaint shall conclude with "Against the peace and dignity of the State."
- ◆ If Complaint alleges an Ordinance violation, it shall also conclude with "Contrary to the said Ordinance."

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**REQUIREMENTS OF COMPLAINT  
ARTICLE 45.019 TCCP**

- ◆ Elements of offense
  - ✓ Must be in the Complaint
  - ✓ Complaint must negate any exception in the Statute. *Bird v. State*, 927 SW2d 136 (Tex. App. – Austin 1982, pet. ref'd.)
- ◆ Location of offense
- ◆ Culpable mental state

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**DOES THE COMPLAINT REQUIRE A  
CULPABLE MENTAL STATE?**

- ◆ Traffic Offense
- ◆ Criminal Offense
- ◆ Code or Ordinance Violations



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**CULPABLE MENTAL STATE  
(HIGHEST TO LOWEST)**

- ◆ Intentionally
- ◆ Knowingly
- ◆ Reckless
- ◆ Criminal Negligence



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◆ What if the definition of an offense does not prescribe a culpable mental state but one is required?

◆ The required culpable mental state must be intentionally, knowingly, or recklessly.

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**COMPLAINT MUST BE SIGNED**

◆ Rubber Stamped Signature

◆ Electronic Signature (Judge, Court Clerk, or Defendant)

◆ Not Signed = Defective Complaint



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**COMPLAINT MUST BE SWORN TO BY AFFIANT**

◆ Personal Knowledge

◆ Hearsay



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**HOW TO ADMINISTER AN OATH TO AN AFFIANT**

- ◆ Affiant Reviews Complaint
- ◆ Both Affiant and Person Administering the Oath Raise their Right Hands
- ◆ Affiant Signs the Complaint
- ◆ Person Administering the Oath Signs Jurat

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**COURT SEAL**

- ◆ Required on Complaints
- ◆ Impressed on Complaints
- ◆ Court of Record Requires "Municipal Court of/in \_\_\_\_\_, Texas"

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**COURT SEAL**

- ◆ Person Administering the Oath Signs Jurat
- ◆ Non-Record Courts No Specific Language
- ◆ Five Point Star (Statute Repealed in 1999)



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## OBJECTIONS BY DEFENDANT

Waives and forfeits the right to object to a defect, error, irregularity in form, or substance of the Complaint if the Defendant does not object before the commencement of the trial on the merits.



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## CITATION VS. COMPLAINT

### CITATION

- Date of Offense
- Name of Accused
- Offense Committed
- Location Where Offense Committed
- Signed by Officer
- Signed by Defendant
- Due Date

### COMPLAINT

- Date of Offense
- Name of Accused
- Offense Charged
- Location Where Offense Committed
- Signed by Officer
- *Not* Signed by Defendant
- *No* Due Date
- SWORN TO BY OFFICIAL

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**SHAZAM, that was interesting!!**

**Does anyone have questions or comments?**



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# CITATIONS AND COMPLAINTS

Presented by

**Joseph Gorfida**

**Partner, Nichols, Jackson, Dillard, Hager & Smith LLP**

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

- Determine whether a citation meets the requirements of Texas law; and
- Assess the sufficiency of a formal complaint filed with the court.

**CITATIONS**

## RATIONALE FOR ISSUANCE OF CITATION

"FACILITATES ARREST AND RELEASE WITH OBLIGATION TO APPEAR AT A LATER DATE AND AVOIDS FULL CUSTODIAL ARREST."

## WHEN IS ISSUANCE OF CITATION AND "ARREST AND RELEASE" REQUIRED?

SPEEDING and OPEN CONTAINER OF ALCOHOL IN VEHICLE, if person makes written promise to appear – Section 543.004, Texas Code of Criminal Procedure ("TCCP")

## WHAT IF PERSON REFUSES TO SIGN WRITTEN PROMISE TO APPEAR?

- Section 543.005, TTC

"To secure release, the person arrested must make a written promise to appear in court by signing the written notice prepared by the arresting officer...The officer shall then promptly release the person from custody."

- *See Berrett v. State*, 152 S.W.3d 600 (Tex.App.—Houston [1<sup>st</sup> Dist.] 2004, pet. ref'd) – "...before an officer may issue a citation and release a defendant charged with violating the Transportation Code, the defendant **must** also sign a promise to appear before a magistrate. Only then does the officer have a duty to release the defendant from custody. If the defendant does not promise to appear, the officer is under no duty to release him. Instead, the officer could choose to take the defendant immediately before a magistrate. To secure a release for a violation of the Transportation Code, the defendant **must** sign a promise to appear. Once he does so, 'the officer shall then promptly release the person from custody.'" (emphasis original)
- *See Sedani v. State*, 848 S.W.2d 314 (Tex.App –Houstong [1<sup>st</sup>. Dist.] 1993, pet. ref'd) – Officer pulls driver over for turning

without signal and irate driver asks officer what would happen if he refused to sign citation. Officer replied that he would be taken to jail. Driver yanks clipboard out of officer's hand, signs citation, and gives clipboard back to officer. Officer hands driver copy of the citation, and driver promptly proceeds to rip it into shreds and throw it on the ground. Officer receives authorization from his supervisor to make custodial arrest of driver. Gun found in driver's car, and driver charged with unlawful possession of weapon. At trial driver alleges that weapon is poisonous fruit because officer had no right to re-arrest him after he signed promise to appear for traffic offense. The trial judge found that driver had negated his promise to appear by ripping citation up, and driver was convicted. Court of Appeals held that driver was illegally detained after he received his copy of the citation, even though he ripped it to pieces and destroyed the information regarding the appearance obligation. The Court stated, "...there was no probable cause to hold him after he signed the promise to appear. Because the arrest that led police to the handgun was illegal, the handgun must be suppressed." Reversed and remanded.

## **CITATION REQUIREMENTS**

### **1. NAME AND ADDRESS OF PERSON CHARGED**

- Section 543.003, TTC

"An officer who arrests a person for a violation of this subtitle punishable as a misdemeanor and who does not take the person before a magistrate shall issue a written notice to appear in court showing the time and place the person is to appear, the offense charged, the name and address of the person charged, and if applicable, the license number of the person's vehicle." (emphasis added)

- Article 14.06(b), Texas Code of Criminal Procedure ("TCCP")

"A peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, the offense charged... ." (emphasis added)

## **2. OFFENSE CHARGED**

- Section 543.003, TTC and Article 14.06(b), TCCP
- For speeding charge, citation must state applicable speed limit and “clocked” speed (Section 543.010, TTC)

“The complaint and the summons or notice to appear on a charge of speeding under this subtitle must specify: (1) the maximum or minimum speed limit applicable in the district or at the location, and (2) the speed at which the defendant is alleged to have driven.”

## **3. TIME AND PLACE OF APPEARANCE**

- Section 543.003, TTC and Article 14.06(b), TCCP
- At least 10 days to appear after date of arrest, before a magistrate having jurisdiction of offense who is in municipality or county in which offense is alleged to have occurred - Section 543.006(a), TTC

“The time specified in the notice to appear must be at least 10 days after the date of arrest unless the person arrested demands an earlier hearing.”

- Remember “Mailbox Rule” – Article 45.013, TCCP

“(a) Notwithstanding any other law, for the purposes of this chapter a document is considered timely filed with the clerk of the court if

- (1) the document is deposited with the United States Postal Service in a first class postage prepaid envelope properly addressed to the clerk or before the date the document is required to be filed with the clerk; and
- (2) 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;

(b) 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.”

**4. LICENSE NUMBER OF VEHICLE (IF APPLICABLE)**

- Section 543.003, TTC and Article 14.06(b), TCCP

**5. NOTICE OF POTENTIAL SUSPENSION**

- Section 601.233(a), TTC

“A citation for an offense under Section 601.191 issued as a result of Section 601.053 must include, in type larger than other type on the citation...the following statement: ‘A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver’s license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the Department of Public Safety for the two years from the date of conviction...’ .”

**6. NOTICE OF POTENTIAL SURCHARGE**

- Section 708.105(a), TTC

“A citation issued for an offense under a traffic law of this state or a political subdivision of this state must include, in type larger than any other type on the citation, the following statement: ‘A conviction of an offense under a traffic law of this state may result in the assessment on your driver’s license of a surcharge under the Driver Responsibility Program.’”

**7. RIGHT TO DRIVING SAFETY COURSE OR MOTORCYCLE OPERATORS COURSE**

- Article 45.0511(q), TCCP

“A notice to appear issued for an offense to which this article applies must inform a defendant charged with an offense under Section 472.002, Transportation Code, and offense under Subtitle C, Title 7, Transportation Code, or an offense under Section 729.001(a)(3), Transportation Code, committed while operating a motor vehicle of the defendant’s right to complete a driving safety course...motorcycle operator training course... .”



**8. NOTICE OF FIREARM ISSUE FOR MISDEMEANOR DOMESTIC VIOLENCE CONVICTION**

- Article 14.06(b), TCCP

“If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

**9. NOTICE TO APPEAR: COMMERCIAL VEHICLE OR LICENSE**

- Section 543.007, TTC

“A notice to appear issued to the operator of a commercial motor vehicle or holder of a commercial driver’s license or commercial driver learner’s permit, for the violation of a law regulating the operating of vehicles on highways, must contain the information required by department rule to comply with Chapter 522 and the federal Commercial Motor Vehicle Safety Act of 1986.”

- (1) whether the vehicle was a CMV as defined in Texas Transportation Code, Chapter 522;
- (2) whether the vehicle was involved in the transporting of hazardous materials;
- (3) the date and nature of the offense, including whether the offense was a serious traffic violation as defined in Texas Transportation Code, Chapter 522

# ADDITIONAL "PRACTICAL" REQUIREMENTS?

## 1. DATA FOR RACIAL PROFILING

- Article 2.132(b)(6), TCCP

"Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must: (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:

- (a) the race or ethnicity of the individual detained;
- (b) whether a search was conducted and, if so, whether the individual detained consented to the search; and
- (c) whether the peace officer knew the race or ethnicity of the individual before detaining that individual... ."

## 2. NOTICE RE: CONTRACT FOR ENFORCEMENT OF CERTAIN ARREST WARRANTS

- Section 702.004, TTC

"(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."

### **3. SPECIAL RULE FOR COMMERCIAL MOTOR VEHICLES**

- Section 16.100, Texas Administrative Code ("TAC")

"A conviction report resulting from a traffic citation issued to a person driving a commercial motor vehicle (CMV), or who is a holder of a commercial driver's license or commercial driver's learner's permit, for violation of any law regulating the operation of motor vehicles on highways, must be on a form that contains the following information:

1. the name, address, physical description, and date of birth of the party charged;
2. the number, if any, of the person driver's license;
3. the registration number of the vehicle involved;
4. whether the vehicle was a CMV as defined in Texas Transportation Code, Chapter 522;
5. whether the vehicle was involved in the transporting of hazardous materials;
6. the date and nature of the offense, including whether the offense was a serious traffic violation as defined in Texas Transportation Code, Chapter 522."

### **4. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS**

- Article 2.133(b), TCCP

"A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

1. a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:
  - a. the person's gender;
  - b. the person's race or ethnicity, as stated by the person, or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;
2. the initial reason for the stop;
3. whether the officer conducted a search as a result of the stop and, of so, whether the person detained consented to the search;

4. whether any contraband or other evidence was discovered in the course of the search and a description of the contraband and evidence;
5. the reason for the search, including whether;
  - a. any contraband or other evidence was in plain view;
  - b. any probable cause or reasonable suspicion existed to person the search; or
  - c. the search was performed was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle.
6. whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
7. the street and address or approximate location of the stop;
8. whether the officer issued a written warning or a citation as a result of the stop.

## **COMPLAINTS**

## CITATION – INTERIM CHARGING INSTRUMENT

- Article 27.14(d), TCCP

“(d) If written notice of an offense for which maximum possible punishment is by fine only...has been prepared, delivered, and filed with the court and a legible duplicate copy has been given to the defendant, the written notice to appear serves as a complaint to which the defendant may plead ‘guilty,’ ‘not guilty,’ or ‘nolo contendere.’”

- *See State v. Shaw*, 822 S.W.2d 807 (Tex.App.—Austin 1992) – “...the written notice of traffic violation serves as a complaint to which the defendant may enter his plea. A formal complaint must be filed only if the defendant pleads not guilty, thus necessitating a trial...a formal complaint is required to be filed in traffic offenses such as this only if the defendant pleads not guilty. If the defendant pleads guilty or no contest, no formal complaint is required and there is nothing for the defendant to waive. Because appellee pleaded no contest, the requirement that a formal complaint be filed was never triggered and, as a logical consequence, no waiver was necessary.”

## PURPOSE OF FORMAL, SWORN COMPLAINT

- Article 45.018(a), TCCP

“For purposes of this chapter, a complaint is a sworn allegation charging the accused with the commission of an offense.”

- A complaint notifies a defendant of the offense charged so that he or she may prepare defense. *Kindley v. State*, 879 S.W.2d 261 (Tex.App.—Austin 1982, pet. ref’d)

## **WHEN MUST COMPLAINT BE FILED?**

- When “not guilty” plea entered OR defendant fails to appear – Article 27.14(d), TCCP

“If the defendant pleads ‘not guilty’ to the offense or fails to appear based on the written notice, a complaint shall be filed that conforms to the requirements of Chapter 45 of this code, and that complaint serves as an original complaint.”

- The “or fails to appear” language was added by amendment in 2009.

## **FILING OF FORMAL COMPLAINT MAY BE WAIVED**

- Article 27.14(d), TCCP

“A defendant may waive the filing of a sworn complaint and elect that the prosecution proceed on the written notice of the charged offense if the defendant agrees in writing with the prosecution, signs the agreement, and files it with the court.”

## **NOTICE TO DEFENDANT OF CONTENT OF COMPLAINT**

- Article 45.018(b), TCCP

“A defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint. The defendant may waive the right to notice granted by this subsection.”

## **STATUTE OF LIMITATIONS**

- Article 12.02(b), TCCP

“A complaint or information for any Class C misdemeanor may be presented within 2 years from the date of the commission of the offense, and not afterward.”

- See The Recorder (Vol. 21, No.4), "Statute of Limitations" by Cathy Reidel

"The Court of Criminal Appeals has made it clear in the *Phillips* decision that prosecution is barred in cases without a sworn complaint filed within two years of the charged offense."

## **REQUIREMENTS OF COMPLAINT- ARTICLE 45.019, TCCP**

- **STATUTORY BEGINNING AND ENDING**

"In the name and by the authority of the State of Texas...Against the peace and dignity of the State."

- **ELEMENTS OF OFFENSE**

Each element 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.). The complaint must negate any exception in the statute that the State is required to negate. Bird v. State, 927 S.W.2d 136 (Tex.App.—Austin 1982, pet. ref'd).

- **LOCATION OF OFFENSE**

See State v. Lang, 916 S.W.2d 63 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1996, no pet.) – complaint for speeding was not substantially defective for failure to allege the offense occurred within the justice precinct in which case was tried.

See Bedwell v. State, 155 S.W. 2d 930 (Tex. 1940) – certain types of charges can occur anywhere within a particular jurisdiction, and, therefore, it is not necessary that the complaint allege a specific location in those instances.

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

- **CULPABLE MENTAL STATE**

A complaint must allege the applicable culpable mental state, if one is required for the offense. The statutory culpable mental states are, from highest to lowest, (1) intentional, (2) knowing, (3) reckless, and (4) criminal negligence. Section 6.02, Texas Penal Code. If the definition of the offense does not provide a required culpable mental state one is still required unless the definition clearly indicates one is not required. If a statute or ordinance does not specifically provide the required culpable mental state, and the offense definition does not clearly dispose of the requirement, then any one of the first three states, from highest to lowest, will suffice.

Most traffic-related offenses do not require a culpable mental state. Offenses charged under the Texas 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).

“A person commits an offense if the person performs an act prohibited or fails to perform an act required by this subtitle.”  
Article 542.301, TTC

- **NAME OF VICTIM, IF APPLICABLE**
- **MANNER AND MEANS OF OFFENSE**

“Manner” is the way, mode, or method of doing something. “Means” is how the end is achieved. If the complaint does not properly allege the manner and means it is defective because the defendant has not been provided notice of how the offense is alleged to have been committed. Haecker v. State, 571 S.W.2d 920 (Tex.Crim.App. 1978).

A charging instrument must be specific enough to inform the accused of the nature of the allegations so that he may prepare a defense. State v. Moff, 154 S.W.3d 599 (Tex.Crim.App. 2004). However, although a complaint alleging a Class C misdemeanor must state facts sufficient to show commission of the offense charged, it need not show the same particularity or specificity as is necessary in an information or indictment. Vallejo v. State, 408 S.W.2d 113 (Tex.Crim.App. 1966)

If the definition of an offense allows or provides for more than one manner or means by which a violation may occur, then fair notice



to the defendant requires that the State allege in the charging instrument the particular manner and means it will seek to establish. *Gowin v. State*, S.W.2d 672 (Tex.App.—Tyler 1988, no pet.)

- **DATE OF OFFENSE**

- **SWORN AND SIGNED**

The person swearing to the complaint is the affiant. It may be a person with personal knowledge of the factual content of the complaint, such as the officer who wrote the citation. It may also be a "hearsay affiant," such as a court clerk who has reviewed the report filed with the officer. There is no requirement that the affiant have first-hand knowledge. *Rose v. State*, 799 S.W.2d 381, Tex.App.—Dallas 1990, no pet.). The affiant makes and subscribes/signs an affidavit, which is a sworn statement. This must be done before a qualified person administering an appropriate oath. There is no specific wording prescribed for the oath.

A complaint must be signed in order to be valid. *State v. Bender*, 353 S.W.2d 39 (Tex.Crim.App. 1962). It may be a genuine signature, a rubber stamp, or electronic signature.

The "*jurat*" is the certificate of the person before whom the complaint is being sworn. A complaint is defective if it does not contain a proper *jurat*. If the *jurat* shows that the affidavit was sworn before someone who had no authority to administer the oath, then the complaint is invalid. An undated *jurat* also renders a complaint defective, and the date of the *jurat* must be a specific date, rather than an "on or about" date. *Brown v. State*, 294 S.W.2d 772 (Tex.Crim.App. 1956).

- **COURT SEAL**

"A justice or municipal court shall have a court seal, the impression of which must be on all papers issued out of the court except subpoenas... ." Article 45.012(g), TCCP

## WAIVER OF DEFECTS IN COMPLAINT

- Article 45.019(f), TCCP

“If the defendant does not object to the 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.”

## CHALLENGE OF COMPLAINT

It is the defendant’s burden to prove a complaint is defective. Bagsby v. State, 721 S.W.2d 567 (Tex.App.—Fort Worth 1986, no pet). The customary means by which the sufficiency of a complaint is challenged is a motion to set aside or “quash” the complaint. Such a motion can be made orally or in writing, as the pleadings of a defendant in municipal or justice court may take either form (unless otherwise required by local rule). If a pre-trial hearing has been set, the motion must be raised or filed at least 7 days before the hearing or it is waived (again, unless otherwise required by local rule). Article 28.01, TCCP.

If the motion to quash is granted then the State normally has an opportunity to refile, and the statute of limitations is tolled for the time period that the quashed complaint was in effect. Article 12.05 (b), TCCP

## AMENDMENT OF COMPLAINT

Because a complaint is a sworn document, it can be “amended” only if the amended complaint is “re-sworn” by the affiant. Cannon v. State, 925 S.W.2d 126 (Tex.App.—Amarillo 1996, pet. ref’d).

