

# APPEARANCE AND DISMISSALS

## CHAPTER 4

## APPEARANCE AND DISMISSALS

4-1	Pleas Made by Mail.....	79
4-2	Dismissals.....	82
4-3	Appearance.....	89

**CHAPTER 4 APPEARANCE AND DISMISSALS**

**1. Pleas Made by Mail**

Judges should instruct clerks to prepare judgments on all the pleas, waivers of jury trial, and payments offered to the courts. An offer to pay a fine and costs is not a conviction until the judge accepts the plea, waiver of jury trial, and/or payment of the fine, and enters judgment.

Checklist 4-1	Script/Notes
<p><input type="checkbox"/> 1. If the court receives payment, <b>without a plea</b>:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Determine that the defendant is at least 17 years of age or is not a minor defendant charged with an Alcoholic Beverage Code offense or a tobacco offense under the Health and Safety Code.</li> <li><input type="checkbox"/> b. Determine that the offense is punishable by fine only and that no other sanction (such as counseling, community service, or DL suspension) is mandatory.</li> <li><input type="checkbox"/> c. Determine that the amount received is sufficient to cover the minimum lawful fine, court costs, and any other fees.</li> <li><input type="checkbox"/> d. Determine that the amount received is not more than the maximum lawful fine plus court costs and any other fees.</li> <li><input type="checkbox"/> e. Determine that the payment is in an amount acceptable to you.</li> </ul>	<p>Article 27.14, C.C.P., allows adult defendants charged in municipal and justice courts with fine-only offenses to mail or deliver in person to the court a plea of guilty or nolo contendere (no contest) and a written waiver of jury trial.</p> <p>Under Art. 27.14(c), C.C.P., a payment received without a plea constitutes a finding of guilty in open court as though a plea of nolo contendere and a written waiver of jury trial had been received. Municipal court clerks usually collect and process these pleas and payments.</p> <p>If a plea and waiver of jury trial and a request for the amount of fine and/or appeal bond is received, the court must either hand deliver a notice or mail a notice, certified mail return receipt requested, of the amount of fine, costs, and appeal bond that the court will accept. Defendants have up to 31 days from the date of receiving the notice to pay the fine and costs or file an appeal bond with the court. Art. 27.14(b), C.C.P.</p>

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|---|--|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> f. Determine that the payment is from the defendant, from defendant’s attorney, or made with the defendant’s agreement to be found guilty.</li> <li><input type="checkbox"/> g. If the above requirements are met, accept the plea, waiver of jury trial, and/or payment and sign a judgment of guilty.</li> <li><input type="checkbox"/> h. If the above requirements are not met, return the payment to the defendant or defense attorney, inform them of the acceptable fine amount and of any other applicable sanctions, and set the case for trial.</li> </ul>  | <p>See <i>TMCEC Forms Book</i>: Plea Form: By Mail or Delivery to Court; and Judgment: Jury Waived – Guilty.</p>   |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> 2. If the defendant does not deliver a fine, but delivers a plea or request for bond amount, determine if defendant has:           <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Pled guilty or nolo contendere.</li> <li><input type="checkbox"/> b. Requested in writing that the court notify defendant of the amount of an appeal bond the court will approve.</li> <li><input type="checkbox"/> c. Waived a jury trial in writing.</li> <li><input type="checkbox"/> d. Provided the court with defendant’s or defense attorney’s address.</li> <li><input type="checkbox"/> e. Delivered the request, plea, jury waiver, and address by defendant’s appearance date.</li> <li><input type="checkbox"/> f. Extended his or her time by the “Mailbox Rule.”               <p style="margin-left: 20px;">If the defendant mailed the plea and jury waiver on or before the due date of appearance, and these documents are received by the clerk not later than 10 days after the due date, the plea and waiver are properly filed. Make sure the clerk keeps the envelope with the postmark.</p> </li> <li><input type="checkbox"/> g. Determine that the offense is punishable by fine only and that no other sanctions (such as counseling, community service, or DL suspension) are mandatory and that defendant is at least 17 years of age.</li> <li><input type="checkbox"/> h. If the above are done, notify</li> </ul> </li> </ul> | <p>Art. 27.14(b), C.C.P.</p> <p>Art. 45.025, C.C.P.</p> <p>Art. 45.013, C.C.P.</p> <p>“Day” does not include Saturday, Sunday, or legal holidays. This rule increases the amount of time allowed to file a document when the document is filed by mail.</p> <p>See <i>TMCEC Forms Book</i>: Notice</p> |

defendant/defense attorney—either in person or by certified mail return receipt requested—of the amount of the fine assessed and the amount of the appeal bond.

- ☐ 3. If the defendant mails a plea of not guilty to the court, the plea should be processed in the same way as a plea of not guilty made in open court.

to Defendant.

Defendant must pay fine or post the appeal bond by the 31<sup>st</sup> day after receiving the notice.

Remember that the bond is timely filed if postmarked before the 31<sup>st</sup> day and received within 10 days. Art. 45.013, C.C.P.

Article 27.16(b), C.C.P., allows a defendant charged with a misdemeanor for which the maximum possible punishment is by fine only, in lieu of entering a plea in open court, to mail to the court a plea of not guilty.

**CHAPTER 4 APPEARANCE AND DISMISSALS**

**2. Dismissals**

All criminal cases are brought by the State of Texas against a named defendant. The prosecutor represents the State. Art. 45.201, C.C.P. Except in the limited circumstances described below, a court may not dismiss a case except on a Motion to Dismiss by the State or after the State has an opportunity to be heard on a proper motion by the defense. Texas law makes limited exceptions to this rule in order to expedite the disposition of certain common Transportation Code violations. Dismissal in these cases is for perfunctory proof of a defense to the charge or proof of compliance pursuant to a specific statute.

In 2007, the Legislature substantially increased the number of offenses that are eligible for such “compliance dismissals.” While such dismissals are intended to alleviate the amount of time it takes to conduct trials, most statutes require the court to make specific determinations but are silent as to the logistics of how such determinations are made. In some instances, it appears that the line between dismissal upon proof and defense to prosecution is blurred. Additionally, statutes authorizing such dismissals and the collection of administrative fees are inconsistent in terms of statutory requirements.

Checklist 4-2	Script/Notes
<input type="checkbox"/> 1. Determine that the case involves one of the following offenses: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Failure to Maintain Proof of Financial Responsibility (No Insurance). Go to Step 2.</li> <li><input type="checkbox"/> b. Failure to Display Driver’s License. Go to Step 3.</li> <li><input type="checkbox"/> c. Expired Vehicle Inspection Sticker. Go to Step 4.</li> <li><input type="checkbox"/> d. Expired Motor Vehicle Registration. Go to Step 5.</li> <li><input type="checkbox"/> e. Expired Driver’s License. Go to Step 6.</li> <li><input type="checkbox"/> f. Operation of Vehicle Without License Plate. Go to Step 7.</li> <li><input type="checkbox"/> g. Operation of Vehicle Without Registration Insignia. Go to Step 8.</li> <li><input type="checkbox"/> h. Display Altered or Obscured License Plate.</li> </ul>	<p>Sec. 601.193, T.C.</p> <p>Sec. 521.025(d), T.C.</p> <p>Sec. 548.605, T.C.</p> <p>Sec. 502.407(b), T.C.</p> <p>Sec. 521.026, T.C.</p> <p>Secs. 502.404(f) and (g), T.C. This section is to be renumbered to Sec. 504.943, T.C., effective January 1, 2012.</p> <p>Secs. 502.404(f) and (g), T.C. This section is to be renumbered to Sec. 502.473, T.C., effective January 1, 2012.</p> <p>Sec. 502.409, T.C.</p>

<p>Go to Step 9.</p>	<p>This section is to be renumbered to Secs. 504.945, T.C., effective January 1, 2012.</p>
<p><input type="checkbox"/> i. Display Altered or Obscured License Plate or Registration Insignia. Go to Step 10.</p>	<p>Sec. 502.409, T.C. This section is to be renumbered to Sec. 502.475, T.C., effective January 1, 2012.</p>
<p><input type="checkbox"/> j. Failure to Report Change of Address or Name on Driver’s License. Go to Step 11.</p>	<p>Sec. 521.054(d), T.C.</p>
<p><input type="checkbox"/> k. Violate Driver’s License Restriction or Endorsement. Go to Step 12.</p>	<p>Sec. 521.221(d), T.C.</p>
<p><input type="checkbox"/> l. Operation of Vehicle with Defective Required Equipment. Go to Step 13.</p>	<p>Sec. 547.004(c), T.C.</p>
<p><input type="checkbox"/> m. Expired Disabled Parking Placard. Go to Step 14.</p>	<p>Secs. 681.013(b) and (c), T.C.</p>
<p><input type="checkbox"/> 2. Failure to Maintain Proof of Financial Responsibility (No Insurance)</p>	<p>Sec. 601.193, T.C. Although a motor vehicle liability insurance policy is the most common method, see Section 601.053, T.C., for a list of different methods of providing evidence of financial responsibility.</p>
<p><input type="checkbox"/> a. Defendant produces evidence of financial responsibility (Insurance) that:</p>	<p>The Transportation Code creates a legal presumption that a driver that fails to present evidence of financial responsibility was operating the vehicle without financial responsibility in violation of the law. When the defendant presents evidence rebutting that presumption, the defendant establishes innocence of the charge.</p>
<p><input type="checkbox"/> (1) Was effective on the date of offense; and</p>	
<p><input type="checkbox"/> (2) Covered the driver (Operator’s Policy); or</p>	
<p><input type="checkbox"/> (3) Covered the vehicle and the owner gave the driver express or implied permission to drive the vehicle.</p>	
<p><input type="checkbox"/> b. The court must verify the proof of financial responsibility.</p> <p><input type="checkbox"/> c. The charge must be dismissed by the court.</p> <p><input type="checkbox"/> d. No cost or fees can be charged.</p>	<p>Although the Transportation Code requires the court verify the proof, it does not specify how verification is to be done. Either calling the insurance provider or requiring an affidavit would seem appropriate.</p> <p>Again, the defendant has established innocence and cannot be</p>

- 3. Failure to Display Driver’s License
  - a. It is a defense to the prosecution if the defendant produces in court a driver’s license:
    - (1) issued to that person;
    - (2) appropriate for the type of vehicle operated; and
    - (3) valid at the time of the arrest for the offense.
  - b. The court **may** assess an administrative fee not to exceed \$10 if a charge is dismissed because of the defense provided in Section 521.025(d), T.C.
- 4. Expired Vehicle Inspection Certificate
 

Expired **less** than 60 days:

  - a. The court **shall** dismiss the charge if:
    - (1) The defendant remedies the defect within 20 days or before the defendant’s first court appearance, whichever is later; and
    - (2) The inspection certificate has not been expired for more than 60 days; and
  - b. The court **shall** assess an administrative fee not to exceed \$20 when an expired inspection certificate has been remedied.

Expired **more** than 60 days:

  - a. The court **may** dismiss a charge of driving with an expired inspection certificate that has been expired for more than 60 days.
- 5. Expired Motor Vehicle Registration.
  - a. A judge having jurisdiction of the offense **may** dismiss a charge if the defendant:

charged a fee, cost, or a fine.

Sec. 521.025(d), T.C.

Note: Individuals who are issued citations are considered under “arrest” for purposes of the Transportation Code. See 543.003, T.C.

Sec. 521.025(f), T.C.

Sec. 548.605, T.C.

Effective January 1, 2008.

Sec. 548.605(c), T.C.

<ul style="list-style-type: none"> <li><input type="checkbox"/> (1) Remedies the defect not later than the 20th working day after the date of the offense or before the defendant’s first court appearance, whichever is later; and</li> <li><input type="checkbox"/> (2) Establishes that defendant paid the tax assessor/collector the late fee prescribed by Section 502.176, T.C.</li> <li><input type="checkbox"/> b. The court <b>may</b> assess an administrative fee not to exceed \$20 when the charge is dismissed.</li> </ul>	<p>Sec. 502.407(b), T.C.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 6. Expired Driver’s License. <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The judge <b>may</b> dismiss the charge if the defendant remedies the defect within 20 working days or before the defendant’s first court appearance date, whichever is later; and</li> <li><input type="checkbox"/> b. The judge <b>may</b> assess the defendant an administrative fee not to exceed \$20 when the charge is dismissed pursuant to Sec. 521.026(a).</li> </ul> </li> </ul>	<p>Sec. 521.026(a), T.C.</p> <p>Sec. 521.026(b), T.C.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 7. Operation of Vehicle without License Plate. <ul style="list-style-type: none"> <li><input type="checkbox"/> a. A court <b>may</b> dismiss the charge if the defendant obtains the required license plate before the defendant’s first court appearance; and</li> <li><input type="checkbox"/> b. The defendant <b>must</b> pay an administrative fee not to exceed \$10.</li> </ul> </li> </ul>	<p>Sec. 502.404(a), T.C. This section is to be renumbered to Sec. 504.943, T.C., effective January 1, 2012.</p> <p>Sec. 502.404(f) or, beginning January 1, 2012, Sec. 504.943(d), T.C.</p> <p>Sec. 502.404(f) or, beginning January 1, 2012, Sec. 504.943(d), T.C.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 8. Operation of Vehicle Without Registration Insignia. <ul style="list-style-type: none"> <li><input type="checkbox"/> a. A court <i>may</i> dismiss the charge if the defendant shows: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) The passenger car or commercial motor vehicle was issued a registration insignia by the Department of Motor Vehicles that establishes that the vehicle was</li> </ul> </li> </ul> </li> </ul>	<p>Sec. 502.404(b), T.C. This offense will be recodified as Sec. 502.473, T.C., effective January 1, 2012.</p> <p>Sec. 502.404(g) or, beginning January 1, 2012, Sec. 502.473(d), T.C.</p>

	registered for the period during which the offense was committed; and
<ul style="list-style-type: none"> <li><input type="checkbox"/> (2) The registration insignia was attached to the car or vehicle before the defendant’s first court appearance.</li> </ul>	
<ul style="list-style-type: none"> <li><input type="checkbox"/> b. The defendant <b>must</b> pay an administrative fee not to exceed \$10.</li> </ul>	Sec. 502.404(g) or, beginning January 1, 2012, Sec. 502.473(d), T.C.
<ul style="list-style-type: none"> <li><input type="checkbox"/> 9. Display Wrong, Fictitious, Altered, or Obscured License Plates</li> </ul>	Sec. 502.409(a) or, beginning, January 1, 2012, Sec. 504.945, T.C.
<ul style="list-style-type: none"> <li><input type="checkbox"/> a. A court <b>may</b> dismiss a charge alleging:</li> </ul>	Sec. 502.409(d) or, beginning January 1, 2012, Sec. 504.945(d), T.C.
<ul style="list-style-type: none"> <li><input type="checkbox"/> (1) License plate assigned for registration period other than the period in effect;</li> </ul>	Sec. 502.409(a)(3) or, beginning January 1, 2012, Sec. 504.945(a)(3), T.C.
<ul style="list-style-type: none"> <li><input type="checkbox"/> (2) License plate has blurring or reflective matter substantially impairing readability;</li> </ul>	Sec. 502.409(a)(5) or, beginning January 1, 2012, Sec. 504.945(a)(5), T.C.
<ul style="list-style-type: none"> <li><input type="checkbox"/> (3) License plate has attached illuminated device or sticker, decal, emblem, or other insignia that is not authorized by law; or</li> </ul>	Sec. 502.409(a)(6) or, beginning January 1, 2012, Sec. 504.945(a)(6), T.C.
<ul style="list-style-type: none"> <li><input type="checkbox"/> (4) License plate has a coating, covering, protective material, or other apparatus that distorts angular detectability; alters or obscures one-half or more of the name of the state in which the vehicle is registered; or alters or obscures the letters or number or the color of the plate;</li> </ul>	Sec. 502.409(a)(7) or, beginning January 1, 2012, Sec. 504.945(a)(7), T.C.
<ul style="list-style-type: none"> <li><input type="checkbox"/> b. The defendant must remedy the defect before the defendant’s first court appearance; and</li> </ul>	Sec. 502.409(d)(1) or, beginning January 1, 2012, Sec. 504.945(d)(1), T.C.
<ul style="list-style-type: none"> <li><input type="checkbox"/> c. Pay an administrative fee not to exceed \$10.</li> </ul>	Sec. 502.409(d)(1) or, beginning January 1, 2012, Sec. 504.945(d)(2), T.C.
<ul style="list-style-type: none"> <li><input type="checkbox"/> 10. Display Wrong, Fictitious, Altered, or Obscured Registration Insignia</li> </ul>	Sec. 502.409(a) or, beginning, January 1, 2012, Sec. 502.475, T.C.

<input type="checkbox"/> a. A court <b>may</b> dismiss a charge alleging:	Sec. 502.409(d) or, beginning January 1, 2012, Sec. 502.475(c), T.C.
<input type="checkbox"/> (1) Insignia assigned for registration period other than the period in effect;	Sec. 502.409(a)(3) or, beginning January 1, 2012, Sec. 502.475(a)(3), T.C.
<input type="checkbox"/> b. The defendant must remedy the defect before the defendant’s first court appearance; and	Sec. 502.409(d)(1) or, beginning January 1, 2012, Sec. 502.475(c)(1), T.C.
<input type="checkbox"/> c. Pay an administrative fee not to exceed \$10.	Sec. 502.409(d)(1) or, beginning January 1, 2012, Sec. 5502.475(c)(2), T.C.
<input type="checkbox"/> 11. Failure to Report Change of Address or Name on Driver’s License.	Sec. 521.054, T.C.
<input type="checkbox"/> a. A court <b>may</b> dismiss a charge if the defendant remedies the defect not later than the 20th working day after the date of the offense; and	Sec. 521.054(d), T.C.
<input type="checkbox"/> b. Pays an administrative fee not to exceed \$20.	Sec. 521.054(d), T.C.
<input type="checkbox"/> c. The court may waive the fee in the interest of justice.	Sec. 521.054(d), T.C.
<input type="checkbox"/> 12. Violate Driver’s License Restriction or Endorsement.	Sec. 521.221(c), T.C.
A court may dismiss a charge if:	Sec. 521.221(d), T.C.
<input type="checkbox"/> a. The restriction or endorsement was imposed:	Sec. 521.221(d), T.C.
<input type="checkbox"/> (1) Because of a physical condition that was surgically or medically corrected before the date of the offense; or	
<input type="checkbox"/> (2) In error, and that fact is established by the defendant;	
<input type="checkbox"/> b. DPS removes the restriction or endorsement before the defendant’s first court appearance; and	
<input type="checkbox"/> c. The defendant pays an administrative fee not to exceed \$10.	
<input type="checkbox"/> 13. Operation of Vehicle with Defective Required Equipment.	Effective January 1, 2008.

<ul style="list-style-type: none"> <li><input type="checkbox"/> a. A court may dismiss a charge if the defendant: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) Operates or moves or, as an owner, knowingly permits another to operate or move a vehicle (not a commercial motor vehicle) that: <ul style="list-style-type: none"> <li><input type="checkbox"/> (a) Is unsafe as to endanger a person;</li> <li><input type="checkbox"/> (b) Is not equipped in a manner required by Chapter 543 T.C.;</li> <li><input type="checkbox"/> (c) Is equipped in a manner prohibited by Chapter 543 T.C.; or</li> </ul> </li> <li><input type="checkbox"/> (2) Operates a vehicle that has been determined in a compliance proceeding under Section 547.206, T.C., not to comply with a DPS standard;</li> </ul> </li> <li><input type="checkbox"/> b. Remedies the defect before the defendant's first court appearance.</li> <li><input type="checkbox"/> c. Pays an administrative fee not to exceed \$10.</li> </ul>	<p>Sec. 547.004, T.C.</p> <p>Sec. 547.004(d), T.C.</p> <p>See TMCEC Compliance Dismissal Chart. (Available online at <a href="http://www.tmcec.com">www.tmcec.com</a>.)</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 14. Expired Disabled Parking Placard. Expired less than 60 days: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The court shall dismiss the charge if: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) The defendant remedies the defect within 20 days or before the defendant's first court appearance, whichever is later; and</li> <li><input type="checkbox"/> (2) The inspection certificate has not been expired for more than 60 days; and</li> </ul> </li> <li><input type="checkbox"/> b. The court shall assess an administrative fee not to exceed \$20 when the charge has been remedied.</li> </ul> </li> </ul>	<p>Sec. 681.013(b), T.C.</p>
<p>Expired more than 60 days:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The court may dismiss a charge of driving with an expired disabled parking placard that has been expired for more than 60 days.</li> </ul>	<p>Sec. 681.013(c), T.C. Effective January 1, 2010.</p>

**CHAPTER 4 APPEARANCE AND DISMISSALS**

**3. Appearance**

This checklist is a model for the court to follow during the first appearance by a defendant before the court. This process is often—though not quite properly—referred to as an “arraignment.” The court must take a plea before conversation about the case or sentencing should take place. When the defendant pleads guilty or nolo contendere, this chapter must be read in connection with Chapter 5 – Pleas and DSC. When the defendant pleads not guilty, the procedures in Chapters 6 and 7 follow. In either event, the procedures in Chapter 8 are necessary in entering a judgment of guilt or acquittal. Chapters 4 through 8 should be used together as a continuum of procedures used in resolving cases.

Checklist 4-3	Script/Notes
<input type="checkbox"/> 1. If the defendant is appearing before you after being issued a citation, you shall perform the magistrate duties imposed by Art. 15.17, C.C.P., in the same manner as if the person had been arrested and brought before you as a magistrate.	Art. 15.17(g), C.C.P. See Checklist 1-1.
<input type="checkbox"/> 2. Ensure that the plea is made by the defendant or the defendant’s attorney.	“Court Calls Case # _____, <i>State v. (Defendant).</i> ”
<input type="checkbox"/> a. If the plea is made by any other person (parent, friend, spouse, etc.), do not accept the plea.	“Are you ( <i>Defendant</i> )?”
<input type="checkbox"/> b. Because this is a criminal case, inform the person that the law only allows the defendant or his or her attorney to enter a plea.	See <i>TMCEC Forms Book</i> : Plea Form.
<input type="checkbox"/> c. Reset the case for defendant to appear.	
<input type="checkbox"/> 3. The defendant is entitled to a copy of the complaint at least one day before any criminal proceeding, or the defendant may waive that right.	Art. 1.05, C.C.P. See <i>TMCEC Forms Book</i> : Waiver of Right to be Prosecuted by Complaint.
<input type="checkbox"/> a. Ask the defendant if he or she understands the charge.	“You are charged with _____, a misdemeanor punishable by a fine. Do you have a copy of the citation or complaint? Do you understand the nature of the charges against you?”
<input type="checkbox"/> b. Give the defendant a copy of the complaint at least one day before trial or unless the defendant waives that right.	Art. 45.018(b), C.C.P.
<input type="checkbox"/> 4. Admonishments	For a greater discussion of an accused’s rights, see <i>TMCEC                      Municipal Judges Book</i> :
<input type="checkbox"/> a. Explain the range of punishment for the	

offenses before the court.

- b. Explain defendant’s right to jury trial.
  
- c. Explain defendant’s right to counsel.
  
- d. Despite the general rule that indigent defendants accused of fine-only offenses are not statutorily entitled to the appointment of counsel, the exception is if “the interests of justice require representation.” This is a discretionary determination made by the judge.

Chapter 4.

“\_\_\_\_\_, is a misdemeanor punishable by a fine of not more than \$\_\_\_\_\_ and not less than \$\_\_\_\_\_ (if offense has a minimum fine) and by \_\_\_\_\_ (if offense bears sanctions in addition to a fine).”

“You have the right to have a jury determine your guilt or innocence on this charge. Do you wish to have a jury trial, or do you waive a jury and wish to proceed before the court without a jury?”

“You have a right to be represented by an attorney in this case. Since the maximum penalty in this case does not include time in jail, you do not have a right under the law—neither the Texas nor U.S. Constitutions—to have an attorney appointed. You have the important right to hire legal counsel. An attorney could advise you and help you make important decisions concerning the consequences and alternatives in this case. An attorney would be familiar with trial procedures and rules of evidence. In this trial, you will be held to the same legal standards as if you were an attorney. Do you still wish to proceed representing yourself?”

Art. 1.051(c), C.C.P.  
 Texas case law provides little guidance to such appointments. Criminal law scholars have opined, “Whether or not this is the case should be determined largely on the basis of whether the case presents defensive possibilities that are most likely to be adequately presented to

- e. If represented by counsel, make sure the attorney’s name, address, and telephone numbers are noted on the docket.
  - f. If the defendant is not represented by counsel, the defendant must waive the right to retain counsel.
  - g. If the defendant wishes to retain counsel, reset the case for the defendant to have time to do so. If not, proceed.
  - h. Explain defendant’s privilege against self-incrimination.
4. If the defendant pleads not guilty:
- a. Set the case for a pretrial hearing and trial; and/or
  - b. Provide the defendant with a copy of the setting order and docket the case.
5. If the defendant pleads guilty or nolo contendere, go to Chapter 5.

the court only by an attorney. If this is the case, an attorney can and must be appointed regardless of the minor nature of the offense.” 42 Dix & Schmolesky, *Texas Practice: Criminal Practice & Procedure*, Sec. 29.32 (3d ed. 2011).

“Do you still wish to proceed representing yourself.”

A warning and waiver of the constitutional right to retain counsel is required. *Warr v. State*, 591 S.W.2d 832 (Tex. Crim. App. 1979). See Chapter 3 concerning lay representation.

See *TMCEC Forms Book: Non-Jury Trial Setting Form: Defendant Appears by Mail; and Jury Trial Setting Form: Defendant Appears in Person.*

“You are not required to testify and no one may make you testify. If you decide not to testify, I will not use the fact that you did not testify as evidence against you. Choosing to remain silent cannot be used against you.”

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