

# JUVENILE AND MINOR PROCEEDINGS

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**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**1. General Procedures**

Checklist 13-1	Script/Notes
<p><input type="checkbox"/> 1. If juvenile offender does not appear as required, see Checklist 13-17.</p> <p><input type="checkbox"/> 2. If juvenile offender appears, determine age of offender at the time of the offense.</p> <p><input type="checkbox"/> a. Generally, a municipal court has jurisdiction over a person between 10 years of age and under 17 years of age for the following offenses:</p> <p style="padding-left: 40px;">(1) Certain traffic offenses;</p> <p style="padding-left: 40px;">(2) Status Alcoholic Beverage Code offenses;</p> <p style="padding-left: 40px;">(3) Certain Education Code offenses;</p> <p style="padding-left: 40px;">(4) Class C misdemeanors in the Penal Code;</p> <p style="padding-left: 40px;">(5) Status tobacco offenses in the Health and Safety Code; and</p>	<p>A student required to make a court appearance, including days absent from school due to traveling, receives an excused absence from school. Sec. 25.087, E.C.</p> <p>Secs. 51.02(2)(A) and 51.03(f), F.C., and Sec. 8.07, P.C.</p> <p>A “status” offender is a child who is accused, adjudicated, or convicted of conduct that would not, under state law, be a crime if committed by an adult. Sec. 51.02(15), F.C.</p> <p>Effective September 1, 2011, juveniles in the sixth grade or lower may not be charged criminally for Disruption of Classes and Disruption of Transportation. Secs. 37.124 and 37.126, E.C. Additionally, juveniles under the age of 12 may not be charged criminally for Failure to Attend School offenses beginning September 1, 2011. Sec. 25.094, E.C.</p> <p>Effective September 1, 2011, juveniles in the sixth grade or lower may not be charged criminally for most types of Disorderly Conduct offenses (involving language, gestures, odors, noise, and fights). Sec. 42.01. P.C.</p>

(6) Other fine-only offenses.

- |   |  |
|---|--|
| <p><input type="checkbox"/> b. Under the Transportation Code, a “minor” is a person who is younger than 17 years of age.</p>  | <p>Sec. 729.001, T.C.<br/>See Checklists 13-3 and 13-4 for a listing of traffic offenses and penalties.</p>  |
| <p><input type="checkbox"/> c. Under the Alcoholic Beverage Code, a “minor” is a person under 21 years of age.</p>  | <p>Sec. 106.01, A.B.C.<br/>See Checklists 13-6; 13-7; 13-15 for a listing of Alcoholic Beverage Code offenses and penalties.</p>   |
| <p><input type="checkbox"/> d. Municipal court does have jurisdiction of public intoxication of children.</p> <p style="padding-left: 40px;">If the offender is younger than age 21, the offender is subject to the penalties in Section 106.071, A.B.C.</p>              | <p>Sec. 49.02(e), P.C.<br/>See Checklist 13-6.</p>   |
| <p><input type="checkbox"/> e. For purposes of status tobacco offenses, a “minor” is an individual under the age of 18 years of age.</p>  | <p>Sec. 161.252(a), H.S.C.<br/>See Checklists 13-8 and 13-9 for a listing of status tobacco offenses and penalties.</p>  |
| <p><input type="checkbox"/> f. For purposes of compulsory attendance under the Education Code, a child is a person who is at least six years of age (or younger than six if previously enrolled in first grade) and who has not yet reached his or her 18th birthday.</p> | <p>Sec. 25.085, E.C.<br/>See Checklists 13-12; 13-13; 13-14 for a listing of Education Code offenses and penalties.</p> <p>Municipal court has jurisdiction only if the child is at least 10 years of age.</p> |
| <p><input type="checkbox"/> g. For purposes of all other offenses, a child is a person who is at least age 10 and under the age of 17.</p>  | <p>Sec. 51.02(2), F.C.</p>   |
| <p><input type="checkbox"/> 3. Court determines whether to retain jurisdiction or to transfer a case involving a child under the age of 17 to the juvenile court.</p>   | <p>See Checklist 13-2.<br/>The court may not transfer a traffic offense or a tobacco offense involving persons under the age of 17.</p>  |
| <p><input type="checkbox"/> 4. If the court does not waive jurisdiction, the court proceeds.</p>  |  |
| <p><input type="checkbox"/> 5. Determine if parent(s) is present. (Parent’s presence required for all proceedings if the child or minor is under the age of 17 and for a 17-year-old defendant charged with a sexting offense under Section 43.261, P.C.)</p>             | <p>Art. 45.0215, C.C.P.</p> <p>“Parent” includes a person standing in parental relation, a managing conservator, or a custodian. Art. 45.057(a)(3),</p>  |

- ❑ 6. If the parent does not appear, determine if the parent(s) has been served with a summons. If not, reset the case.
  - ❑ a. The court must summon the parent(s) to appear in open court with his or her child (a person under the age of 17 or a 17-year-old charged with a sexting offense under Section 43.261, P.C.).
  - ❑ b. If the parent(s) has been served with a summons but failed to appear, the court may waive the requirement of the presence of the parents, guardian, or managing conservator if, after diligent effort, the court cannot locate them or compel their presence.
  
- ❑ 7. Notify parent and child in writing of their continuing obligation to give written notice of current address. The court should provide a copy of Article 45.057(h) and (i), C.C.P., to child and parent.

C.C.P.

Marriage removes the disability of minority. Thus, the parents of defendants who are younger than 17 years of age and who are married need not be summoned. Sec. 1.104, F.C.

Art. 45.0215, C.C.P.

If the court waives this requirement, it is advisable to document what action the court employed to compel the parent’s presence in the offender’s file. If the parent, guardian, or managing conservator fails to respond to the summons, it is punishable as a Class C misdemeanor. Art. 45.057(g), C.C.P.

Art. 45.057, C.C.P.

“Here is a copy of the law requiring you and your parent to give notice of your current address. If you fail to give this court written notice of your current address or if you move and fail to give written notice of your current address within seven days after moving, you and your parent(s) could be charged with a Class C misdemeanor that has a maximum penalty of \$500.”

Art. 45.057(h), C.C.P. 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

- 8. Make notes on child’s sophistication and maturity and file notes with case.
  
- 9. If an attorney appears without the child or the child’s parent(s). Reset the case.
  
- 10. If the child does not appear with an attorney, determine whether the juvenile offender is intending to hire an attorney.
  - a. If an attorney is going to be hired, reset the case and inform the juvenile offender and parent or guardian to have the attorney present for the date and time in which the case is rescheduled.
  
  - b. Provide the specific:

17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt.

Art. 45.057(i), C.C.P. If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice under Subsection (h) to the appellate court.

Article 45.045, C.C.P., requires the court to consider the defendant’s sophistication and maturity before issuing a capias pro fine for the defendant when the defendant reaches age 17. This might be the only time that the court has to determine that information. See Checklist 13-21 Children Now Adults who Fail to Pay Fines.

Art. 45.0215, C.C.P.  
“The law requires that a child and his or her parents must personally be present in open court before the court can proceed with the child’s case. Therefore, I am resetting this case.”

See Checklist 3-2 for explaining the defendant’s right to counsel.

“At your next court date and at any subsequent court appearances, you and your parent(s) must still appear even though you will be represented by an attorney.” Art. 45.0215, C.C.P.

- (1) Date;
  - (2) Place; and
  - (3) Time of the resetting.
- c. If an attorney is not going to be hired, proceed.
11. Explain the child’s rights, charge(s), pleas, and penalties. Make sure that child understands consequences of each plea.
12. In addition to the rights in Checklists 3-2 and 4-3, if the offense is a fine-only misdemeanor penal offense (includes Penal Code offenses, penal ordinance offenses, and Education Code offenses except the offense of failure to attend school), the court must:
- a. Notify the parent and child of the child’s right to an expunction at the commencement of the proceedings; and
  - b. Give both the parent and child a copy of the expunction statute, Article 45.0216, C.C.P.
13. In addition to the rights in Checklists 3-2 and 4-3, if the offense is failure to attend school, the court must:
- a. Notify the parent and child of the child’s right to an expunction at the commencement of the proceedings; and
  - b. Give both the parent and child a copy of the expunction statute, Article 45.055, C.C.P.
14. Request a plea.

See Checklists 3-2 and 4-3 for rights and pleas; see Checklists 13-3; 13-5; 13-6; 13-8; and 13-12 for information on charges and penalties for each code.

See Checklist 13-22.

“You have the right to have the offense of \_\_\_\_\_ expunged.

Here is a copy of the law regarding your right to expunction. Please take time to read this information.”

See Checklist 13-22.

“You have the right to have the offense of failure to attend school expunged if you are convicted of only one offense of failure to attend school. Here is a copy of the law regarding your right to expunction. Please take time to read this information.”

See Chapter 5 on taking pleas.

“How do you plead to the charge of \_\_\_\_\_ brought against you? ‘Guilty,’ ‘No Contest,’ or ‘Not Guilty?’”



under Article 45.049, C.C.P., if:

- (1) Defendant failed to pay previously assessed fine or cost; or
- (2) Defendant is determined by the court to have insufficient resources or income to pay fine or costs;

- c. By performing community service, if defendant is younger than 17 years, under Article 45.0492, C.C.P.;
- d. By performing tutoring, if defendant is younger than 17 years of age and the offense occurred in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense, under Article 45.0492, C.C.P.; or
- e. Through a combination of the alternatives described above.

See Checklist 8-3 for indigent hearings.

Art. 45.049, C.C.P.

“If you do not have the resources to pay the fine and costs, you may perform community service for a governmental entity or a non-profit organization to discharge payment of your fine and costs.”

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**2. Waiver of Municipal Court Jurisdiction and Transfer of Child to Juvenile Court**

It would be prudent for the municipal judge and other interested officials to meet with the juvenile court judge in your respective jurisdiction to devise a system of transfer that is acceptable to both courts.

Checklist 13-2	Script/Notes
<p><input type="checkbox"/> 1. If the court decides to waive jurisdiction, see the following information:</p> <p><input type="checkbox"/> a. A municipal court may enter an “order of waiver of jurisdiction” and transfer the juvenile defendant to juvenile court whenever a complaint is pending against a juvenile for any fine-only offense other than a traffic offense, or a tobacco offense under Section 161.252, H.S.C. This is called discretionary transfer.</p> <p><input type="checkbox"/> b. A municipal court shall enter an “order of waiver of jurisdiction” and transfer the juvenile defendant to juvenile court if the complaint pending alleges a violation of Section 43.261, P.C., that is punishable by fine only (i.e., “sexting”).</p> <p><input type="checkbox"/> c. A municipal court shall enter an “order of waiver of jurisdiction” and transfer the juvenile defendant to juvenile court when the juvenile has previously been convicted of:</p> <p><input type="checkbox"/> (1) Two or more misdemeanors punishable by fine only other than traffic or tobacco;</p> <p><input type="checkbox"/> (2) Two or more violations of a penal ordinance of a political subdivision other than a traffic; or</p> <p><input type="checkbox"/> (3) One or more of each of the types of misdemeanors described above.</p> <p>This is called mandatory transfer.</p> <p><input type="checkbox"/> 2. A municipal court may elect not to enter an “order of waiver of jurisdiction” for a third or other subsequent violation if the court employs a juvenile case manager under Article 45.056, C.C.P.</p> <p><input type="checkbox"/> 3. Notice to Juvenile Court</p>	<p>Sec. 51.08(b)(2), F.C. Sec. 161.257, H.S.C.</p> <p>Sexting offenses alleged against a child must be transferred to juvenile court. Municipal courts may only see a defendant age 17 for a sexting offense.</p> <p>If court is waiving because of two prior convictions, include information on prior convictions in waiver notice.</p> <p>Sec. 161.257, H.S.C. Sec. 51.08(b)(1), F.C.</p> <p>Sec. 51.08(d), F.C.</p> <p>Sec. 51.08(c), F.C.</p>

- a. A municipal court is required to notify the juvenile court of any pending complaint against a juvenile in which jurisdiction is not waived except for:
  - (1) A traffic offense; or
  - (2) A tobacco offense committed by a person under the age or 17.
  
- b. In addition, the municipal court must furnish the juvenile court with notice of the final disposition of the cases in which the municipal court retained jurisdiction.

A letter addressed to the juvenile court judge or the appropriate designee of the juvenile court should contain the following information:

- 1) Name of the court;
- 2) Name of the defendant;
- 3) Name of the judge;
- 4) Offense charged; and
- 5) Cause number assigned to the case.

See *TMCEC Forms Book*: Report to Juvenile Court of Complaint Filed.

Sec. 51.08(c), F.C.



**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Traffic and Other Motor Vehicle Misdemeanors**

**4. Penalties**

<b>Checklist 13-4</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. General and specific penalties for traffic offenses:</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. Registration of Vehicles – Chapter 502, T.C.:</p> <p style="padding-left: 80px;">Sec. 502.401, T.C. (General Penalty) – A fine not to exceed \$200.</p> <p style="padding-left: 40px;"><input type="checkbox"/> b. Driver’s License Offenses – Chapter 521, T.C.</p> <p style="padding-left: 80px;">Sec. 521.461, T.C. (General Penalty) – A fine not to exceed \$200.</p> <p style="padding-left: 40px;"><input type="checkbox"/> c. Rules of the Road Offenses – Title 7, Subtitle C, T.C. (Chapters 541-600)</p> <p style="padding-left: 80px;">Sec. 542.401, T.C. (General Penalty) – A fine of not less than \$1 or more than \$200.</p>	<p>Sec. 729.001(c), T.C., provides that the fine range provided in Transportation Code violations applies to violators under age 17.</p> <p>Sec. 521.025, T.C., provides that if a person fails to display a driver’s license but actually had a valid driver’s license on the day of the offense, it is a defense to the prosecution. The prosecutor must make a motion to dismiss the charge. An optional \$10 fee may be assessed.</p> <p>The court may double the minimum and maximum fines for offenses committed in a construction or maintenance work zone when workers are present. Sec. 542.404, T.C.</p> <p>If the offense involves failure to yield right-of-way that causes a crash and bodily injury to a person other than defendant, the fine is a minimum of \$500 and a maximum of \$2,000. The fine increases to a minimum of \$1,000 and a maximum of \$4,000 if the offense results in serious bodily injury or death. Sec. 542.4045, T.C.</p>

□ d. Motor Vehicle Safety Responsibility Act – Chapter 601, T.C.

Sec. 601.191, T.C. (Specific Penalty) – A minimum fine of \$175 and a maximum fine of \$350.

Sec. 601.191(c), T.C. (Specific Penalty) – If a person has been previously convicted of an offense of failure to maintain financial responsibility, the fine is not less than \$350 or more than \$1000. (The complaint must be enhanced alleging a prior judgment and the prosecution must prove the prior judgment before the court may assess this fine.)

Fines for no safety belt are a minimum of \$25 and a maximum of \$50. Fines for allowing a child younger than 17 to ride in a vehicle without requiring a safety belt are a minimum of \$100 and a maximum of \$200. Sec. 545.413, T.C.

If the driver is charged with not having a child secured, the fines are a maximum of \$25 for the first offense and a maximum of \$250 for a second or subsequent offense. Sec. 545.412(b), T.C.

The fine for passing a school bus is a minimum of \$200 and a maximum of \$1000. Sec. 545.066(c), T.C.

If the court determines that a person has not been previously convicted of Failure to Maintain Financial Responsibility and that the person is economically unable to pay the fine, the court may reduce the fine to not less than \$175. Sec. 601.191(d), T.C.

On a second or subsequent conviction for Failure to Maintain Financial Responsibility, the court shall order the sheriff to impound the vehicle if the defendant was an owner at the time of the offense and at the time of conviction. Sec. 601.261, T.C. See *TMCEC Forms Book: Order for Impoundment of In-State Motor Vehicle*.

If a person is covered with valid insurance or other form of financial responsibility at the time of offense, presents it to the court, and the court (clerk) verifies that it is valid at the time of the offense, the court shall dismiss the charge. No fee may be charged.

- e. General Provisions Relating to Vehicle Size and Weight – Chapter 621, T.C.

Sec. 621.507, T.C. (General Penalty) – A fine not to exceed \$200. (Subsequent offenses include jail time. Hence, municipal court does not have jurisdiction.)

- f. Protective Headgear for Motorcycle Operators and Passengers – Chapter 661, T.C.

Sec. 661.003(h), T.C. (Specific Penalty) – A minimum fine of \$10 and a maximum fine of \$50.

- 2. In addition to the fine, upon conviction, the court may also require optional sanctions under Article 45.057, C.C.P.
- 3. There is no right to expunge traffic convictions.

All persons under the age of 21 must wear protective headgear. Exceptions to this rule are contained in Secs. 661.003(c) and (d), T.C.

See Checklist 13-15.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Alcoholic Beverage Code**

**5. General Status Offenses**

Checklist 13-5	Script/Notes
<p><input type="checkbox"/> 1. Before proceeding with this Checklist, see Checklists 3-2, 4-3, and 13-1 for general procedures, rights, and pleas.</p> <p><input type="checkbox"/> 2. Identify the code provision that is alleged to have been violated.</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Purchase of Alcohol by a Minor – Elements of this offense are:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) A minor;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) Purchases;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (3) An alcoholic beverage.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Attempt to Purchase Alcohol by a Minor – Elements of this offense are:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) A minor;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) With specific intent to purchase alcohol;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (3) Does an act amounting to more than mere preparation;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (4) That intends but fails to commit the offense.</p> <p style="padding-left: 20px;"><input type="checkbox"/> c. Consumption of Alcohol by a Minor – Elements of this offense are:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) A minor;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) Consumes;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (3) An alcoholic beverage.</p> <p style="padding-left: 40px;"><input type="checkbox"/> (4) It is an affirmative defense if the minor consumed an alcoholic beverage in the visible presence of the minor’s adult parent, guardian, or spouse.</p> <p style="padding-left: 40px;"><input type="checkbox"/> (5) This offense does not apply to a minor who:</p>	<p>Sec. 106.02, A.B.C.</p> <p>It is not 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.</p> <p>Sec. 106.025, A.B.C.</p> <p>Sec. 106.04, A.B.C.</p> <p>Sec. 106.04(b), A.B.C.</p> <p>Sec. 106.04(e), A.B.C.</p>

- (a) Requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;
  - (b) Was the first person to make a request for medical assistance;
  - (c) Remained on the scene until medical assistance arrived; and
  - (d) Cooperated with medical assistance and law enforcement personnel.
  
- d. Driving or Operating Watercraft Under the Influence of Alcohol by a Minor – Elements of this offense are:
  - (1) A minor;
  - (2) Operates a motor vehicle or a watercraft;
  - (3) In a public place;
  - (4) With any detectable amount of alcohol in his or her system.
  
- e. Possession of Alcohol by a Minor – Elements of this offense are:
  - (1) A minor;
  - (2) Possesses;
  - (3) An alcoholic beverage.
  - (4) It is an exception to an offense under this section if the minor possesses an alcoholic beverage:
    - (a) In the course and scope of his or her employment provided that such employment is not prohibited by this code;
    - (b) In the presence of an adult parent, guardian, or spouse; or

Sec. 106.041, A.B.C.

Sec. 106.041, A.B.C.  
 Juvenile DUI is not a lesser included offense under Section 49.04, P.C., which is the more serious offense of Driving While Intoxicated. Sec. 106.041(g), A.B.C.

Sec. 106.05, A.B.C.



- |  |                            |
|--|----------------------------|
| <p><input type="checkbox"/> (4) It is a defense to prosecution that the alcohol or other substance is administered for therapeutic purposes as part of medical treatment administered by a licensed physician.</p> | <p>Sec. 49.02(b), P.C.</p> |
| <p><input type="checkbox"/> (5) Upon conviction, punishment is in the same manner as if the minor committed an offense to which Section 106.071, A.B.C., applies.</p>  | <p>Sec. 49.02(e), P.C.</p> |

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Alcoholic Beverage Code**

**6. General Penalty Provision, Section 106.071, A.B.C.**

Checklist 13-6	Script/Notes
<p><input type="checkbox"/> 1. Section 106.071, A.B.C., provides the punishment scheme for the following violations:</p> <p><input type="checkbox"/> a. Purchase of Alcohol by a Minor.</p> <p><input type="checkbox"/> b. Attempt to Purchase Alcohol by a Minor.</p> <p><input type="checkbox"/> c. Consumption of Alcohol by a Minor.</p> <p><input type="checkbox"/> d. Possession of Alcohol by a Minor.</p> <p><input type="checkbox"/> e. Misrepresentation of Age by a Minor.</p> <p><input type="checkbox"/> f. Public Intoxication Under the Age of 21.</p>	<p>Sec. 106.115, A.B.C.</p> <p>Sec. 106.02, A.B.C.</p> <p>Sec. 106.025, A.B.C.</p> <p>Sec. 106.04, A.B.C.</p> <p>Sec. 106.05, A.B.C.</p> <p>Sec. 106.07, A.B.C.</p> <p>Sec. 49.02(e), P.C.</p>
<p><input type="checkbox"/> 2. A first conviction is punishable as a Class C misdemeanor—maximum fine of \$500.</p>	<p>“You have been found guilty of the offense of _____ and the fine is assessed at \$_____. In addition, you must pay court costs. Moreover, the court must require other sanctions.” See items below.</p>
<p><input type="checkbox"/> 3. In addition to the fine, the court is required to order:</p> <p><input type="checkbox"/> a. Attendance at an alcohol awareness program;</p> <p><input type="checkbox"/> (1) The minor has 90 days from the date of final conviction to submit to the court evidence of satisfactory completion of the alcohol awareness program.</p> <p><input type="checkbox"/> (2) For good cause, the court may extend this period by not more than 90 days.</p> <p><input type="checkbox"/> (3) Failure by the defendant to present evidence of completion of the alcohol awareness program within the prescribed time period obligates the court to order the Department of Public Safety to suspend the</p>	<p>Sec. 106.115, A.B.C.</p> <p>Sec. 106.115(c), A.B.C. “You are required to attend an alcohol awareness program. You have 90 days from today to submit to this court evidence of completion of the program.”</p> <p>“If you fail to submit the proper evidence within 90 days, this court will schedule a show cause hearing.”</p> <p>“If the court determines that you did not have a good reason for not completing the alcohol awareness program and submitting evidence of completion within 90 days, I will order the Texas Department of</p>

defendant’s driver’s license or permit, or, if the defendant does not have a driver’s license or permit, to deny the issuance of a license or permit for a period not to exceed six months in either event.

Public Safety to suspend or deny issuance of your driver’s license for up to 180 days.” Sec. 106.115(d)(1)(A), A.B.C.

- (4) If a defendant previously convicted of a Chapter 106, A.B.C., offense fails to provide proof of attending an alcohol awareness program within the period proscribed by the court, the court may either order the suspension of the defendant’s driver’s license or permit for a period not to exceed one year or, if the defendant does not have a license or a permit, may deny the issuance of a license or a permit for a period not to exceed one year.

Sec. 106.115(d)(1)(B), A.B.C.

- (5) If the minor fails to present evidence of completion of the alcohol awareness program, the court may order the parent or guardian of the minor to do any act or refrain from doing any act if the court determines that the doing or refraining from doing the act will increase the likelihood that the minor will complete the alcohol awareness course.

Sec. 106.115(d)(2), A.B.C.

- (6) Court order on parents may be enforced by contempt.

*Ex parte Powell*, 883 S.W.2d 775 (Tex. App.—Beaumont 1994) Sec. 21.002(c), G.C.

- (a) Punishment for the parents: up to three days in jail and a fine up to \$100.

- (7) If the defendant presents evidence of successful completion of the course in a timely manner, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.

Sec. 106.115(c), A.B.C.

- b. Eight to 12 hours of alcohol-related community service; and

Sec. 106.071(e), A.B.C.  
 “In addition to the fine and alcohol awareness program, you must perform eight to 12 hours of community service (judge selects amount of hours between eight to

- c. DPS to suspend or deny issuance of the minor’s DL or permit for 30 days.
  
- 4. A second conviction (charge is enhanced alleging the prior conviction) is punishable as a Class C misdemeanor—maximum fine of \$500.
  - a. The court is required to order:
    - (1) 20-40 hours of alcohol-related community service; and
  
    - (2) DPS to suspend or deny issuance of the minor’s DL or permit for 60 days.

12 hours). You must complete the community service by \_\_\_\_\_.”

Community service ordered must be related to education about or prevention of misuse of alcohol if programs and services are available in the community. If educational programs and services are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

“Also, I am going to order the Texas Department of Public Safety to suspend (or deny issuance of) your driver’s license for 30 days. The suspension is effective 11 days from today.” Sec. 106.071(h), A.B.C.

The judge should order the clerk to immediately send notice of the order to DPS.

Community service ordered must be related to education about or prevention of misuse of alcohol if programs and services are available in the community. If educational programs and services are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

The driver’s license suspension takes effect on the 11<sup>th</sup> day after the date the minor is convicted. Sec. 106.071(h), A.B.C. The judge should order the clerk to immediately send notice of the order to DPS.

- b. The alcohol awareness program is optional.

However, if the court opts to order the defendant to attend a subsequent alcohol awareness program and the defendant fails to provide proof of attending with the proscribed period, the court may either order the suspension of the defendant's driver's license or permit for a period not to exceed one year or, if the defendant does not have a license or permit, may deny the issuance of a license or a permit for a period not to exceed one year.

- 5. If it is shown at trial that a minor (17 to 20 years of age) has two prior convictions under this section, the offense is punishable by a fine of not less than \$250 or more than \$2,000; confinement in jail of not more than 180 days; or both fine and confinement; plus 180 days suspension or denial of DL or permit.
- 6. If a person is under 17 years of age and has two prior convictions under this section, then the court must transfer the case to juvenile court.
- 7. For purposes of determining whether a minor has been previously convicted:
  - a. An adjudication under Title 3, F.C., that the minor engaged in DUI is considered a conviction; and

If the court requires the minor to attend an alcohol awareness program, the court may require that the parent or guardian of the minor attend the alcohol awareness program when the minor is younger than 18 years of age. Sec. 106.115(a), A.B.C.

Sec. 106.115(d)(1)(B), A.B.C.

For procedures on alcohol awareness program, see the previous discussion on first conviction.

If the prosecutor wants to seek the more serious penalty provided by this section, the municipal court does not have jurisdiction because the penalty includes the possibility of jail-time.

Sec. 51.08, F.C.

An exception is made in Sec. 51.08(d), F.C., for courts that have created juvenile case managers under Article 45.056, C.C.P.

Sec. 106.071(f), A.B.C.

Note: When a defendant receives deferred disposition for an alcohol offense (excluding DUI), the defendant's driver's license is not suspended. The court does, however, report the deferred disposition to DPS using Form DIC-15. If the defendant is subsequently convicted of an alcohol offense, prior deferred disposition orders are treated as convictions for the purpose of determining the duration of the driver's license suspension (e.g., a defendant convicted of an alcohol offense with two prior deferred dispositions would face a 180 day suspension). Furthermore,

- b. An order of deferred disposition for an offense alleging DUI is considered a conviction.
  
- 8. If a court grants deferred disposition, the court, in addition to any other term ordered under Article 45.0511, C.C.P., must require the minor to:
  - a. Attend an alcohol awareness program; and
  - b. Perform eight to 40 hours of community service.
  
- 9. The court may also enter additional orders under Section 45.057, C.C.P.
  
- 10. Minors convicted of an Alcoholic Beverage Code status offense may request an expunction.
  
- 11. If person is under 17 years of age and has two prior convictions under this section, see Step 6 above.

prosecutors may use prior deferred dispositions to allege enhanced charges.

Sec. 106.115, A.B.C.

Sec. 106.071, A.B.C.

See Checklist 13-15.

Sec. 106.12, A.B.C.  
See Checklist 13-23.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Alcoholic Beverage Code**

**7. Specific Penalty Provision, Section 106.041, A.B.C. – Minor D.U.I.**

Checklist 13-7	Script/Notes
<p><input type="checkbox"/> 1. Section 106.041, A.B.C., provides the punishment for Driving or Operating Watercraft Under the Influence of Alcohol by a Minor.</p> <p><input type="checkbox"/> 2. A first conviction is punishable as a Class C misdemeanor—maximum fine of \$500.</p> <p><input type="checkbox"/> a. The court is required to order:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) 20 to 40 hours of alcohol-related community service; and</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) An alcohol awareness program.</p> <p style="padding-left: 80px;"><input type="checkbox"/> (a) The minor has 90 days from the date of final conviction to submit to the court evidence of satisfactory completion of the alcohol awareness program.</p> <p style="padding-left: 80px;"><input type="checkbox"/> (b) For good cause, the court may extend this period by not more than 90 days.</p> <p style="padding-left: 80px;"><input type="checkbox"/> (c) Failure by the defendant to present evidence of completion within the prescribed time period obligates the court to order the Department of Public</p>	<p>Sec. 106.041, A.B.C.</p> <p>“You have been found guilty of the offense of driving under the influence and the fine is assessed at \$_____. In addition, you must pay court costs. Moreover, the court must require other sanctions.” See items below.</p> <p>“In addition to the fine and alcohol awareness program, you must perform 20 to 40 hours community service (judge selects amount of hours). You must complete the community service by _____.”</p> <p>Community service ordered must be related to education about or prevention of misuse of alcohol.</p> <p>Sec. 106.115, A.B.C.</p> <p>Sec. 106.115(c), A.B.C. “You are required to attend an alcohol awareness program. You have 90 days from today to submit to this court evidence of completion of the program.”</p> <p>“If you fail to submit the proper evidence within 90 days, this court will schedule a show cause hearing.”</p> <p>“If the court determines that you did not have a good reason for not completing the alcohol awareness program and submitting evidence of completion within 90 days, I</p>

Safety to suspend the defendant's driver's license or permit, or, if the defendant does not have a driver's license or permit, to deny the issuance of a license or permit for a period not to exceed six months in either event.

- (d) If the defendant presents evidence of successful completion of the course in a timely manner, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.
- (e) If the minor fails to present evidence of completion of the alcohol awareness program, the court may order the parent or guardian of the minor to do any act or refrain from doing any act if court determines that the doing or refraining from doing the act will increase the likelihood that the minor will complete the alcohol awareness course.
- (f) Court order on parents may be enforced by contempt. Punishment for the parents is up to three days in jail and a fine up to \$100.

- 3. The court has no authority to order DPS to suspend or deny issuance of the DL.
- 4. A second conviction (charge is enhanced alleging a prior conviction) is punishable as a Class C misdemeanor—maximum fine of \$500.
  - a. The court is required to order:
    - (1) 40-60 hours of alcohol-related community service.

will order the Texas Department of Public Safety to suspend or deny issuance of your driving record for up to 180 days.” Sec. 106.115(d), A.B.C.

Sec. 106.115(c), A.B.C.

Sec. 106.115(d)(2), A.B.C.

*Ex parte Powell*, 883 S.W.2d 775 (Tex. App. – Beaumont 1994)  
Sec. 21.002(c), G.C.

An administrative DL suspension is conducted in the same manner as DWI offenders.

See Chapters 524 and 724, T.C.

Community service ordered must be related to education about or prevention of misuse of alcohol.

- (2) The alcohol awareness program is optional.

However, if the court opts to order the defendant to attend a subsequent alcohol awareness program and the defendant fails to provide proof of attending within the proscribed period, the court may either order the suspension of the defendant's driver's license or permit for a period not to exceed one year or, if the defendant does not have a license or permit, may deny the issuance of a license or a permit for a period not to exceed one year.

- 5. If it is shown at trial that a minor (17 to 20 years of age) has two prior convictions under this section, the offense is punishable by:
  - a. A fine of not less than \$500 or more than \$2,000;
  - b. Confinement in jail of not more than 180 days; or
  - c. Both fine and confinement.
  - d. In addition, the court shall order DL suspension for 180 days.
- 6. For purposes of determining whether a minor has been previously convicted of DUI:
  - a. An adjudication under Title 3, F.C., that the minor engaged in DUI is considered a conviction.

If the court requires the minor to attend an alcohol awareness program, the court may require that the parent or guardian of the minor attend the alcohol awareness program when the minor is younger than 18 years of age. Sec. 106.115(a), A.B.C.

Sec. 106.115(d)(1)(B), A.B.C.

For procedures on alcohol awareness programs, see items above under first conviction.

If the prosecutor wants to seek the penalty provided by this section, the offense is a Class B misdemeanor within the jurisdiction of the county court.

Sec. 106.041(h), A.B.C.

- b. An order of deferred disposition for an offense alleging DUI is considered a conviction.
  
- 7. If a court grants deferred disposition, the court, in addition to any other term ordered under Article 45.0511, C.C.P., must require the minor to attend an alcohol awareness program.
- 8. Upon conviction for DUI, the court may impose additional orders under Section 45.057, C.C.P.
- 9. Minors convicted of an Alcoholic Beverage Code status offense may request an expunction upon reaching age 21 if they have only one alcohol conviction.
- 10. If person is under 17 years of age and has two prior convictions under this section, then the court must transfer the case to juvenile court.

Note: This section allows prosecutors to enhance charges against minors who have either previously been adjudicated in juvenile court for DUI or placed on deferred disposition for DUI in either municipal or justice court.

Courts are required to report convictions, deferred dispositions, and acquittals of DUI to DPS. Sec. 106.117, A.B.C. (Use Form DIC-15.)

Sec. 106.115, A.B.C.

See Checklist 13-15.

Sec. 106.12, A.B.C.  
See Checklist 13-23.

An exception is made in Sec. 51.08(d), F.C., for courts that have created juvenile case managers under Article 45.056, C.C.P.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Health & Safety Code**

Section 161.257, H.S.C., provides that Title 3, F.C., does not apply to a proceeding under Chapter 161, Subchapter N (Tobacco Use by Minors), H.S.C. This means that minors charged with tobacco offenses may not be transferred to juvenile court.

**8. Tobacco Offenses Committed by Minors**

Checklist 13-8	Script/Notes
<p><b>Definitions:</b></p> <p>Section 161.251, H.S.C., incorporates the definitions of “cigarette” and “tobacco product” found in the Tax Code.</p> <p>“Cigarette” is defined in Section 154.001, Tax Code, as a roll for smoking:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and</li> <li><input type="checkbox"/> (2) that is not a cigar.</li> </ul> <p>“Tobacco product” is defined in Section 155.001, Tax Code, as:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) a cigar;</li> <li><input type="checkbox"/> (2) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;</li> <li><input type="checkbox"/> (3) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing;</li> <li><input type="checkbox"/> (4) snuff or other preparations of pulverized tobacco; or</li> <li><input type="checkbox"/> (5) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.</li> </ul> <p><input type="checkbox"/> 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.</p>	

- 2. A person must be younger than 18 years of age to commit the offenses described in Section 161.252, H.S.C.
  
- 3. Identify the code provision that is alleged to have been violated.
  - a. Possession, Purchase, Consumption, or Acceptance of Cigarettes or Tobacco Products by a Minor – Elements of this offense are:
    - (1) an individual younger than 18
    - (select one):
      - (2) possesses;
      - (3) purchases;
      - (4) consumes; or
      - (5) accepts
    - (select one):
      - (a) a cigarette; or
      - (b) a tobacco product (specify the product).
  
  - b. False Proof of Age by a Minor to Obtain Cigarette or Tobacco Product – Elements of this offense are:
    - (1) an individual younger than 18;
    - (2) falsely represents himself or herself to be 18 or older;
    - (3) by displaying a proof of age that is false;
    - (4) in order to (select one):
      - (a) obtain possession of;
      - (b) purchase; or
      - (c) receive
    - (select one):
      - (i) a cigarette; or
      - (ii) a tobacco product (specify the product).
  
  - c. Exceptions:
    - (1) It is an exception if the defendant possessed the cigarette or tobacco product in the presence of an adult parent, guardian, or spouse.

Sec. 161.252(a), H.S.C.

Sec. 161.252(a)(1), H.S.C.

To give defendant adequate notice of the offense charged, complaint must allege only one specific violation (e.g., “possessed a cigarette” or “purchased a cigar”). A complaint alleging defendant “possessed, purchased, or received” or alleging “a tobacco product” is subject to being quashed.

Sec. 161.252(a)(2), H.S.C.

To give defendant adequate notice of the offense charged, complaint must allege only one specific violation (e.g., “to obtain possession of a cigarette” or “to purchase chewing tobacco”). A complaint alleging “to obtain possession of, purchase, or receive” or alleging “a tobacco product” is subject to being quashed.

The parent, guardian, or spouse exception applies only to possession. Sec. 161.252(b)(1), H.S.C.

(2) It is an exception if the defendant is in the presence of an employer, if possession or receipt is required as part of defendant's duties as an employee.

(3) It is an exception if the defendant is participating in an inspection or test of compliance in accordance with Section 161.088, H.S.C.

The employee exception applies only to possession or receipt by a minor. Sec. 161.252(b)(2), H.S.C.

This is sometimes known as "the minor sting operation" exception and applies to all Section 161.252 offenses. Sec. 161.252(c), H.S.C.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Health & Safety Code**

**9. Penalties for Tobacco Use by Minors. Section 161.253, H.S.C.**

Checklist 13-9	Script/Notes
<p><input type="checkbox"/> 1. Section 161.253, H.S.C., provides the punishments for tobacco offenses committed by persons under the age of 18.</p> <p><input type="checkbox"/> 2. A conviction is punishable by a fine not to exceed \$250.</p> <p><input type="checkbox"/> 3. The court is required to:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Suspend execution of sentence; and</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Order attendance at a tobacco awareness program.</p> <p style="padding-left: 20px;"><input type="checkbox"/> c. Determine if a tobacco awareness program approved by the Texas Health Department is readily available where defendant resides.</p> <p style="padding-left: 20px;"><input type="checkbox"/> d. If approved tobacco awareness program is available, order defendant to complete program by the 90<sup>th</sup> day after conviction.</p> <p style="padding-left: 20px;"><input type="checkbox"/> e. If tobacco awareness program is not readily available, order defendant to complete eight to</p>	<p>Sec. 161.252(d), H.S.C.                      “You have been found guilty of the offense of _____. I am assessing a fine in the amount of \$_____.”</p> <p>Sec. 161.253, H.S.C.                      “I am going to suspend execution of the sentence, which means that I am not going to require you to pay the fine. However, you must pay court costs.”</p> <p>Sec. 161.253(b), H.S.C.                      “I am going to require you to attend a tobacco awareness program (or perform eight to 12 hours of tobacco related community service). You have 90 days to attend the program (or perform the community service) and submit evidence to me that you completed the program.”</p> <p>Defendant may request a tobacco awareness program be taught in a language other than English.</p> <p>Call the Office of Tobacco Prevention and Control, Texas Department of Health, at 800.345.8647 for a list of approved providers.</p> <p>Sec. 161.253(a) and (e), H.S.C.</p> <p>Sec. 161.253(c) and (e), H.S.C.</p>

<p>12 hours of tobacco-related community service by the 90<sup>th</sup> day after conviction.</p> <p><input type="checkbox"/> f. Court may order parent or guardian to attend tobacco awareness program with the defendant.</p> <p><input type="checkbox"/> g. Defendant to present to court, in the manner required by the court, evidence of completion of the awareness course or of the community service.</p> <p><input type="checkbox"/> h. If defendant presents evidence on time:</p> <p style="padding-left: 40px;">(1) On first conviction: Judge shall dismiss the case.</p> <p style="padding-left: 40px;">(2) On subsequent conviction: Case not dismissed, but judge has discretion to reduce fine to not less than half the fine imposed.</p> <p><input type="checkbox"/> i. If defendant fails to present evidence on time, the court shall:</p> <p style="padding-left: 40px;">(1) Order DPS to suspend or deny driver’s license or permit.</p> <p style="padding-left: 40px;">(2) Specify period of suspension or denial, up to a maximum of 180 days after date of the order.</p> <p><input type="checkbox"/> 4. The court may also order a sanction under Section 45.057, C.C.P.</p>	<p>Sec. 161.253(a), H.S.C.</p> <p>Sec. 161.253(e), H.S.C.</p> <p>Sec. 161.253(f)(2), H.S.C.          “If you complete the tobacco awareness program and present evidence of completion within 90 days from today, I will dismiss your case.”</p> <p>“If you do not present this court with evidence of completion of the program, I will enter a final judgment and assess a fine of \$_____.”</p> <p>Sec. 161.253(f)(1), H.S.C.</p> <p>Sec. 161.254, H.S.C.</p> <p>Section 161.257, H.S.C., provides that Title 3, Family Code does not apply to these proceedings. Therefore, the court cannot transfer jurisdiction of tobacco cases by minors under age 17 to juvenile court.</p> <p>This, however, does not mean that a municipal court cannot enforce its orders by referring a juvenile to juvenile court for contempt, which is considered delinquent conduct by Section 51.03(a)(3), F.C.</p> <p>See Checklist 13-15.</p>
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- ☐ 5. Minors charged with a status tobacco offense under the age of 17 may request an expunction.

Sec. 161.255, H.S.C.  
See Checklist 13-24.

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**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Penal Code Offenses**

**10. Offenses**

<b>Checklist 13-10</b>	<b>Script/Notes</b>
<ul style="list-style-type: none"><li data-bbox="181 443 917 548"><input type="checkbox"/> 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.</li><li data-bbox="181 579 906 642"><input type="checkbox"/> 2. Identify the Penal Code offense alleged to have been violated.</li><li data-bbox="181 674 899 747"><input type="checkbox"/> 3. Municipal court has jurisdiction over all fine-only offenses (Class C misdemeanors) in the Penal Code.</li></ul>	

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Penal Code Offenses**

**11. Penalties**

Checklist 13-11	Script/Notes
<input type="checkbox"/> 1. Fine-only offenses in the Penal Code are called Class C misdemeanors and have a maximum fine of \$500.	Sec. 12.23, P.C.
<input type="checkbox"/> 2. Outside of the Penal Code, offenses are classified as Class C misdemeanors if the offense is punishable by fine only.	Sec. 12.41, P.C.
<input type="checkbox"/> 3. In addition to the fine, upon conviction, the court may also order a sanction under Section 45.057, C.C.P.	See Checklist 13-15.
<input type="checkbox"/> 4. A child charged with a Class C misdemeanor Penal Code offense has a right to expunction.	Art. 45.0216, C.C.P. See Checklist 13-22.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Education Code Offenses**

**12. Offenses**

<b>Checklist 13-12</b>	<b>Script/Notes</b>
<input type="checkbox"/> 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.	
<input type="checkbox"/> 2. Identify the Education Code offense alleged to have been violated.	
<input type="checkbox"/> 3. The following offenses may be violated under the Education Code:	
<input type="checkbox"/> a. Rules Enacted by School Board;	Sec. 37.102, E.C.
<input type="checkbox"/> b. Trespass on School Grounds;	Sec. 37.107, E.C.
<input type="checkbox"/> c. Possession of Intoxicants on School Grounds;	Sec. 37.122, E.C.
<input type="checkbox"/> d. Disruption of Classes;	This offense does not apply to a defendant in grade six or lower. Sec. 37.124, E.C.
<input type="checkbox"/> e. Disruption of Transportation;	This offense does not apply to a defendant in grade six or lower. Sec. 37.126, E.C.
<input type="checkbox"/> f. Pledging or soliciting another to pledge to a Public School Fraternity, Sorority, Secret Society, or Gang that Is Not Sanctioned by the statute or State or National authorities; and	Sec. 37.121, E.C.
<input type="checkbox"/> g. Failure to Attend School.	Sec. 25.094, E.C. See Checklist 13-13.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Education Code Offenses**

**13. Failure to Attend School Requirements, Exemptions, and Elements of Offense**

Checklist 13-13	Script/Notes
<p><input type="checkbox"/> 1. Requirements to Attend School</p> <p><input type="checkbox"/> a. Compulsory School Attendance Law. The following are required to attend school each school day for the entire period the program of instruction is provided:</p> <p>(1) 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 the child’s 18<sup>th</sup> birthday, unless exempt under Section 25.086, E.C.;</p> <p>(2) A child enrolled in either pre-kindergarten or kindergarten;</p> <p>(3) A person who voluntarily enrolls in school or voluntarily attends school after the person’s 18<sup>th</sup> birthday shall attend school each school day for the entire period the program of instruction is offered. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a semester that are not excused under Section 25.087, E.C. A person whose enrollment is revoked under this subsection may be considered an unauthorized person on school district grounds for purposes of Section 37.107, E.C.</p> <p><input type="checkbox"/> 2. Exemptions from Compulsory Attendance. A defendant is exempt from attendance if he or she:</p> <p><input type="checkbox"/> a. attends a private or parochial school that includes in its course a study of good</p>	<p>Sec. 25.085, E.C.</p> <p>This provision makes it clear that individuals 18 years of age or older who enroll to attend school are required to attend. However, changes to Section 25.094(a)(1), E.C., (effective September 1, 2011) preclude criminal charges against 18 year olds who fail to attend school.</p> <p>A school board adopting a policy to require 18-year-olds to attend school in accordance with the law may apply the offense of Failure to Attend School to those students as well. Sec. 25.085, E.C.</p> <p>Sec. 25.086, E.C.</p> <p>Marriage is neither an exemption for compulsory attendance, nor is it a defense for Failure to Attend School.</p>

citizenship;

- b. is eligible to participate in a school district’s special education program under Section 29.003, E.C., and cannot be appropriately served by the resident district;
  
- c. 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 condition, 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;
  
- d. 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;
  
- e. is at least 17 years of age, and:
  - (1) is attending a course of instruction to prepare for the high school equivalency examination, and: (1) has the permission of the child’s parent or guardian to attend the course; (2) is required by court order to attend the course; (3) has established a residence separate and apart from the child’s parent, guardian, or other person having lawful control of the child; or (4) is homeless as defined by 42 U.S.C. Sec. 11302; or
  
  - (2) has received a high school diploma or high school equivalency certificate;

A new constructive defense: Effective September 1, 2011 a complaint alleging Failure to Attend School must specify whether the student is eligible for or receives special education services. Sec. 25.0915, E.C. A student who is not properly served by a school district’s special education program is exempt from compulsory school attendance and is not required to attend school under Section 25.085(b), E.C. Such students do not commit the offense of Failure to Attend School. See Sec. 25.094(a)(2), E.C.

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| <ul style="list-style-type: none"> <li><input type="checkbox"/> f. is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if:             <ul style="list-style-type: none"> <li>(1) 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</li> <li>(2) the child is enrolled in a Job Corps training program under the Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.);</li> </ul> </li> <li><input type="checkbox"/> g. Is enrolled in the Texas Academy of Mathematics and Science;</li> <li><input type="checkbox"/> h. Is enrolled in the Texas Academy of Leadership in the Humanities, the Texas Academy of Mathematics at UT Brownsville, or the Texas Academy of International Studies; or</li> <li><input type="checkbox"/> i. Is specifically exempted under another law.</li> </ul>  | <p>Note: Arrest for this offense requires affidavit showing probable cause. Sec. 25.094 (d), E.C.</p>                               |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> 3. Elements of Failure to Attend School             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The individual is 12 years of age or older and younger than 18 years of age.</li> <li><input type="checkbox"/> b. The individual is required to attend school under Section 25.085, E.C. (See Step 1 of this Checklist.)</li> <li><input type="checkbox"/> c. The individual fails to attend school 10 or more days or parts of days within six months in the same school year or on three or more days within a four-week period.</li> <li><input type="checkbox"/> d. If a student fails to attend school without excuse on 10 or more days within a school year, a school district shall within 10 school days of the 10<sup>th</sup> absence file a complaint alleging failure to attend school and/or parent contributing to non-attendance. A court shall dismiss a complaint or referral made by a school district that is not made in compliance</li> </ul> </li> </ul> | <p>Sec. 25.094(a)(1), E.C.</p> <p>Sec. 25.094(a)(2), E.C.</p> <p>Sec. 25.094(a)(3), E.C.</p> <p>Sec. 25.0951(a) &amp; (d), E.C.</p> |

with this section.

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| <p>(1) A complaint dismissed for the school district's failure to file within 10 days may not be filed again. A school district may, however, file a new complaint with an unexcused absence that occurred subsequent to the absences noted on the original complaint, but it must do so within 10 days of the latest unexcused absence.</p>   | <p>Tex. Atty. Gen. Op. GA-417 (2006). Tex. Atty. Gen. Op. GA-574 (2007).</p>  |
| <p>(2) A school district may not file a complaint or referral under Section 25.0951(b), E.C., if the student has accumulated 10 unexcused absences by the time the school district is ready to file the case.</p>  | <p>Tex. Atty. Gen. Op. GA-417 (2006). Tex. Atty. Gen. Op. GA-574 (2007).</p>  |
| <p><input type="checkbox"/> e. It is an affirmative defense to the offense that one or more of the absences required to be proven were:</p> <p>(1) Excused by a school official or by the court. The burden is on the defendant to prove this by the preponderance of the evidence standard; or</p> <p>(2) Involuntary; but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute an offense. The burden is on the defendant to prove this by the preponderance of the evidence standard.</p> | <p>Sec. 25.094(f), E.C.</p>   |
| <p><input type="checkbox"/> 4. Specific procedures applicable to failure to attend cases.</p>  | <p>Sec. 25.0952, E.C. School attendance violations prosecuted in municipal court against either the student or the parent/guardian are adjudicated pursuant to Chapter 45, C.C.P.</p> |
| <p><input type="checkbox"/> 5. Specific rehabilitative sanctions may be required in addition to the fine. See Article 45.054, C.C.P., for list of sanctions.</p>   | <p>Art. 45.054, C.C.P.<br/>See Checklist 13-14.</p>   |

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Education Code Offenses**

**14. Penalties and Orders**

<b>Checklist 13-14</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. The following offenses are Class C misdemeanors with a maximum fine of \$500:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Rules enacted by School Board;</li> <li><input type="checkbox"/> b. Trespass on School Grounds;</li> <li><input type="checkbox"/> c. Possession of Intoxicants on School Grounds;</li> <li><input type="checkbox"/> d. Disruption of Classes;</li> <li><input type="checkbox"/> e. Disruption of Transportation;</li> <li><input type="checkbox"/> f. Pledging or soliciting another to pledge to a Public School Fraternity, Sorority, Secret Society, or Gang that is not Sanctioned by the statute or State or National authorities; and</li> <li><input type="checkbox"/> g. Failure to Attend School.</li> </ul>	<p>Sec. 37.102, E.C.</p> <p>Sec. 37.107, E.C.</p> <p>Sec. 37.122(c), E.C</p> <p>Sec. 37.124(b), E.C.</p> <p>Sec. 37.126(b), E.C.</p> <p>Sec. 37.121(2)(c), E.C.</p> <p>Sec. 25.094(e), E.C. See Step 3 below for optional order specific to the offense of failure to attend school.</p>
<p><input type="checkbox"/> 2. In addition to the fine, the court may also impose other orders for all the above listed offenses under Article 45.057, C.C.P.</p>	<p>See Checklist 13-15.</p>
<p><input type="checkbox"/> 3. Optional Orders Specific to Failure to Attend School. Upon a finding of guilty, the court may enter an order requiring:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The individual to attend school without unexcused absences.</li> <li><input type="checkbox"/> b. The individual to attend a preparatory class for the high school equivalency exam, if court determines child is too old to do well in formal classroom environment.</li> <li><input type="checkbox"/> c. If the individual is at least 16 years of age, he or she may also be ordered to take the high school equivalency examination administered under Section 7.111, E.C.</li> </ul>	<p>These orders may be applied to any defendant, regardless of age.</p> <p>Art. 45.054(a)(1)(A), C.C.P.</p> <p>Art. 45.054(a)(1)(B), C.C.P.</p> <p>Art. 45.054(a)(1)(C), C.C.P.</p>

<p><input type="checkbox"/> d. The individual to attend a special program the court determines to be in the best interest of the individual, including:</p> <ol style="list-style-type: none"> <li>(1) Alcohol or drug abuse program;</li> <li>(2) Rehabilitation;</li> <li>(3) Counseling, including self-improvement counseling;</li> <li>(4) Training in self-esteem and leadership;</li> <li>(5) Work and job skills training;</li> <li>(6) Training in parenting, including parental responsibility;</li> <li>(7) Training in manners;</li> <li>(8) Training in violence avoidance;</li> <li>(9) Sensitivity training; and</li> <li>(10) Training in advocacy and mentoring.</li> </ol>	<p>Art. 45.054(a)(2), C.C.P.</p>
<p><input type="checkbox"/> e. The individual’s parents, managing conservator, or guardian attend a class for students at risk of dropping out.</p>	<p>Art. 45.054(a)(3), C.C.P.  This order is enforceable by contempt see, Article 45.054(b), C.C.P. The court should include this order in the child’s judgment and should notify the parent of the consequences.</p> <p>The term “parent” includes anyone standing in parental relation. Art. 45.054(h), C.C.P.</p>
<p><input type="checkbox"/> f. The individual complete reasonable community service requirements.</p>	<p>Art. 45.054(a)(4), C.C.P.  Report order to DPS using Form DIC-15.</p>
<p><input type="checkbox"/> g. The individual participate in a tutorial program provided by the school, in academic subjects for which child is enrolled, for a total number of hours ordered by the court.</p>	<p>Art. 45.054(a)(5), C.C.P.</p>
<p><input type="checkbox"/> h. The individual’s driver’s license suspended or denied for up to 365 days.</p>	<p>Art. 45.054(f), C.C.P.</p>
<p><input type="checkbox"/> i. A dispositional order may not extend beyond 180 days or the end of the school year, whichever period is longer.</p>	<p>Art. 45.054(g), C.C.P.</p>
<p><input type="checkbox"/> j. A county, justice, or municipal court shall dismiss the complaint alleging failure to attend school if:</p> <ol style="list-style-type: none"> <li>(1) The court finds that the individual has successfully complied with the</li> </ol>	<p>Art. 45.054(i), C.C.P.</p>

<p>conditions imposed under Article 45.054, C.C.P; or</p>	
<p>(2) The individual presents proof that the individual has obtained a high school diploma or high school equivalency certificate.</p>	
<p><input type="checkbox"/> k. A county, justice, or municipal may waive or reduce a fee or court cost imposed under this article if it would cause financial hardship.</p>	<p>Art. 45.054(j), C.C.P.</p>
<p><input type="checkbox"/> l. In addition to any fine and upon finding that the child committed a fine-only misdemeanor, the municipal or justice court may:</p>	<p>Art. 45.054(a)(3), C.C.P.</p>
<p>(1) Refer the child or the child’s parents, managing conservators, or guardians for services under Section 264.302, F.C.; or</p>	<p>This provision only applies to a defendant who is a “child” (i.e., “at least 10 years of age and younger than 17 years of age”).</p>
<p>(2) Parent may be ordered to attend parenting class or parental responsibility program.</p>	<p>Art. 45.057(b)(3), C.C.P. See Checklist 13-15.</p>
<p><input type="checkbox"/> m. For any offense, the court may require that the child attend a special program that the court determines to be in the best interest of the child:</p>	<p>Art. 45.057(b)(2), C.C.P. Programs include: 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, and a mentoring program.</p>
<p><input type="checkbox"/> (1) The program must be approved by the county commissioners;</p>	<p>Art. 45.057(b)(2), C.C.P.</p>
<p><input type="checkbox"/> (2) The court may not order a parent, managing conservator, or guardian of a child to pay an amount greater than \$100 for the costs of the program;</p>	<p>Art. 45.057(c), C.C.P.</p>
<p><input type="checkbox"/> (3) The court may require that a person required to attend this program submit proof of attendance to the court;</p>	<p>Art. 45.057(d), C.C.P.</p>
<p><input type="checkbox"/> (4) A municipal or justice court shall</p>	<p>Art. 45.057(e), C.C.P.</p>

endorse on the summons issued to a parent, managing conservator, or a guardian an order to personally appear at the hearing with the child. The summons must note that failure to appear is a Class C misdemeanor.

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|--|---|
| <ul style="list-style-type: none"><li><input type="checkbox"/> n. An order under this section involving a child is enforceable under Article 45.050, C.C.P.</li><br/><li><input type="checkbox"/> o. An order under this section not involving a child is enforceable by contempt.</li></ul> | <p>Art. 45.057(f), C.C.P.</p><br><p>Art. 45.057(l), C.C.P.<br/>See Chapter 14 in this book.</p> |
| <ul style="list-style-type: none"><li><input type="checkbox"/> 4. A child charged with an Education Code offense except for the offense of Failure to Attend School has a right to an expunction under Article 45.0216, C.C.P.</li></ul>   | <p>See Checklist 13-22.</p>   |
| <ul style="list-style-type: none"><li><input type="checkbox"/> 5. A child charged with the offense of failure to attend school has a right to an expunction under Article 45.055, C.C.P.</li></ul>   | <p>See Checklist 13-25.</p>   |

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**15. Additional Optional Orders**

While deferred disposition allows courts to impose conditions as terms of probation, Article 45.057, C.C.P., provides a “laundry list” of orders that can be imposed on any child upon conviction.

Checklist 13-15	Script/Notes
<p><input type="checkbox"/> 1. In addition to any fine and upon finding that the child committed a fine-only misdemeanor, the municipal or justice court may:</p> <p><input type="checkbox"/> a. Refer the child or the child’s parents, managing conservators, or guardians for services under Section 264.302, F.C.; or</p> <p><input type="checkbox"/> b. Parent may be ordered to refrain from conduct that may encourage the child to violate court order.</p> <p><input type="checkbox"/> c. Parent may be ordered to attend a parenting class or a parental responsibility program.</p> <p><input type="checkbox"/> d. Require that the child attend a special program that the court determines to be in the best interest of the child. Programs include:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) Rehabilitation;</li> <li><input type="checkbox"/> (2) Counseling;</li> <li><input type="checkbox"/> (3) Self-esteem and leadership;</li> <li><input type="checkbox"/> (4) Work and job skills training;</li> <li><input type="checkbox"/> (5) Job interviewing and work preparation;</li> <li><input type="checkbox"/> (6) Self-improvement;</li> <li><input type="checkbox"/> (7) Parenting;</li> <li><input type="checkbox"/> (8) Manners;</li> <li><input type="checkbox"/> (9) Violence avoidance;</li> <li><input type="checkbox"/> (10) Tutoring;</li> <li><input type="checkbox"/> (11) Sensitivity training;</li> <li><input type="checkbox"/> (12) Parental responsibility;</li> </ul>	<p>Art. 45.057, C.C.P.            “In addition to the fine that I have already assessed, I am going to require you (or you and your parents) to _____. This must be completed by _____.”</p> <p>Art. 45.057(b)(3), C.C.P.            Any order for a parent should be included in the child’s judgment. The court should inform the parent of the consequences of not complying — contempt with a maximum fine of \$100 and/or up to three days in jail. See Chapter 14 of this book concerning contempt.</p>

- (13) Community service;
  - (14) Restitution;
  - (15) Advocacy; and
  - (16) A mentoring program.
- 
- e. If the program involves the expenditure of municipal or county funds, it must be approved by the governing body of the municipality or county commissioners court. Art. 45.057(b)(2), C.C.P.
  
  - f. The court may not order a parent, managing conservator, or guardian of a child to pay an amount greater than \$100 for the costs of the program. Art. 45.057(c), C.C.P.
  
  - g. The court may require that a person required to attend this program submit proof of attendance to the court. Art. 45.057(d), C.C.P.
  
  - h. A municipal or justice court shall endorse on the summons issued to a parent, managing conservator, or a guardian an order to personally appear at the hearing with the child. Art. 45.057(e), C.C.P.
  
  - i. An order under this section involving a child is enforceable as contempt under Article 45.050, C.C.P. Art. 45.057(f), C.C.P.  
See Checklist 13-27.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**16. Default in Payment of Fine**

Checklist 13-16	Script/Notes
<p><input type="checkbox"/> 1. Default in payment of fines</p> <p><input type="checkbox"/> a. In no event, after conviction or plea of guilty and imposition of fine, may a juvenile offender be committed to any jail in default of payment of fine.</p> <p><input type="checkbox"/> b. The court may consider contempt when a child fails to pay a fine or violates a court order. (These rules apply even if the child has turned age 17 before the contempt hearing is conducted, or if the child turned age 17 and then failed to pay.)</p> <p><input type="checkbox"/> c. Court must schedule a contempt hearing and give the child an opportunity to be heard.</p>	<p>Art. 45.050, C.C.P.</p> <p>Art. 45.050, C.C.P.</p> <p>Article 45.045(b)(3), C.C.P., requires courts to proceed under Article 45.050, C.C.P., to compel the person to discharge the judgment before issuing a capias pro fine. See Checklist 13-21.</p> <p>Art. 45.050(c), C.C.P. See Checklist 13-27 for contempt procedures.</p>

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**17. Failure to Appear**

Checklist 13-17	Script/Notes
<p><input type="checkbox"/> 1. If the parent(s) does not appear:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Determine if the parent(s) has been served with a summons. If not, reset the case.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. If the parent(s) has been served with a summons but failed to appear, the court may waive the requirement of the presence of the parents, guardian, or managing conservator if, after diligent effort, the court cannot locate them or compel their presence.</p> <p style="padding-left: 20px;"><input type="checkbox"/> c. If the parent(s) was served with a summons, the prosecutor may charge the parent(s) with a Class C misdemeanor for failure to appear in court with child. (Maximum fine \$500).</p> <p><input type="checkbox"/> 2. If child does not appear for a traffic offense, the court shall:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Report to the Department of Public Safety any minor charged with a traffic offense who does not appear.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. A court that has filed a report under this section shall report to the Department of Public Safety on final disposition of the case.</p> <p><input type="checkbox"/> 3. If a child fails to appear for any offense other than traffic, the court may:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Report to the Department of Public Safety any minor charged with an offense other than traffic who does not appear.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. A court that has filed a report under this section shall report to the Department of Public Safety on final disposition of the case.</p> <p><input type="checkbox"/> 4. General procedure when a child fails to appear:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. A court should issue an order for nonsecure custody for the child.</p>	<p>If the court waives this requirement, the court should document the actions taken in an effort to compel the parent's presence in the defendant's file.</p> <p>Art. 45.0215(d), C.C.P. Art. 45.057(g), C.C.P.</p> <p>Sec. 521.3452, T.C.</p> <p>Sec. 521.3452, T.C.</p> <p>.</p> <p>Secs. 521.201 and 521.294, T.C.</p> <p>Secs. 521.201 and 521.294, T.C</p> <p>Arts. 45.058 and 45.059, C.C.P.</p> <p>Article 45.060, C.C.P., requires the court to have used all available procedures in Chapter 45 to secure</p>

the appearance of the child before issuing a warrant of arrest when the child turns age 17.

See Checklist 13-18 for nonsecure custody.

See Checklist 13-20 for information regarding a juvenile who has failed to appear and then turns age 17.



- b. The child may be held in the nonsecure facility only long enough to accomplish the purpose of:
    - (1) Identification;
    - (2) Investigation;
    - (3) Processing;
    - (4) Release to parents; or
    - (5) The arranging of transportation to the appropriate juvenile court, juvenile detention facility, municipal court, or justice court.
  - c. Residential use of the area is prohibited.
  - d. 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.
  - e. The child may not be detained in a place of nonsecure custody for more than six hours.
4. A child taken into custody may be released to the child's parent, guardian, custodian, or other responsible adult as provided in Section 52.02(a)(1), F.C., for:
- a. A traffic offense;
  - b. An offense punishable by fine only; or
  - c. As a status offender or nonoffender.
5. A child cannot be incarcerated for contempt. For details about contempt for juveniles see Checklists 13-16, 13-21, and 13-27.
6. If the judge sees the child, the judge may handle all charges against the child.

Art. 45.058, C.C.P.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**19. Children Taken into Custody for Violation of Juvenile Curfew**

While only a juvenile court may issue a directive to apprehend (Sec. 52.015, F.C.), children accused of criminal behavior may be taken into custody “pursuant to the laws of arrest.” Sec. 52.01, F.C. Because Class C misdemeanors are an exception to the general rule that children do not belong in the criminal justice system, Chapter 45, C.C.P., contains provisions for taking children into custody accused of fine-only offenses. Article 45.058, C.C.P., is the general rule. Article 45.059 applies only to curfew violations. For more information see Chapter 6, “The Adjudication of Juveniles,” *TMCEC Municipal Judges Book*.

The procedures that follow place the responsibility of ensuring compliance with this section on the peace officer who takes into custody a person under 17 years of age for a juvenile curfew offense.

<b>Checklist 13-19</b>	<b>Script/Notes</b>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. A peace officer who takes a person under 17 years of age into custody for a violation of a juvenile curfew ordinance shall, without unnecessary delay:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Release the person to the person’s parent, guardian, or custodian;</li> <li><input type="checkbox"/> b. Take the person before a municipal or justice court to answer the charge; or</li> <li><input type="checkbox"/> c. Take the person to a place officially designated as a juvenile curfew processing office.</li> </ul> </li> </ul>	<p>Art. 45.059(a), C.C.P.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 2. A juvenile curfew processing office must observe the following procedures:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. 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.</li> <li><input type="checkbox"/> b. The person may not be secured physically to a cuffing rail, chair, desk, or stationary object.</li> <li><input type="checkbox"/> c. 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.</li> <li><input type="checkbox"/> d. A juvenile curfew processing office may not be designated or intended for residential purposes.</li> </ul> </li> </ul>	<p>Art. 45.059(b), C.C.P.</p>

- e. 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.
- f. A person may not be held in a juvenile curfew processing office for more than six hours.
- 3. A juvenile curfew office, if so designated, may also be used as a place of nonsecure custody for children taken into custody for:
  - a. Traffic offenses;
  - b. Other fine-only misdemeanor offenses; or
  - c. As a status offender.

Beware that Section 370.002, L.G.C., requires review, public hearings, and reenactment of curfew ordinances no less than every three years.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**20. Unadjudicated Children, Now Adults (No Appearance Made)**

Checklist 13-20	Script/Notes
<p><input type="checkbox"/> 1. Procedures when child turns age 17:</p> <p><input type="checkbox"/> a. 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.</p> <p><input type="checkbox"/> b. Court gives notice to a peace officer to serve either in person or by mail at the last known address on file with the court.</p> <p><input type="checkbox"/> c. If child now an adult appears:</p> <p><input type="checkbox"/> (1) Court proceeds to handle all cases filed against the 17 year old.</p> <p><input type="checkbox"/> (2) Court should explain charges, pleas, and rights.</p> <p><input type="checkbox"/> d. The child now an adult fails to appear in response to the notice and order to appear.</p> <p><input type="checkbox"/> (1) Prosecutor files a sworn complaint charging the offense of Violation of Continuing Obligation to Appear (VCOA) as ordered by the notice. (Not to be confused with Section 38.10, P.C., offense of Failure to Appear.)</p> <p><input type="checkbox"/> (2) Court orders a warrant prepared for issuance only for the VCOA as ordered by the notice. (Court must also have a probable cause affidavit before issuing the warrant.)</p>	<p>An individual may not be taken into secured custody for offenses alleged to have occurred before the individual's 17<sup>th</sup> birthday except an individual under the age of 17 may be taken into nonsecure custody as allowed by Articles 45.058 and 45.059, C.C.P.</p> <p>Art. 45.060, C.C.P.</p> <p>Art. 45.202, C.C.P. If defendant is convicted and peace officer served notice, court must assess \$35 fee under Art. 102.011, C.C.P.</p> <p>See Checklist 13-1. See Chapter 4 in this book.</p> <p>Sec. 45.060(c), C.C.P.</p> <p>Court may not issue warrants on the charges filed while the individual was under the age of 17. Art. 45.060, C.C.P.</p> <p>When a warrant is processed or served by a peace officer, the court</p>

- 2. Procedures when child now an adult is arrested:
  - a. Court should explain charges, pleas, and rights.
  - b. Court proceeds to handle all cases filed against the 17 year old, including all the cases that were filed while the individual was under the age of 17.
  - c. For the penalties, see the applicable Checklist for that offense in this chapter.

must assess a \$50 warrant fee. Art. 102.011, C.C.P.

See Checklist 13-1.  
See Chapter 4 in this book.

It is an affirmative defense to prosecution for the charge of violation of continuing obligation to appear as ordered by the notice if the individual was not informed of the individual's obligation to notify the court of a current address within seven days of moving. Art. 45.060(d), C.C.P.

If the individual fails to pay, see Checklist 13-21.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**21. Children Now Adults Who Fail to Pay**

Checklist 13-21	Script/Notes
<p><input type="checkbox"/> 1. When a child now an adult (at least age 17) fails to pay:</p> <p><input type="checkbox"/> a. 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:</p> <p><input type="checkbox"/> (1) The individual is 17 years of age or older;</p> <p><input type="checkbox"/> (2) The court finds that the issuance of the capias pro fine is justified after considering:</p> <p><input type="checkbox"/> (a) The sophistication and maturity of the individual;</p> <p><input type="checkbox"/> (b) The criminal record and history of the individual; and</p> <p><input type="checkbox"/> (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</p> <p><input type="checkbox"/> (3) The court has proceeded under Article 45.050, C.C.P., to compel the individual to discharge the judgment.</p> <p><input type="checkbox"/> 2. If the court finds that the issuance of a capias pro fine is not justified, the court may still issue an order for nonsecure custody for the child who is now an adult.</p>	<p>Art.45.045(b), C.C.P. See Checklist 2-10.</p> <p>Art 45.045(b)(1), C.C.P.</p> <p>Art. 45.045(b)(2), C.C.P.</p> <p>Art. 45.045(3), C.C.P. See Checklist 13-16.</p> <p>Art. 45.045(c), C.C.P. See Checklist 13-18.</p>

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Expunction**

**22. Expunction Under Article 45.0216, C.C.P.**

Checklist 13-22	Script/Notes
<p><input type="checkbox"/> 1. Determine if the offense is covered by Article 45.0216, C.C.P.</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Article 45.0216, C.C.P., applies to offenses described by Secs. 8.07(a)(4) and (5) and 43.261, P.C.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. These offenses include Penal Code offenses and Education Code offenses except failure to attend school, and penal ordinance offenses.</p> <p><input type="checkbox"/> 2. Article 45.0216, C.C.P., applies also to a conviction and dismissal pursuant to Article 45.051 (deferred disposition) or Article 45.052 (teen court) for offenders under the age of 17.</p> <p><input type="checkbox"/> 3. All eligible offenders, and any parents, must be informed in open court of their rights and provided with a copy of Article 45.0216, C.C.P.</p>	<p>Art. 45.0216(b), C.C.P.</p> <p>Art. 45.0216(g)(1), C.C.P. Transportation Code offenses and traffic ordinances are an exception to this expunction provision.</p> <p>Art. 45.0216, C.C.P., does not apply to status offenses under the Alcoholic Beverage Code. They have a separate provision in Section 106.12, A.B.C. See Checklist 13-23.</p> <p>Art. 45.0216, C.C.P., does not apply to status offenses under the Health and Safety Code. They have a separate provision in Section 161.252, H.S.C. See Checklist 13-24.</p> <p>Art. 45.0216, C.C.P., does not apply to the Failure to Attend School offense. It has a separate provision in Art. 45.055, C.C.P. See Checklist 13-25.</p> <p>Art. 45.0216(h), C.C.P.</p> <p>Other dismissals under deferred disposition are expunged under Chapter 55 of the Code of Criminal Procedure, which grants authority for other expunction to the district courts.</p> <p>Art. 45.0216(e), C.C.P. “You have the right to request the court to expunge the offense of _____.”</p> <p>Here is a copy of the law regarding</p>

- 4. Eligibility requirements:
  - a. Defendant must not have been convicted of more than one offense covered by these provisions;
  - b. Defendant must be at least 17 years of age; and
  - c. Offense must have been committed before turning 17.
  
- 5. Procedures are instigated by request of the defendant:
  - a. In writing;
  - b. Identifying the case to be expunged;
  - c. Stating that the person has not been convicted of another offense under these provisions; and
  - d. Made under oath.
  
- 6. The court shall require a person who requests expunction under this article to pay a fee in the amount of \$30 to defray the cost of notifying state agencies of orders of expunction.
  
- 7. The provisions do not require notice or a hearing.
  
- 8. If the court finds the person was not convicted of any other covered offense while the person was a child, the court shall order the following items expunged:
  - a. Conviction;
  - b. Complaints;
  - c. Verdicts;
  - d. Sentences;
  - e. Prosecutorial records;
  - f. Law enforcement records; and
  - g. Any other documents related to the offense.

your right to expunction. Please take time to read this information.”

Art. 45.0216(i), C.C.P.

Art. 45.0216(f), C.C.P.

- 9. Order the appropriate entities to return the relevant records to the court or to destroy them.
- 10. Give the order to the clerk to serve on the appropriate entities.
- 11. Destroy the records and delete computer references.
- 12. Further order that the person is released from all disabilities resulting from the conviction and that the conviction may not be shown or made known.
- 13. Provide a copy of the order to the movant/defendant.
- 14. Seal the order and make no computer or index reference to it.

The order should contain a list of agencies, officials, and persons who are subject to the order. The clerk sends by certified mail/return receipt a copy of the order to all that are subject to the order.



- 8. Provide a copy of the order to the movant/defendant.
- 9. Seal the order and make no computer or index reference to it.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Expunction**

**24. Expunction of Status Tobacco Offenses**

Checklist 13-24	Script/Notes
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. An individual convicted for an offense under Section 161.252, H.S.C., may apply to court to have conviction expunged.                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Defendant must apply to court;</li> <li><input type="checkbox"/> b. Court must find defendant satisfactorily completed tobacco awareness program or tobacco-related community service ordered by the court; and</li> <li><input type="checkbox"/> c. The court shall require a person who requests expunction under this article to pay a fee in the amount of \$30 to defray the cost of notifying state agencies of orders of expunction.</li> </ul> </li>   <li><input type="checkbox"/> 2. If above satisfied, court shall order that the conviction may not be shown or made known for any purpose and order the following expunged from the record:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Conviction;</li> <li><input type="checkbox"/> b. Complaint;</li> <li><input type="checkbox"/> c. Verdict;</li> <li><input type="checkbox"/> d. Sentence; and</li> <li><input type="checkbox"/> e. Any other document relating to the offense.</li> </ul> </li>   <li><input type="checkbox"/> 3. Mail certified copies of order to:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Alcohol awareness course provider; or</li> <li><input type="checkbox"/> b. Community services provider; and</li> <li><input type="checkbox"/> c. Chief of your city’s police.</li> </ul> </li> </ul>	<p>Sec. 161.255, H.S.C.</p> <p>There is no requirement that defendant have achieved a certain age or have only one conviction under Section 161.252 to qualify for expunction.</p> <p>General expunction procedures found in Article 45.0216, C.C.P., do not apply to tobacco violations.</p>



been convicted of an offense under that section, if;

- a. The court finds that the individual has complied with the conditions imposed under Article 45.054, C.C.P.; or
  - b. The individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.
7. If the court finds the person was not convicted of any other covered offense while the person was a child, the court shall order the following items expunged:
- a. Conviction;
  - b. Complaints;
  - c. Verdicts;
  - d. Sentences;
  - e. Prosecutorial records;
  - f. Law enforcement records; and
  - g. Any other documents related to the offense.
8. Order the appropriate entities to return the relevant records to the court or to destroy them.
9. Give the order to the clerk to serve on the appropriate entities.
10. Destroy the records and delete computer references.
11. Further order that the person is released from all disabilities resulting from the conviction and that the conviction may not be shown or made known.
12. Provide a copy of the order to the movant/defendant.
13. Seal the order and make no computer or index reference to it.

does not require an application to be filed nor the \$30 fee.

The order should contain a list of agencies, officials, and persons who are subject to the order. The clerk sends by certified mail/return receipt a copy of the order to all that are subject to the order.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

The criminal records of children have traditionally been handled in municipal courts in the same manner as the criminal records of adults. Juvenile records in juvenile courts, however, have long been confidential. Senate Bill 1056, enacted as law during the 81<sup>st</sup> Legislative Session, made it mandatory for criminal courts to issue orders of nondisclosure upon the conviction of a child for a fine-only misdemeanor. Subsequently, it became clear that the system for processing nondisclosure orders was not equipped to handle the volume of convictions involving children that occur in municipal and justice courts. House Bill 961, enacted during the 82<sup>nd</sup> Legislative Session, repealed the nondisclosure provisions and replaces for nondisclosure with procedures that conditionally make particular criminal case records confidential. This is intended to provide parity to children in the juvenile justice system by extending the confidentiality of juvenile courts to criminal court records.

**26. Confidentiality**

Checklist 13-26	Script/Notes
<p><input type="checkbox"/> 1. All records and files, including those held by law enforcement, from which a record or file could be generated relating to a child who is <b>convicted of</b> and <b>has satisfied</b> the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public.</p> <p><input type="checkbox"/> 2. Information subject to confidentiality may be open to inspection only by:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Judges or court staff;</li> <li><input type="checkbox"/> b. A criminal justice agency for criminal justice purposes;</li> <li><input type="checkbox"/> c. The Department of Public Safety;</li> <li><input type="checkbox"/> d. An attorney for a party to the proceeding;</li> <li><input type="checkbox"/> e. The child defendant; or</li> <li><input type="checkbox"/> f. The defendant’s parent, guardian, or managing conservator.</li> </ul> <p><input type="checkbox"/> 3. Confidentiality does not apply upon the successful completion of a form of “probation” (e.g., DSC, deferred disposition, or teen court.)</p>	<p>Sec. 411.082, G.C.</p> <p>Confidentiality only applies upon <b>conviction and satisfaction</b>. This means that the judgment is <b>final</b>. See Arts. 45.037, 45.038, and 45.043, C.C.P. Disclosure and inspection are allowed prior to trial and during the duration of any type of “probation” under Arts. 45.051-45.053, C.C.P.</p>

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**27. Juvenile Contempt**

Article 45.050 of the Code of Criminal Procedure gives municipal and justice courts two distinct options when dealing with children who do not comply with court orders. The first option is to refer the child to juvenile court for delinquent conduct. Art. 45.050(c)(1). The second option is to retain the matter and proceed to conduct a contempt hearing. Art. 45.050(c)(2).

Checklist 13-27	Script/Notes
<input type="checkbox"/> 1. Court gives the child notice of the hearing.	Art. 45.050(c), C.C.P.
<input type="checkbox"/> 2. Court issues a summons for the parent(s) to appear with the child. <ul style="list-style-type: none"> <li><input type="checkbox"/> a. If the child appears, court conducts a hearing; and</li> <li><input type="checkbox"/> b. Parent(s) must appear with child. If summons has been served and parent fails to appear, court may waive presence of parent; if summons has not been served, reset hearing.</li> </ul>	Art. 45.0215(a)(2)(B), C.C.P.
<input type="checkbox"/> 3. Hearing is informal. Explain to the child why the court is conducting the hearing, the consequences of waiving jurisdiction, and the consequences of retaining jurisdiction.	<p>“If I determine that your actions constitute contempt and I decide to keep jurisdiction over you, I can assess a fine of up to \$500. This is in addition to the fines that you still owe this court. Also, I can order the Texas Department of Public Safety to suspend or deny issuance of your driver’s license until you have completely complied with all of this court’s orders.”</p> <p>“If I decide to transfer you to the juvenile court, this conduct is considered delinquent conduct by the juvenile court.”</p>
<input type="checkbox"/> 4. Court decides whether to transfer the child to juvenile court or to retain jurisdiction. <ul style="list-style-type: none"> <li><input type="checkbox"/> a. If the court transfers the child to juvenile court, further action against the child ceases in municipal court. (The child is still liable for payment of the fine on the original charge(s).)</li> <li><input type="checkbox"/> b. If the court retains jurisdiction, the court may:</li> </ul>	Art. 45.050(c)(1), C.C.P.

- |  |                              |
|--|------------------------------|
| <ul style="list-style-type: none"><li><input type="checkbox"/> (1) Find the child in contempt and order the child to pay a fine of up to \$500 (Court may not find a child in contempt of another court's order.); and/or</li><br/><li><input type="checkbox"/> (2) Order DPS to suspend or deny issuance of the child's driver's license.</li></ul> | Art. 45.050(c)(2)(A), C.C.P. |
| <ul style="list-style-type: none"><li><input type="checkbox"/> 5. If the child turns age 17 before paying the fine, see Checklist 13-21.</li></ul>   | Art. 45.050(c)(2)(B), C.C.P. |
|  | Art. 45.045, C.C.P.          |

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Magistrate’s Warning for a Written or Oral Juvenile Confession of a Child, Section 51.095, Family Code**

**28. Written Confession**

Checklist 13-28	Script/Notes
<input type="checkbox"/> 1. Identify yourself to the child.	“My name is _____. I am the Judge of _____ Court.”
<input type="checkbox"/> 2. Determine if the child sufficiently understands the English language or possesses any impairments.	
<input type="checkbox"/> 3. If necessary, swear a person to act as an interpreter.	Art. 38.30, C.C.P.
<input type="checkbox"/> 4. If the child is deaf, obtain the services of an interpreter as provided by Article 38.31, C.C.P., to interpret the warning.	Art. 15.17(c), C.C.P. See Checklist 12-5.
<input type="checkbox"/> 5. All activities must take place in a setting approved by the juvenile board. This means the juvenile processing office, or the office or official designated by the juvenile court as required in Section 52.02, F.C.	A “juvenile processing office” should not be confused with the “juvenile curfew processing office” found in Article 45.059, C.C.P., or a “place of nonsecure custody” described in Article 45.058, C.C.P.
<input type="checkbox"/> a. Be sure that you know the policy set out by your local juvenile court or juvenile board as to where a child might be taken for receipt of a statement.	
<input type="checkbox"/> 6. Advise the child of the following warning:	Sec. 51.095(a)(1)(A), F.C.
<input type="checkbox"/> a. “You may remain silent and not make any statement at all and that any statement that you make may be used in evidence against you.”	
<input type="checkbox"/> b. “You have the right to have an attorney present to advise you either prior to any questioning or during the questioning.”	Child’s request to contact his mother because he “wanted his mother to ask for an attorney” held to constitute an unambiguous request for counsel. <i>In re H.V.</i> , 179 S.W.3d 746 (Tex. App.—Fort Worth 1995).
<input type="checkbox"/> c. “If you are unable to employ an attorney, you have the right to have an attorney appointed to counsel with you before or during any interviews with peace officers or attorneys representing the State.”	
<input type="checkbox"/> d. “You have the right to terminate the interview at any time.”	

- 7. Advise the child as follows:
  - a. “You will not be penalized for not making a statement.”
  - b. “Any prior oral statements made by you are not admissible except if the statement contains assertions of facts or circumstances that are found to be true, and which tends to establish your guilt.”
  
- 8. Sign the written warning noting the date and time.
  
- 9. After the statement is reduced to writing, a magistrate must again give a proper warning to the child before the written statement is signed by the juvenile in the presence of the magistrate.
  
- 10. No law enforcement official or prosecuting attorney can be present except that a magistrate may require a bailiff or law enforcement officer to be present to ensure the safety of the magistrate and other court personnel.

The bailiff or law enforcement officer may not carry a weapon in the presence of the child.
  
- 11. The magistrate must certify in writing that he or she is convinced that the child understands the nature and contents of the statement and signs it voluntarily.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Magistrate’s Warning for a Written or Oral Juvenile Confession of a Child, Section 51.095, Family Code**

**29. Oral Confession**

Checklist 13-29	Script/Notes
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Comply with items 1–7 in Checklist 13-27.</li> <li><input type="checkbox"/> 2. The warning must be part of the recording.</li> <li><input type="checkbox"/> 3. At the time of the warning, the magistrate may require that the officer return the child and the recording to the magistrate at the conclusion of questioning.                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The magistrate may then view the recording with the child or have the child view the recording in order to determine whether the child’s statement was given voluntarily.</li> <li><input type="checkbox"/> b. The magistrate’s determination of voluntariness must be reduced to writing and signed and dated by the magistrate.</li> <li><input type="checkbox"/> c. If a magistrate invokes Section 51.095(f), a child’s confession is not admissible unless the magistrate determines that statement was given voluntarily.</li> </ul> </li> <li><input type="checkbox"/> 4. The child must knowingly and voluntarily waive each right stated in the warning.</li> <li><input type="checkbox"/> 5. The recording device must be capable of making an accurate recording.</li> <li><input type="checkbox"/> 6. The operator of the device must be competent to use the device.</li> </ul>	<p>Sec. 51.095(a)(5)(A), F.C.</p> <p>Sec. 51.095(f), F.C.</p> <p>Note: While subsection (f) is discretionary, magistrates should be prepared to explain why they did or did not invoke the option.</p> <p>See <i>TMCEC Forms Book: Magistrate’s Determination of Voluntariness – Recorded Statement of Child.</i></p>

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