

Municipal Court Recorder

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LEGISLATIVE UPDATE: EARLY EDITION

In this early edition you will find summaries of 15 bills that are already in effect. The early effective date prompted us here at TMCEC to deliver information on these bills before sending out our complete summary of bills affecting municipal courts. The bills are listed in order of probable impact. The more important bills precede the less important bills regardless of bill number or code amended. A complete listing of new laws and summaries will be arriving soon in the next *Municipal Court Recorder*.

In addition to bills with immediate effective dates, we have included the updated court costs chart. Margaret Robbins created this chart with input from Rene Henry of the Office of Court Administration. In addition to updating all the changes made by the 77th legislature, now the chart also gives guidance on the issue of where the often-used \$10 special fee is appropriate.

With the session ending less than one month ago, we hope this update provides you with the information you need to know now. For comprehensive coverage of new legislation, TMCEC is offering two Legislative Update seminars. A description and registration form is included in this newsletter.

Subject: Waiver of Payment of Fines and Court Costs
HB 2410

Effective Date: Immediately (See Summary for Application)

Article 43.03, Code of Criminal Procedure is amended and Article 43.091, Code of Criminal Procedure is added. These changes provide the court with the authority to waive payment of a fine and court costs if the defendant defaults in payment. After a default and before waiving the fine and costs, the court must determine that the defendant is indigent and that performing community service would impose an undue hardship on the defendant. The act applies to a fine or costs imposed by a justice or municipal court on conviction of an offense, regardless of whether the offense was committed before, on, or after the effective date.

Subject: Collection Contracts
SB 1778

Effective Date: Immediately
Articles 103.003 and 103.0031, Code of Criminal Procedure are amended, and Article 6701d-28, V.T.C.S., providing for a fee for a delinquent traffic fine, is repealed. The amendments to the Code of

Criminal Procedure provide that a governing body of a municipality may enter into a contract with a private attorney or a public or private vendor for collection services for debts, fines, fees, restitution, or costs other than forfeited bonds. The governing body may authorize an additional collection fee in the amount of 30 percent on each debt or account that is more than 60 days past due and has been referred to the attorney or vendor for collection. If the private attorney or vendor collects an amount that is less than the total costs owed, the amount of costs required to be sent to the Comptroller and the amount owed the municipality are reduced by an equal percentage in order to fully compensate the attorney or vendor for specified allowable collection costs in the contract.

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authors and are not those of the TMCA
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**Subject: Payment of Fees or
Costs by Credit Card**

HB 3162

Effective Date: Immediately
Section 132.002, Local Government
Code is amended to provide the
governing body of a municipality
the authority to accept payment by
credit card without requiring collec-
tion of a fee.

**Subject: Information and
Payment through the Internet**

SB 201

Effective Date: Immediately
Chapter 132, Local Government
Code is amended by adding Section
132.007. A county or municipality
may provide, through the Internet,
access to information on collection
of payments for taxes, fines, fees,
court costs, or other charges. A fee
to recover costs for providing access
may be charged only if providing
the access through the Internet
would not be feasible without the
imposition of the charge. The
amendment also provides authority
to contract with a vendor to provide
the service. Any fee charged by a
vendor must be approved by the city
or county. Payments collected by
the vendor are to be promptly
submitted to the city or county.

**Subject: Exceptions to Public
Information Law for Credit Card
Numbers and E-mail Addresses**

SB 694

Effective Date: Immediately
Creates Sections 552.136 and
552.137 as exceptions in Chapter
552 of the Government Code. That
chapter deals with public informa-
tion. The act makes credit, debit,
and charge card numbers and related
information confidential. The
second part of the act makes confi-

dential the e-mail addresses of
members of the public. E-mail
addresses may be released with the
addressee's permission.

**Subject: Application of a Seal to
an Electronic Document**

SB 276

Effective Date: Immediately
Section 121.004, Civil Practice and
Remedies Code and Section
406.013, Government Code are
amended. The application of an
embossed seal is not required on an
electronically transmitted certificate
of acknowledgement. An electroni-
cally transmitted authenticated
document must legibly reproduce
the required elements of a seal.

**Subject: Municipal Authority to
Use Parking Boots and Tow
Vehicles**

HB 996

Effective Date: Immediately
Amends Section 684.054 of the
Transportation Code, which previ-
ously allowed a peace officer to
direct the towing of a vehicle. The
section is amended to allow a
municipality under an ordinance
regulating the parking of vehicles to
immobilize parked vehicles and to
remove such vehicles. Immobiliza-
tion and towing must be to aid the
enforcement of the parking ordi-
nance.

Subject: Waiver of Arraignment

HB 840

Effective Date: Immediately
Creates Article 26.011, Code of
Criminal Procedure, prohibiting the
clerk, and thereby presumptively the
court, from requiring the presence of
the defendant in order to accept a
waiver of arraignment from an
attorney representing the defendant.

Practices in this regard obviously vary jurisdiction to jurisdiction. The act requires simplification of the process for defendants with retained counsel.

Subject: Study and Comprehensive Plan for Juvenile with "At-Risk" Factors
HB 1901

Effective Date: Immediately
Creates Sections 614.018 and 614.019 in the Health and Safety Code, requiring the Texas Council on Offenders with Mental Impairments to perform a comprehensive study to develop a plan for juveniles with mental health and substance abuse disorders who are involved in or who are at risk of becoming involved in the juvenile justice system. Pilot projects are authorized to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders. The bill also requires the Council to include certain representatives, including local and state juvenile justice entities, that it considers necessary in the preparation of the study and plan. The Council must submit the study and plan, including recommendations and projected funding to implement the plan, to certain state officials on or before December 1, 2002. Section expires December 1, 2002.

Subject: Expunction of Arrest Records
HB 1323

Effective Date: Immediately (Applies to Records Created before, on, or after April 25, 2001)
Article 55.01(a)(2), Code of Criminal Procedure is amended to provide an additional appropriate circumstance for expunction. Now, if an indictment or information charging a

felony has been quashed, an expunction is available. The old law simply provided for expunction if an indictment or information charging a felony had been dismissed. Also added is the condition that the limitations period expired before the date on which a petition for expunction was filed under Article 55.02, or that the court finds that the indictment or information was dismissed or quashed for certain reasons.

Article 55.02, Section 3(c) is amended to allow a clerk to deliver by hand or by certified mail, return receipt requested, an order of expunction to each official or agency designated in the order, except that the copy going to the Crime Records Service of DPS must be sent certified mail. If the clerk delivers the order by hand, the clerk must receive a receipt for the delivery.

Subject: Evidentiary Search Warrants in Rural Counties
HB 1999

Effective Date: Immediately
Amends Article 18.01(i), Code of Criminal Procedure to include language clarifying who may sign evidentiary warrants under Article 18.02(10) for mere evidence. As a general rule, only municipal judges sitting in a court of record may sign evidentiary search warrants (ordering seizure of non-contraband items). A previous exception was made in jurisdictions where the only attorney judge was a district judge with more than one county in his or her district. A very few counties had multiple district judges, each with multi-county jurisdiction. This act incorporates them into the excep-

tion. The impact of this bill is limited and local in nature.

Subject: Speed Limit Increase
HB 299

Effective Date: Immediately
Amends Section 545.353 of the Transportation Code. Current law provides a maximum lawful speed of 70 miles per hour in the daytime for a vehicle on a highway numbered by the state or the United States outside an urban district. Ten western states with landscapes and population densities similar to the western part of Texas, including New Mexico, Oklahoma, and Arizona, allow for a maximum speed limit of 75 miles per hour. This bill allows the Texas Transportation Commission to establish a speed limit of 75 miles per hour on any part of the highway system located in a county with a population density of less than ten persons per square mile.

Subject: Special Needs Offenders
SB 661

Effective Date: Immediately
Adds judges with criminal jurisdiction to the list in Section 614.017 of the Health and Safety Code, detailing who may receive and share information about special needs offenders. Special needs offenders are persons convicted or with charges pending who have documented mental illness or mental retardation. This is a tool unlikely to be used often by municipal judges, but when necessary they will now qualify as judges with criminal jurisdiction.

The act also adds municipal and county health departments, hospital districts, and appointed or retained

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criminal defense attorneys to the list of eligible persons or entities.

Subject: Jurisdiction to Initiate Inquest
SB 164

Effective Date: Immediately
Alters the provisions of Article 49.07(c), Code of Criminal Procedure, related to who orders an inquest in the absence of the justice of the peace. The justice of the peace in the precinct in which a

body is found must be notified and is responsible for an inquest if ordered. Art. 49.07(c), C.C.P. deals with the procedures when that justice of the peace is not available.

The checklist of other magistrates, including municipal judges, has been removed from the article. Included is language making other justices of the peace in the county and the county court judge the designated backup.

Subject: Use of a Child in Commission of an Offense
HB 156

Effective Date: Offenses Committed after May 21, 2001
Creates Section 481.140 of the Health and Safety Code. The section provides for enhancement at the punishment stage of offenses involving delivery of controlled substances when the defendant used or attempted to

HB156 continued on page 8

TMCEC LEGISLATIVE UPDATE SEMINARS

What: A six-hour seminar on recent legislative changes of importance to the municipal courts. (Does not qualify for mandatory judicial credit for judges, but does qualify for credit in the clerk certification program.). Six hours MCLE credit for attorneys is anticipated.

Hotel rooms are available for \$70 (single) a night. Please make overnight reservations directly with hotel; TMCEC will NOT pay for hotel accommodations. The number of rooms at the special state rate are limited, so please book your room early.

Who: Municipal Court Judges, Clerks, Court Administrators, Prosecutors, Bailiffs, and Warrant Officers

Cost: \$50 (includes course materials and lunch). Checks only - no cash. Make checks payable to TMCEC.

Program: New laws from the 77th Legislative Session affecting municipal court practice and procedural and court costs will be discussed. Emphasis will be on changes made to the Code of Criminal Procedure, the Penal Code, and the Transportation Code. Magistrate issues and the processing and handling of juvenile offenders in municipal court will also be covered.

Questions: Call the Texas Municipal Courts Education Center (1-800-252-3718).

TMCEC LEGISLATIVE UPDATE REGISTRATION FORM

July 27, 2001
Doubletree Hotel Austin
6505 IH-35
Austin, TX 78741
Telephone Number: 512/448-3737
Register By: July 20, 2001

August 6, 2001
Omni Dallas Hotel Park West
1590 LBJ Freeway
Dallas, TX 75234
Telephone Number: 972/869-4300
Register By: July 30, 2001



Name (please print legibly): _____

Street: _____ City: _____ Zip: _____

Office Telephone #: _____ Court #: _____ FAX: _____

Primary City Served: _____ Other Cities Served: _____

E-mail address: _____

- Check all that apply:** Attorney Non-Attorney Full Time Part Time
- Presiding Judge Associate/Alternate Judge Mayor Justice of the Peace
- Court Clerk Deputy Clerk Court Administrator Bailiff/Warrant Officer
- Prosecutor Other: _____

I certify that I am currently serving as a municipal court judge, city prosecutor, or court support personnel in the State of Texas. I understand that I will be responsible for making my own hotel reservations. Payment is required for this program; payment of \$50 is due with registration form. The \$50 is refundable if the Center is notified of cancellation in writing two weeks prior to the seminar.

Participant Signature Date

TMCEC • 1609 Shoal Creek Boulevard, Suite 302 • Austin, TX 78701 • FAX 512/435-6118

COURT COSTS

For Conviction of Offenses Committed on or after September 1, 2001

OFFENSE/DESCRIPTION	State JCPT	State FA	State CVC	State CCC	State JCD	State CMI	Local TFC	Local CS	Total* ²
MUNICIPAL ORDINANCES									
■ Parking (authorized by Sections 542.202-5542.203, Transportation Code)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	* ¹	* ¹
■ Pedestrian	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
■ Other Municipal Ordinances									
• Punishable by a fine of \$200 or less	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>40.00</u>
• Punishable by a fine of \$201-\$500	2.00	5.00	35.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>60.00</u>
• Punishable by a fine of more than \$500	2.00	5.00	35.00	40.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>83.00</u>
STATE LAW									
■ Transportation Code, Subtitle C, Rules of the Road									
• Parking & Pedestrian (in school crossing zone)	N/A	N/A	N/A	N/A	N/A	N/A	3.00	<u>25.00</u>	<u>28.00</u>
• Parking & Pedestrian (outside school crossing zone)	N/A	N/A	N/A	N/A	N/A	N/A	3.00	N/A	3.00
• Overtaking & passing a school bus, Section 545.066	2.00	5.00	35.00	17.00	<u>.50</u>	<u>.50</u>	3.00	<u>25.00</u>	<u>88.00</u>
• Other (outside school crossing zone)	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	3.00	N/A	<u>43.00</u>
• Other (in school crossing zone)	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	3.00	<u>25.00</u>	<u>68.00</u>
■ Transportation Code, Section 601.192, Failure to Maintain Financial Responsibility									
• First conviction	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>40.00</u>
• Subsequent convictions	2.00	5.00	35.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>60.00</u>
■ Education Code									
• Parent Contributing to Truancy, Section 25.093	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	20.00	<u>60.00</u>
• Failure to Attend School, Section 25.094	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	20.00	<u>60.00</u>
■ All other misdemeanors									
• Punishable by a fine of \$500 or less	2.00	5.00	15.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>40.00</u>
• Punishable by a fine of more than \$500	2.00	5.00	35.00	17.00	<u>.50</u>	<u>.50</u>	N/A	N/A	<u>60.00</u>

*Add applicable fees and other costs whenever they apply. See next page of chart for additional costs and fees.

Legislative Changes Underlined

- *1 ■ \$2-\$5 court costs for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).
- Up to \$5 court costs for cities with population less than 850,000 that have adopted appropriate ordinance, regulation, or order (optional).

*2 **FEES (Add the following fees whenever they apply.):**

- Applicable fees for services of peace officers under Art. 102.011, Code of Criminal Procedure (C.C.P.).
 - **Arrest Fee:** \$5.00 for issuing a written notice to appear in court following the defendant’s violation of a traffic law, municipal ordinance, penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20% (\$1.00) is sent to the state.
 - **Warrant Fee:** \$50.00 for executing or processing an issued arrest warrant or *capias*. When service is performed by a peace officer employed by the state, 20% (\$10.00) is sent to the state.
 - **Summoning a Witness:** \$5.00 for serving a subpoena.
 - **Summoning a Jury:** \$5.00 for summoning a jury.
 - **Service of a Summons** (for a defendant or a child’s parents): \$35.
 - **Other costs:** Costs for peace officer’s time testifying while off duty.
- **Time Payment Fee:** The court shall collect a fee of \$25 from a person who has been convicted and ordered to pay a fine, court costs, or restitution and seeks to pay the fine, court costs or restitution over a period of time. Fee due on or after the 31st day after the date on which the judgment is entered. One-half (\$12.50) is sent to the state. One-tenth (\$2.50) is retained locally for judicial efficiency. Four-tenths (\$10.00) are retained locally with no restrictions. (Section 51.921, Government Code)
- **Municipal Court Building Security Fee:** \$3.00 on every conviction if governing body has passed required ordinance establishing building security fund. (Art. 102.017, C.C.P.)
- **Municipal Court Technology Fund:** Up to \$4.00 on every conviction if governing body has passed required ordinance establishing the municipal court technology fund. **Fund expires September 1, 2005** (Art. 102.0712, C.C.P.)
- **Traffic Law Failure to Appear (FTA):** \$30.00 for failure to appear or failure to pay or satisfy a judgment for violation of any fine-only offense **if city has contracted with the Department of Public Safety** to provide information necessary for the department to deny renewal of driver’s licenses. Two-thirds (\$20.00) are sent to the state. One-third (\$10.00) is retained locally. Applies on any violation that municipal court has jurisdiction of under Art. 4.14, C.C.P. (Chapter 706, Transportation Code [T.C.])
- **Special Expense:** Not to exceed \$25.00; collected when warrant for *failure to appear* or *violate promise to appear* served. City ordinance required to authorize collection. (Art. 45.203, C.C.P.)
- **Jury Fee:** \$3.00 fee collected upon conviction when case tried before a jury. \$3.00 fee collected upon conviction if defendant had requested a jury trial and then withdrew the request not earlier than 24 hours before the time of trial; fee to be paid even if case is deferred. (Art. 102.004, C.C.P.)

Seat Belt & Child Safety Systems: City must remit 50 percent of the fines collected for violations of the seat belt and child safety systems statutes (Secs. 545.412 & 545.413, T.C.). Remittance must be done at the end of the city’s fiscal year.

Excess Fines: Cities with population less than 5,000 must remit all but one dollar of fines and special expenses under Article 54.051, Code of Criminal Procedure for Title 7, Transportation Code offenses when the fines and special expenses for such offenses reach 30 percent of the city’s budget less any federal money. (Section 542.402(b), T. C.)

Ten Dollar Fees: A \$10 fee may be collected in the following instances upon dismissing a case: 1) Expired driver’s license or expired registration when a defendant remedies within 10 working days and presents proof to the court of a valid driver’s license or registration (Secs. 521.026 & 502.407, T.C.); 2) When an inspection certificate is expired less than 60 days and the defendant remedies it within 10 working days and presents evidence to the court (Sec. 548.605, T.C.). A court may also assess a \$10 fee when it grants a driving safety course (Art. 45.0511(f), C.C.P.). When a court grants teen court, the court may collect two \$10 fees – one is kept by the city for administering teen court, the other is disbursed to the teen court program (Art. 45.052(e) & (g), C.C.P.).

Name of Cost/Fee	Legal Reference	Abbreviation
Judicial and Court Personnel Training Fund	Government Code, Section 56.001	JCPT
Fugitive Apprehension Fund	Code of Criminal Procedure, Article 102.019	FA
Compensation to Victims of Crime Fund	Code of Criminal Procedure, Article 56.55	CVC
Consolidate Court Costs Fund	Code of Criminal Procedure, Article 102.075	CCC
Juvenile Crime and Delinquency Fund	Code of Criminal Procedure, Article 102.075(m)	JCD
Correctional Management Institute & Criminal Justice Center Fund	Code of Criminal Procedure, Article 102.075	CMI
Traffic Fund	Transportation Code, Section 542.403	TFC
Child Safety Fund	Code of Criminal Procedure, Article 102.014	CS

use a child under 18 to commit or assist in the offense.

The section applies only to felony charges. The offense is increased one degree if the child's participation was voluntary. The offense is punishable as a felony of the first

degree if force or threat was used to gain the assistance of the child.

The bill also adds offenses under this new section to Article 42.12, Section 3g(a) of the Code of Criminal Procedure, which makes the offense "aggravated" for parole purposes. Inclusion in Art. 42.12, Section 3g(a) would also prevent

defendants punished under this new section from being granted community supervision by the trial court. The new section automatically "stacks" the sentence consecutively with any other sentence without application of the permissive "stacking" provisions of Art. 42.08 of the Code of Criminal Procedure.

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