

Municipal Court Recorder

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Municipal Court Clerks Certification Program: Improving the Local Administration of Justice

By Leisa Hardin, Court Administrator, Crowley and Lauren Waite, TMCEC Program Coordinator

Each year brings changes within the municipal court system as caseloads grow and new technological advances become accessible to a larger number of courts. Prior to 1996, municipal clerks lacked resources and training options to aid them in maintaining an adequate administration of justice. Since the creation and implementation of the certification program, clerks have had the necessary tools to assist them in the performance of their duties in the midst of ever changing procedures. Now study guides and over a dozen training sessions are available each year as a part of the certification program offered through

Texas Municipal Courts Education Center (TMCEC). Clerks who complete the certification process equip themselves with the tools they need to benefit their municipal courts, their communities and, ultimately, themselves.

In 1996, the State Justice Institute, located in Alexandria, Virginia, granted money to the Texas Court Clerks Association (TCCA) and TMCEC for the creation of study guides and examinations. The first testing occurred the following year in 1997 when 89 clerks attained Level I certification. On average, between fiscal years 2002 and

2005, 91 clerks have achieved Level I certification, 33 have reached Level II, and six have met the qualifications for Level III. During this time period, approximately 130 clerks have been certified for the first time or advanced to a higher level of certification each year. A comparison of these recent numbers to the 89 clerks who became certified in the first year of the program demonstrates the growth and success the program has experienced in less than a decade.

Although each level contains specific information about court procedures, materials flow from one level to

Certification continued on page 19

Magistrate's Duty to Order the Installation of Ignition Interlock Devices

by John Vasquez, Municipal Judge, Austin

The judiciary plays a pivotal role in the effort to reduce hardcore drunk driving and the deaths and injuries caused by it. A growing number of judges across the country are developing and adopting innovative programs that show great promise in addressing this complex issue. Of all types of criminal cases, drunk driving cases are among the most complicated in terms of the legal and

evidentiary issues, with hardcore drunk driving presenting the thorniest challenges.¹

Background

Drinking and driving are a dangerous combination. We all know this to be true, but how dangerous is drinking

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Texas Municipal Courts Education Center

1609 Shoal Creek Boulevard, Suite 302
Austin, Texas 78701
512/320-8274 or 800/252-3718
Fax: 512/435-6118
Website: www.tmcec.com

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AROUND THE STATE

TMCA Annual Meeting

The Annual Meeting of the Texas Municipal Courts Association (TMCA) will be held in Galveston at the San Luis Spa and Resort on September 14-16, 2006. Study sessions for the clerks certification will be offered on September 14. There will be educational sessions for judges and clerks on September 14 and 15, and the business meeting of TMCA will be conducted on Saturday, September 16. The registration fee will be \$95. For additional information, watch the TMCA website (www.txmca.com) or contact Judge Robert Doty at 806/775-2468 or rdoty@mail.ci.lubbock.tx.us.

Fall Conferences

Texas Municipal Courts Association, Galveston, September 14-16, 2006

Texas Municipal Courts Education Center 32-hour New Clerks Conference, Austin, September 25-29, 2006

Texas Court Clerks Association, Galveston, October 1-4, 2006 (See the description on page 21 of this newsletter.)

Texas Municipal Courts Education Center 12-hour Clerks Regional Conference, Nacogdoches, October 10-11, 2006

Texas Municipal Courts Education Center 12-hour Judges Regional Conference, Nacogdoches, October 12-13, 2006

Texas Municipal Courts Education Center 6-hour Orientation, Austin, October 18, 2006

Texas Municipal League, Austin, October 24-27, 2006

Teen Court Association of Texas, McAllen, November 7-10, 2006

TCAT Conference

The Teen Court Association of Texas (TCAT) will host their Annual Conference on November 7-10, 2006 at the McAllen Holiday Inn Civic Center, 200 W. Expressway 83 (956/686-2471). The program will offer speakers on *Gang Trends*, *M.A.D.D.*, *Volunteer Appreciation*, *Court Security*, *Child Abuse Education & Prevention*, *Leadership*, *Juvenile Law*, *Juvenile Consequences*, and *Parents & Youth Rights*. For more information, contact Diana Ramos at 956/972-7920 or dramos@mcllenpd.net.



FROM THE GENERAL COUNSEL

Ryan Kellus Turner

Random Thoughts:

1. Nice to Hear From You

Thanks to the readers who took the time to share their thoughts about the article featured in the last issue of the *Municipal Court Recorder*, “Apathy in Our Courts, Death on Our Roads.” We appreciate feedback and encourage others to write us. Our general email address is tmcec@tmcec.com.

2. It Takes Two: The Last Word on CDLs and Masking (for now, anyway)

If you have had your fill of hearing about CDL issues and “masking,” you’re in good company. While I’d like to stop writing about it, I have an anecdote that illustrates why the dialog has lingered on this long. At a recent regional judicial conference, a judge in the audience stated that his city attorney had no reservations about doing whatever it took to skirt the zero tolerance laws affecting holders of commercial driver’s licenses. I could tell that many of the judges in the audience were taken aback by the description of the prosecutor’s behavior. I overheard a judge near me whisper to another judge, “I bet you that the city attorney is also a criminal defense lawyer.”

Only in the world of municipal courts would you hear that proposition offered as an explanation for prosecutorial misconduct. Granted, there are a good number of city attorneys who are also criminal defense practitioners. Yet, the comment struck me as going a bit too far. First, unlike in county or district court, the vast majority of defendants are *pro se*. Reasonable minds may differ on this, but I think it is fair to say that the frequent lack of defense counsel in

municipal court puts a unique pressure on prosecutors in municipal and justice court to ensure not convictions, but that justice is done. Don’t get me wrong. By no means am I condoning attorneys who, in the name of the State of Texas, substitute their will in place of or in contradiction to the law. Though the history and role of the city attorney in criminal law enforcement is a muddled one, lawyers who will go to all lengths to avoid enforcing the laws they swore to preserve, protect and defend, should not be city attorneys. A city attorney (as well as the deputy assistant and attorney *pro tem*), when in municipal court, represents the State of Texas, and this means enforcing laws that they may not personally like and may not be favored by the city.

At the end of the session, a judge came up to me and said that he could not believe what he had just heard. He explained that his prosecutor was one of the most professional lawyers he knew and that there was no way his city attorney would go to such lengths to dismiss a case when the law did not warrant it. Just as he made the comment, another judge responded, “You know, that is probably why Article 32.02 of the Code of Criminal Procedure does not give the prosecutor the unilateral authority to dismiss without the court’s approval. IT TAKES TWO. It takes two signatures to dismiss a case.” The first judge responded, “While we cannot make them take a case to trial, we certainly don’t have to endorse what the prosecutor is doing if we believe it is wrong.” Amen.

3. Sliding Scale Constitutional Protections?

In recent months, TMCEC has received a staggering number of telephone calls that lead me to pose the following scary hypothesis to our readers: Some peace officers in Texas do not know that the law requires probable cause for an individual to be either issued a citation or arrested for a Class C misdemeanor. While this is certainly an oversight of a minority of Texas peace officers, I have been asked by law enforcement to explain where in the law it requires probable cause to get an arrest warrant for an individual accused of a Class C misdemeanor. From your calls, I have learned that many peace officers in Texas believe that they can make a warrantless arrest of an individual, transport the arrestee to jail, and leave the magistrate no more than a blank citation with the word “INSTANTER” written diagonally across the carbon paper to justify the arrest. The “instanter arrest” is not rooted in the law. (In fact, case law reveals that “instanter” relates to bail, not arrest). Chapter 14 of the Code of Criminal Procedure states under what circumstances you can make a warrantless arrest. Case law further clarifies such circumstances and that it is the magistrate’s duty to release individuals whose arrests lack probable cause. In circumstances where a defendant refuses to sign a citation, Section 543.002 of the Transportation Code requires the individual be “immediately taken before a magistrate.” Consequently, a magistrate should never have to wonder why someone was arrested.

The scope of the Fourth Amendment,

the Texas Constitution and the Code of Criminal Procedure relates to seizure of individuals and the government's ability to restrict their freedom. Neither the quality nor the quantity of an individual's constitutional protections when being arrested is determined by the classification of the offense for which he or she is accused. In other words, the protection from unreasonable searches and seizures has nothing to do with the potential punishment an accused may receive if found guilty. It is not as if the law provides a more or less onerous requirement for arresting an individual accused of a felony than a Class C misdemeanor. If you want further proof, take a gander at the large body of case law involving arrests that begin as Class C misdemeanor traffic arrests and subsequently evolve into prosecutions for jailable misdemeanors or felonies. An arrest is an arrest, and cities employing law enforcement that confuse potential punishment ("it's just a Class C misdemeanor") with the rules regulating arrests face a potential rude awakening in federal court in the form of Section 1983 lawsuits.

4. One in the Oven, One on Deck!

The *2006 Bench Book* galley proofs (containing all of the legislative changes from the last session) are making their rounds through the office this week. Next up, revisions to the *Forms Book*. We intend to have both of these projects wrapped up by August and in the mail by September. It has been a slow go with staff changes, but we're now making good progress and appreciate your patience.



LETTERS TO THE CENTER

Dear TMCEC:

I am so pleased to see Ryan Turner's article on "Apathy in the Courts: Death on Our Roads" in the May issue of *The Recorder*. It seems sometimes that granting DD without reservations or conditions just furthers the cause of habitual offenders. Serving as a JP has allowed me to witness the terrible carnage on the highways. It definitely gives those who serve in this added capacity a far different view of habitual offenders.

Thanks for the article and I will, in the near future, take the time to share some thoughts with you.

Larry Dunne
Municipal Judge, Elgin
Bastrop County

Dear TMCEC:

I read the *Municipal Court Recorder* regarding the apathy in our courts for traffic safety. I am trying to gather information for the Mayor, City Council and City Manager regarding the issue of making speeding and red light citations a civil offense. Some cities have switched to this but, in reading the information provided and attending the *Youthful Drivers* course at the TMCEC Prosecutor's Seminar in Corpus Christi, I think we need more information on the pros and cons. The sales people for devices to use for red light and speeding gave the City of Plainview their pitch on how it is a win/win situation to have civil citations. If you have thoughts or information that I can give the Mayor, Council and City Manager regarding this issue, please let me know. I would be glad to share it with the appropriate people.

Thanks!

Leslie Spear Pearce
City Attorney, Plainview

[*Editor's Note: Please send letters and articles on civil enforcement to tmcec@tmcec.com.*]

Dear TMCEC:

When I looked at the May *Recorder* and saw, at the bottom of the front page under your article, "Apathy continued on page 7." Initial thought: "Who cares?" Then the chuckles began. On the serious side, you make some great points, and it's WAY too easy to get jaded "in the trenches" and forget the baseline reason for the laws we enforce.

"Apathy continued on page 7"— hee hee (sniff), ahem...

Dana D. Jacobson
Municipal Judge, Fair Oaks Ranch
& Prosecutor, Boerne

Interlock continued from page 1

and driving? Is our state any better or worse than other states? An examination of the relevant statistics paints a grim reality for Texas. The combination of drinking and driving has proved more deadly in Texas than in any other state. In 2004, there were 1,642 alcohol related traffic fatalities in Texas. California, with a higher population, reported 1,643 alcohol related traffic fatalities.²

Texas is a large state with many road miles. The danger drunk drivers pose to Texans is evident when the number of miles driven by intoxicated persons is compared to the number of total miles driven. In 1999, a person with a blood alcohol content greater than .08 drove one out of every 150 miles. Alcohol consumption was a factor in 170,000 car accidents injuring 63,500 people in 1999. These are estimates for Texas alone.³

Texans incurred over \$10 billion dollars in monetary and property losses due to alcohol related crashes. The National Highway Traffic Safety Administration (NHTSA) estimates that the average cost of each alcohol related fatality was \$3.3 million in 1999.

Policy makers have recently made the reduction of alcohol related crashes and fatalities a priority. The blood alcohol content needed to prove intoxication was reduced from .10 to .08 BAC. The Legislature enacted a zero tolerance law making it illegal for drivers under the age of 21 to drive if they have any detectable amount of alcohol in their system. Magistrates are now required to make defendants charged with subsequent DWI offenses install an Ignition Interlock Device.

Ignition Interlock Devices Explained

Ignition Interlock Devices (IID) are defined as:

A device that is a breath alcohol analyzer that is connected to a motor vehicle ignition. In order to start the motor vehicle engine, a driver must deliver an alveolar breath sample to the IID which measures the alcohol concentration. If the alcohol concentration meets or exceeds the startup set point on the interlock device, the motor vehicle engine will not start.⁴

In other words, an IID is a device designed to prevent a car from starting when the driver has consumed too much alcohol. The devices approved for this purpose are regulated by the State. The State of Texas has approved eight different interlock devices for this purpose.

Defendants charged with a subsequent DWI offense are required to install an IID through an approved vendor. Presently, there are six approved vendors. The authorized vendors, in turn, train and license IID installers in communities across the state.

Though each device has different features, they share important common features, including:

- The ability to prevent the vehicle from being started if the device measures a BAC of over .03;
- The ability to limit the driver up to no more than five opportunities to start the vehicle within a short period of time;
- If the driver fails multiple tests, the ability to prevent the vehicle from starting for a period of time;
- The ability to measure ethanol alcohol only; and
- The ability to maintain a tamper-proof internal record of each attempted start that can be downloaded monthly and reported to the supervising court.

The Legal Requirements

Texas Law provides that:

A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.⁵

The term “intoxicated” is defined as:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.08 or more.⁶

State law requires magistrates to order defendants charged with a subsequent DWI to install an IID unless the magistrate finds that the installation of an IID “would not be in the best interest of justice.”⁷ Defendants subject to a magistrate’s order to install an IID are further ordered not to operate any motor vehicle unless the vehicle is equipped with an IID.⁸

Texas laws requiring the installation of IIDs have been challenged as unconstitutional. The Fort Worth Court of Appeals upheld the IID requirement finding:

The interlock device serves the narrow governmental purpose of assuring that such persons not drive an automobile after they have consumed alcohol. See *Ex parte Tharp*, 912 S.W.2d 887, 890 (Tex. App. Fort Worth 1995), *aff’d*, 935 S.W.2d 157 (Tex. Crim. App. 1996). Driving an automobile is a privilege, not a right. See *Naff v. State*, 946 S.W.2d 529 (Tex. App.—Fort Worth 1997); *Texas Dep’t of Pub. Safety v. Schaejbe*, 687 S.W.2d 727, 728 (Tex. 1985); *Ex parte Tharp*, 912 S.W.2d at 890. The revocation of licenses and privileges in general have traditionally not been found to be punitive in nature. See *Ex parte Tharp*, 912 S.W.2d at 891. Accordingly, the requirement of an interlock device, which is a less

severe infringement on the privilege of driving an automobile, does not constitute punishment and is not oppressive.⁹

The magistrate's order requiring that a defendant install an IID is not subject to interlocutory review.¹⁰ The appellate courts may only hear cases specifically authorized for interlocutory appeal. No exception exists for the appeal of a magistrate's order requiring the installation of an IID.

Finally, the magistrate's order requiring an IID does not trigger the bar against double jeopardy when the defendant is prosecuted on the charge of driving while intoxicated.

The revocation of licenses and privileges is traditionally not found to be punitive in nature. *Elliott*, 950 S.W.2d at 717. Driving is a privilege, not a right. See *Ex parte Tharp*, 935 S.W.2d 157, 159 (Tex. Crim. App. 1996). The court held in *Sharp* that a complete loss of driving privileges is not punishment. *Id.* The requirement of an interlock device, a less severe infringement on the privilege of driving, does not constitute punishment. *Elliott*, 950 S.W.2d at 717. Therefore, we conclude that the restriction on appellant's driving license also does not constitute punishment.¹¹

The Magistrate's IID Order

When the magistrate orders the defendant to install an IID, an order is signed by the magistrate setting forth the requisites. The magistrate's order must require the defendant:

- to install an IID;
- at the expense of the accused;
- within 30 days of release on bail; and
- not to operate any motor vehicle, unless the motor vehicle is equipped

with an IID.

In some cases, the magistrate may find that the IID should not be required in the best interest of justice. In that event, the magistrate should make a written order excusing the accused from the IID requirement that states the reasons for such determination. Reasons that might justify lifting the requirement might include economic hardship and health.

If the defendant fails to comply with the magistrate's order, the magistrate may revoke the bond upon a finding by a preponderance of the evidence that the defendant violated the conditions of the bond. Texas Code of Criminal Procedure, Art. 17.40.

Monitoring the IID

The magistrate is also empowered to designate an appropriate agency to monitor the installation and operation of the IID. In practice, the monitoring function has been delegated to pre-trial services or the probation department. In some cases, the magistrate has assigned the monitoring function to members of the judge's staff.

The monitoring function is critical to an effective program of reducing drunk driving through the use of IIDs. Each month the defendant must report to a field office of the IID vendor company. The information regarding ignition attempts maintained by the IID is downloaded at that time. The report from the downloaded data is then reformatted and sent to the monitoring official.

The IID monthly report is a listing of each start prevented by the IID, and it identifies the reason the start was prevented. For example, if the defendant registered a BAC over .03, the monthly report would state the BAC measurement, date and time.

If the report indicates non-compliance, the monitoring officer

might recommend the magistrate modify the bond to include alcohol/drug counseling, out-patient or in-patient treatment, or increased supervision of the defendant.

The action taken by the magistrate should be proportional to the extent of the non-compliance.

Conclusion

IIDs are a response to the very serious problem of drunk driving. A properly monitored IID is an effective tool for reducing drunk driving. 

¹ *Judicial Guide: Hardcore Drunk Driving*, National Association of State Judicial Educators, 2004.

² National Highway Traffic Safety Administration, *Traffic Safety Facts: Crash Stats*, DOT HS 809 905.

³ National Highway Traffic Safety Administration, *Impaired Driving in Texas*, www.nhtsa.dot.gov/people/injury/alcohol/impaired_driving_pg2/TX.htm.

⁴ 37 TAC §19.21(23).

⁵ Texas Penal Code §49.04(a).

⁶ Texas Penal Code §49.01(2).

⁷ Texas Code of Criminal Procedure Art. 17.441(b).

⁸ Texas Code of Criminal Procedure Art. 17.441(a)(2).

⁹ *Ex parte Kevin Elliott*, 950 SW2d 714, 717 (Tex. App. Fort Worth, 1997).

¹⁰ *Bridle v State*, 16 SW3d 906 (Tex. App. Fort Worth, 2000).

¹¹ *Ex parte Sells*, 2000 Tex. App. Lexis 132 (Tex. App. Houston—1st District, 2000).

BOND WITH IGNITION INTERLOCK CONDITION (Art. 17.441, CCP)

CAUSE NUMBER: _____

STATE OF TEXAS
VS.

§
§
§

IN THE MUNICIPAL COURT
CITY OF _____
_____ **COUNTY, TEXAS**

The Court finds that the Defendant is eligible for bail in the amount of \$_____.

The Court further finds that the Defendant is charged with:

- Intoxication Assault (Sec. 49.07, Penal Code)
- Intoxication Manslaughter (Sec. 49.08, Penal Code)
- A subsequent offense of Driving While Intoxicated (Sec. 49.04, Penal Code)
- A subsequent offense of Flying While Intoxicated (Sec. 49.05, Penal Code)
- A subsequent offense of Boating While Intoxicated (Sec. 49.06, Penal Code)

It is **ORDERED** that, in addition to any other conditions of bail imposed on the Defendant, that the Defendant abide by the following conditions of bail:

Defendant shall, no later than _____ days after the date the Defendant is released on bond, and at Defendant's expense, have a device (ignition interlock) that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected on the breath of the operator, installed on the following vehicle:

Model Year: _____ Make: _____
 Model: _____ Color: _____
 License Plate and State: _____ VIN: _____

Defendant shall not operate ANY motor vehicle unless the vehicle is equipped with such an ignition interlock device.

It is further ORDERED that the following agency shall verify the installation of the ignition interlock device and monitor the device during the period this Order is in effect, and shall immediately report to this Court, or to any other Court in which this case may be pending, if the device is not installed by the day specified above or if the device is removed or disabled other than according to a Court Order: _____

Defendant shall pay a fee in the amount of \$_____ at the time of installation and thereafter each month to the agency who monitors the ignition interlock device.

OR

The Court finds that to require the installation of an ignition interlock device would not be in the best interest of justice.

Signed on the _____ day of _____, 200__.

DEFENDANT'S ACKNOWLEDGMENT

On the above date, I received a copy of this **BOND IGNITION INTERLOCK ORDER**.

Defendant _____

Judge Presiding

Municipal Court of _____

_____ County, Texas

Note: Effective September 1, 1999, Article 17.441(d) of the Code of Criminal Procedure was amended as follows: If the magistrate designates an agency under this subsection, in each month during which the agency verifies the installation of the device or provides a monitoring service the Defendant shall pay a fee to the designated agency in the amount set by the magistrate. The Defendant shall pay the initial fee at the time the agency verifies the installation of the device. In each subsequent month during which the Defendant is required to pay a fee the Defendant shall pay the fee on the first occasion in that month that the agency provides a monitoring service. The magistrate shall set the fee in an amount not to exceed \$10 as determined by the county auditor, or by the commissioner's court of the county if the county does not have a county auditor, to be sufficient to cover the cost incurred by the designated agency in conducting the verification or providing the monitoring service, as applicable in that county.

For City Attorneys: Enforcing Municipal Ordinance Violations in the Extraterritorial Jurisdiction by Prosecution in the Municipal Court

By Lawrence Provins, Assistant City Attorney, City of Pearland

As a general rule, a city can exercise its powers only within the city's corporate limits unless power is expressly or impliedly extended by the Texas Constitution or by statute to apply to areas outside the limits.¹

Extraterritorial Jurisdiction (ETJ)

The purpose of having an ETJ is to promote and protect the general health, safety and welfare of persons residing in and adjacent to the municipalities.²

Extent of Extraterritorial Jurisdiction

The extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

- (1) within one-half mile of those boundaries, in the case of a municipality with fewer than 5,000 inhabitants;
- (2) within one mile of those boundaries, in the case of a municipality with 5,000 to 24,999 inhabitants;
- (3) within two miles of those boundaries, in the case of a municipality with 25,000 to 49,999 inhabitants;
- (4) within 3½ miles of those boundaries, in the case of a municipality with 50,000 to 99,999 inhabitants; or
- (5) within five miles of those boundaries, in the case of a municipality with 100,000 or more inhabitants.³

Municipalities routinely extend the application of their respective ordinances to their extraterritorial

jurisdictions. Common areas of regulation in a city's ETJ pursuant to a number of express provisions of the Local Government Code include: Industrial Districts⁴, Planned Unit Development Districts⁵, Nuisance Regulations⁶ by home-rule municipalities, Subdivision Regulations⁷, Development Plat Regulations⁸, Sign Regulations⁹, Impact Fees¹⁰, and Municipal Drainage Utility Systems.¹¹ Most, if not all, municipalities provide a general penalty clause in their ordinances so that violations of such ordinances can be prosecuted in the municipal court.

As a prosecutor, from time to time you will be presented with a case that originated outside the city's territorial limits. You will have to determine whether you are able to proceed with prosecuting that case in the municipal court or whether you need to move for dismissal of the case and recommend a different course of action to the city.

If you decide to prosecute the case, you will have to address this issue early on, if not at a pre-trial conference or through some sort of dispositive motion, when the defendant moves for a directed verdict because you were not able to prove that the offense occurred within the territorial limits of the city as alleged in the complaint.

The courts have used the following four factors to determine whether a city can prosecute such cases in the municipal court and you should use them to evaluate your case and determine how to proceed: 1) the type of municipality; 2) the subject matter of ordinance alleged to have been

violated; 3) jurisdiction; and 4) venue.

Types of Municipalities and Their Respective Powers

One of the factors courts review is the type of municipality whose ordinance is in question. There are five different types of municipalities: (1) Type A general-law; (2) Type B general-law; (3) Type C general-law; (4) home-rule; and (5) special-law.¹² Each type of municipality has different powers and limitations, which in turn can determine the outcome of the case. All municipalities have the general powers to adopt, publish, amend, or repeal an ordinance, rule or police regulation that:

- (1) is for the good of government, peace or order of the municipality or for the trade and commerce of the municipality; and
- (2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.¹³

Although the powers of each municipality are delineated throughout the Local Government Code, some of the more applicable provisions are provided below:

Type A General-Law Municipality

General Powers Regarding Adoption of Ordinances and Regulations

The governing body of a Type A general-law municipality may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic.¹⁴

Type B General-Law Municipality

General Powers Regarding Adoption of Ordinances and Bylaws

The governing body of a Type B general-law municipality may adopt an ordinance or bylaw, not inconsistent with state law, that the governing body considers proper for the government of the municipal corporation.¹⁵

The governing body of a Type B general-law municipality may take any other action necessary to carry out a provision of the code applicable to the municipality.¹⁶

Type C General-Law Municipality

General Powers and Alternative Powers of a Type C General-Law Municipality

The governing body of a Type C general-law municipality with 501 to 4,999 inhabitants has the same authority and is subject to the same duties as a Type A general-law municipality unless the authority or duties conflict with a provision of this code relating specifically to a Type C general-law municipality.¹⁷

The governing body of a Type C general-law municipality with 201-500 inhabitants has the same authority as a Type B general-law municipality unless the authority conflicts with a provision of this code relating specifically to a Type C general-law municipality.¹⁸

A municipality that is incorporated as a Type C general-law municipality and that has \$500,000 or more of assessed valuation for taxable purposes, according to its most recently approved tax rolls, may adopt all the powers of a Type A general-law municipality regardless of any limitation prescribed by Section 51.051. On adoption of the powers, the municipality has the same rights, powers, privileges, immunities, and franchises as a Type A general-law municipality.¹⁹

Home-Rule Municipality

A municipality is a home-rule municipality if it operates under a municipal charter that has been adopted or amended as authorized by Article XI, Section 5 of the Texas Constitution.²⁰

A home-rule municipality has full power of local self-government.²¹ A home-rule municipality may enforce ordinances necessary to protect health, life and property and to preserve the good government, order and security of the municipality and its inhabitants.²²

Special-Law Municipality

A municipality is a special-law municipality if it operates under a municipal charter granted by a local law enacted by the Congress of the Republic of Texas or by the Legislature. A special-law municipality that has amended its municipal charter as authorized by Article XI, Section 5, of the Texas Constitution is also a home-rule municipality.²³

A City's Authority to Enforce Ordinances

After the court determines that a municipality has the ability to adopt the ordinance, it looks at how the ordinance can be enforced. The statutory authority granting a municipality the ability to enforce its ordinances through criminal prosecution is found in Chapter 54 of the Local Government Code, which states that:

- (a) The governing body of a municipality may enforce each rule, ordinance or police regulation of the municipality and may punish a violation of a rule, ordinance or police regulation.
- (b) A fine or penalty for the violation of a rule, ordinance or police regulation may not exceed \$500. However, a fine or penalty for the violation of a rule, ordinance or

police regulation that governs fire safety, zoning or public health and sanitation, including dumping of refuse, may not exceed \$2,000.²⁴

Jurisdiction of Ordinance Violations

The next issue the courts turn to is which court has jurisdiction to hear such cases. Both the Code of Criminal Procedure and the Government Code establish the municipal court as the court with exclusive original jurisdiction to hear cases regarding violations of a municipal ordinance that are declared to be a crime.

Jurisdiction in the Code of Criminal Procedure

A municipal court, including a municipal court of record, shall have exclusive original jurisdiction within the territorial limits of the municipality in all criminal cases that:

- (1) arise under the ordinances of the municipality; and
- (2) are punishable by a fine not to exceed:
 - (a) \$2,000 in all cases arising under municipal ordinances that govern fire safety, zoning or public health and sanitation, including dumping of refuse; or
 - (b) \$500 in all other cases arising under municipal ordinance.²⁵

Jurisdiction in the Government Code

A municipal court, including a court of record, shall have exclusive original jurisdiction within the municipality's territorial limits **and property owned by the municipality located in the municipality's extraterritorial jurisdiction** in all criminal cases that:

- (1) arise under:
 - (a) the ordinances of the municipality; or
 - (b) a resolution, rule or order of

- a joint board operating an airport under Section 22.074, Transportation Code; and
- (2) are punishable by a fine not to exceed:
- (a) \$2,000 in all cases arising under municipal ordinances or resolutions, rules or orders of a joint board that govern fire safety, zoning or public health and sanitation, including dumping of refuse; or
- (b) \$500 in all other cases arising under a municipal ordinance or a resolution, rule or order of a joint board.²⁶

A municipal court of record, in addition to the jurisdiction provided by general law for municipal courts, has jurisdiction over criminal cases arising under ordinances authorized by Section 215.072, 217.042, 341.903, and 401.002, Local Government Code (L.G.C.).²⁷

Section 215.072 of the L.G.C. states that:

The municipality may inspect dairies, slaughterhouses or slaughter pens, in or outside the municipal limits, from which milk or meat is furnished to the residents of the municipality.

Section 217.042 of the L.G.C. states that:

- (a) The municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits.
- (b) The municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.²⁸

Section 341.903 of the L.G.C. states that:

A home-rule municipality may police the following areas owned by and located outside the municipality:

- (1) parks and grounds;
- (2) lakes and land contiguous to and used in connection with a lake; and
- (3) speedways and boulevards.²⁹

Section 401.002 of the L.G.C. states that:

- (a) A home-rule municipality may prohibit the pollution or degradation of and may police a stream, drain, recharge feature, recharge area, or tributary that may constitute or recharge the source of water supply of any municipality.
- (b) A home-rule municipality may provide for the protection of and may police any watersheds.
- (c) The authority granted by this section may be exercised inside the municipality's boundaries or inside the municipality's extraterritorial jurisdiction or outside the municipality's extraterritorial jurisdiction only if required to meet other state or federal requirements. The authority granted by this section for the protection of recharge, recharge areas or recharge features of groundwater aquifers may be exercised outside the municipality's boundaries and within the extraterritorial jurisdiction provided the municipality exercising such authority has a population greater than 750,000 and the groundwater constitutes more than 75 percent of the municipality's source of water supply.³⁰

Venue

Finally, after determining whether the municipal court has jurisdiction to hear criminal cases for violations of municipal ordinances, the court must determine whether the municipal court is the proper venue for prosecution of ordinance violations that arise in the

ETJ. Venue is governed by Chapter 13 of the Code of Criminal Procedure.

Offenses committed wholly or in part outside this State, under circumstances that give this State jurisdiction to prosecute the offender, may be prosecuted in any county in which the offender is found or in any county in which an element of the offense occurs.³¹

An offense committed on the boundaries of two or more counties, or within 400 yards thereof, may be prosecuted and punished in any one of such counties and any offense committed on the premises of any airport operated jointly by two municipalities and situated in two counties may be prosecuted and punished in either county.³²

In all cases mentioned in Chapter 13, the indictment or information, or any pleading in the case, may allege that the offense was committed in the county where the prosecution is carried on. To sustain the allegation of venue, it shall only be necessary to prove by the preponderance of the evidence that by reason of the facts in the case, the county where such prosecution is carried on has venue.³³

Opinions Interpreting the Above Statutes

*Treadgill v. State*³⁴

On June 5, 1953, there was a fire and explosion on the premises of the Alco Fireworks and Specialty Company. As a result of that fire, four people were killed, including two children and 96 people were injured. On June 24, 1953, the City of Houston passed Ordinance No. 8941 pursuant to what is now Section 217.042 of the L.G.C. and declared fireworks to be a nuisance and prohibited the presence of any fireworks within the city and within 5,000 feet of the city limits. In 1955, the Texas Court of Criminal Appeals held that when a state statute granted a municipality express

authority to prohibit nuisances outside the city limits, the Legislature impliedly granted jurisdiction upon the municipal court for the prosecution of those offenses. In *Treadgill v. State*, the court stated that “[i]t would be idle to say that, in the exercise of its police power, a city may prohibit the operation of a nuisance within the corporate limits but could not do so if the nuisance was beyond the limits of the city but so situated as to constitute the same nuisance or hazard to the public health and safety as if within the city limits. To so limit and circumscribe the power of the city in such an instance could defeat the power of the city or prohibit the maintenance of the nuisance.”³⁵

In regards to venue, the Court stated “...we have no constitutional inhibition against trying an accused outside the county where the offense is committed or outside the county of his residence. The only inhibition we have is statutory.”³⁶ “Such being true, it would follow that the Legislature was authorized to confer upon corporation courts like power and authority to try cases coming within its jurisdiction but where the offense was committed outside the corporate limits.”³⁷

AG Opinion JC-0025³⁸

Texas Attorney General John Cornyn extended the analysis of the *Treadgill* case to a City of Wylie ordinance that declared outdoor burning a nuisance and prohibited it within 5,000 feet of the city limits.

***Parker v. City of Ft. Worth*³⁹**

A “nuisance” is anything that works injury, harm or prejudice to an individual or public, or which causes a well-founded apprehension of danger. A nuisance obstructs, impairs or destroys the reasonable, peaceful and comfortable use of property.

***City of West Lake Hills v. Westwood Legal Defense Fund*⁴⁰**

The City of West Lake Hills was a general law city with a population of less than 5,000 people. In 1977, the West Lake Hills City Council passed an ordinance attempting to control pollution flowing from private sewage facilities. The ordinance required inspection and licensing of all such facilities existing within the city’s limits or its ETJ. The Westwood Legal Defense Fund was a coalition of homeowners that lived in a subdivision known as Westwood, which was located entirely outside the city limits but within the ETJ. In *City of West Lake Hills v. Westwood Legal Defense Fund*, the Westwood Legal Defense Fund applied for an injunction preventing the city from enforcing the application of the ordinance in the ETJ through criminal action. The Court ruled that the City could not enforce by criminal action an ordinance requiring licensing of private sewage facilities located within the city’s ETJ because such an ordinance would be inconsistent with a state law that granted such powers to the Water Commission and the Texas Department of Water Resources.

***City of Austin v. Jamail*⁴¹**

The City of Austin passed the Lake Austin Watershed Site Development Ordinance which required anyone building a structure to obtain a permit before construction or clearing of the land begins. The purpose of the ordinance was to minimize the amount of urban runoff by specifying the amount and slope of impervious surfaces, the amount of pre-construction clearing so as not to affect natural ground cover, the depth of fill material allowed, building foundation standards, and erosion control requirements. Mr. Jamail filed an injunctive action in the district court in an attempt to prevent the city from

enforcing this ordinance within its five-mile extraterritorial jurisdiction. The district court relied on the *City of West Lake Hills v. Westwood Legal Defense Fund* and granted the injunction. The City of Austin appealed to the Court of Appeals, which held that the City had the authority to enforce, within its five-mile extraterritorial jurisdiction, its watershed site development ordinance. The Court distinguished this case from *Westwood* by explaining how the court in the *Westwood* case mischaracterized the applicable Water Code provisions and that the City’s enforcement of such laws were not inconsistent with state law.

***State v. Blankenship*⁴²**

Mr. Blankenship was convicted in the Austin Municipal Court of Record for eight city ordinance offenses that occurred in the city’s ETJ. The ordinance he was alleged to have violated was adopted pursuant to Section 401.002(a) of the L.G.C.

In compliance with Article 45.019(c) of the Code of Criminal Procedure, each of the underlying complaints alleged that the offense occurred in the territorial limits of the City of Austin. Blankenship filed pretrial motions to quash each complaint on the basis that the complaints alleged that the offenses occurred in the territorial limits of the city when in fact the offenses occurred outside the city’s territorial limits but in its ETJ. The motions were called to the court’s attention on the day of trial and the court overruled them as they were untimely. After the State rested its case, Blankenship moved for an instructed judgment of acquittal in each case on the basis that the State failed to prove the venue allegation and, in fact, proved without dispute that the offenses had occurred outside the territorial limits of the city.

The county court reversed the eight convictions on Blankenship’s asserted point of error that the State failed to

prove venue as alleged in the complaint. The county court recognized the requirement of Article 45.019(c) but concluded it was “nonsense” to argue the complaint must allege the offense occurred within the territorial limits of a city when “the truth of the matter is that the offense, if any, occurred in the ETJ of the city.” The county court asserted that “because the prosecution did not prove an essential element of its case, this prosecution must fail.”

In *Blankenship v. State*, the Court of Appeals asserted that the issue was not whether each complaint properly charged an offense or the proper manner of pleading each offense; but was the consequence of the failure of the prosecution to prove venue as laid under the particular circumstances of the case.

The Court noted that venue is different than jurisdiction and that the terms are not synonymous. Jurisdiction is the authority or power conferred upon a court by the constitution and laws of the State that allows a court to hear and try a case. Venue denotes locality, and its prevailing meaning is the place of trial, the geographical location in which an action or proceeding should be brought to trial.

The Court further noted that venue is not a constituent element of the offense charged. Venue must be proved only by a preponderance of the evidence. The failure of proof of venue by the prosecution does not negate the guilt of the accused. It must be remembered, however, that if the issue of venue is timely raised, reversible error may result from the failure to prove venue as laid in the charging instrument.

The State argued that the *Gollibar*⁴³ standard applied and that the error was harmless because there was only an immaterial variance that did not prejudice Blankenship’s substantial rights; therefore the convictions stand. The court rejected this argument

asserting that the *Gollibar* standard applies to elements of the offense and venue is not an element of the offense. Blankenship asserted the long-standing rule that when venue is made an issue in the trial court, the failure to prove venue constitutes reversible error. The court rejected this rule as it was decided before the adoption of the Texas Rules of Appellate Procedure and its harmless error analysis provisions.

The Court asserted that the failure to prove venue when the issue is raised at trial is subject to a harm analysis rather than an automatic reversal of the conviction and found that the error was non-constitutional. It then asserted that the non-constitutional error did not affect Blankenship’s substantial rights as there was no showing that Blankenship was prevented from presenting a defense and that the error did not influence the trial judge. The Court noted, however, that the Legislature ought to amend the law relating to venue.

In the meantime, prosecutors can argue substantial compliance by alleging in the complaint that the offense occurred within the extraterritorial jurisdiction of the City of _____ and the State of Texas, rather than the “territorial limits” or “corporate limits” of the city. Then, the evidence introduced at trial on the location of the offense will not vary from the venue alleged in the complaint.

Other Ways the City Can Enforce Ordinances in the ETJ

After reviewing the facts of your particular case, you may determine that justice prevents you from prosecuting an ordinance violation in the municipal court that occurred in the ETJ because the city may not have jurisdiction (express or implied) or venue over the offense. If you are confronted with such a situation, in addition to dismissing such a case, you can advise the city that other enforcement alternatives are available, such as filing a

civil lawsuit under Chapter 54 of the L.G.C. in the district, county court or municipal court of record.

A municipality may bring a civil action for the enforcement of an ordinance:

- (1) for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;
- (2) relating to the preservation of public health or to the fire safety of a building or other structure or improvement, including provisions relating to materials, types of construction or design, interior configuration, illumination, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;
- (3) for zoning that provides for the use of land or classifies a parcel of land according to the municipality’s district classification scheme;
- (4) establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;
- (5) implementing civil penalties under this subchapter for conduct classified by statute as a Class C misdemeanor;
- (6) relating to dangerously damaged or deteriorated structures or improvements;
- (7) relating to conditions caused by accumulations of refuse, vegetation or other matter that creates breeding and living places for

insects and rodents;

- (8) relating to the interior configuration, design, illumination, or visibility of business premises exhibiting for viewing by customers while on the premises live or mechanically or electronically displayed entertainment intended to provide sexual stimulation or sexual gratification; or
- (9) relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality.⁴⁴

Additionally, the municipality can adopt one of the quasi-judicial enforcement measures outlined in Chapter 54 of the L.G.C., such as creating a Building and Standards Commission⁴⁵ and referring the case to it or adopting an administrative hearing procedure.⁴⁶ ➡

¹ See *City of Austin v. Jamail*, 662 S.W.2d 779, 782 (Tex. App.—Austin, 1983, writ dismissed w.o.j.); *City of West Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681, 686 (Tex. Civ. App.—Waco 1980, no writ); *Sweetwater v. Hammer*, 259 S.W. 191,

195, (Tex. Civ. App.—Fort Worth 1923, writ dismissed).

² Tex. Loc. Gov't Code § 42.001.

³ Tex. Loc. Gov't Code § 42.021.

⁴ Tex. Loc. Gov't Code § 42.044.

⁵ Tex. Loc. Gov't Code § 42.046.

⁶ Tex. Loc. Gov't Code § 217.042.

⁷ Tex. Loc. Gov't Code § 212.003.

⁸ Tex. Loc. Gov't Code §§ 212.041-212.050.

⁹ Tex. Loc. Gov't Code § 216.003.

¹⁰ Tex. Loc. Gov't Code § 395.001(9).

¹¹ Tex. Loc. Gov't Code § 402.044 (8).

¹² Tex. Loc. Gov't Code §§ 5.00-5.005.

¹³ Tex. Loc. Gov't Code § 51.001.

¹⁴ Tex. Loc. Gov't Code § 51.012.

¹⁵ Tex. Loc. Gov't Code § 51.032(a).

¹⁶ Tex. Loc. Gov't Code § 51.032(b).

¹⁷ Tex. Loc. Gov't Code § 51.051(a).

¹⁸ Tex. Loc. Gov't Code § 51.051(b).

¹⁹ Tex. Loc. Gov't Code § 51.052(a).

²⁰ Tex. Loc. Gov't Code § 5.004.

²¹ Tex. Loc. Gov't Code § 51.072(a).

²² Tex. Loc. Gov't Code § 54.004.

²³ Tex. Loc. Gov't Code § 5.005.

²⁴ Tex. Loc. Gov't Code § 54.001.

²⁵ Tex. Code Crim. Proc. art. 4.14.

²⁶ Tex. Gov't Code § 29.003.

²⁷ Tex. Gov't Code § 30.00005.

²⁸ Tex. Loc. Gov't Code § 217.042.

²⁹ Tex. Loc. Gov't Code § 341.903.

³⁰ Tex. Loc. Gov't Code § 401.002.

³¹ Tex. Code Crim. Proc. art. 13.01.

³² Tex. Code Crim. Proc. art. 13.04.

³³ Tex. Code Crim. Proc. art. 13.17.

³⁴ *Treadgill v. State*, 160 Tex. Crim. 658, 275 S.W.2d 658 (Tex. Crim. App. 1954). See also *Alpha Enterprises, Inc. v. City of Houston*, 411 S.W.2d 417 (1967) and *A.M. Cohen, et al. v. R.C. Bredebeft, et. al.*, 290 F.Supp. 1001, (S.D. Texas 1968).

³⁵ *Id* at 662.

³⁶ *Id* at 665.

³⁷ *Id* at 666.

³⁸ Op. Tex. Att'y Gen. No. JC-0025 (1999).

³⁹ *Parker v. City of Ft. Worth*, 281 S.W.2d 721, 723 (Tex. Civ. App.—Ft. Worth 1955, no writ). See also Op. Tex. Att'y Gen. No. JM-226 (1984).

⁴⁰ *City of West Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681, 686 (Tex. Civ. App.—Waco 1980, no writ).

⁴¹ *City of Austin v. Jamail*, 662 S.W.2d 779, 782 (Tex. App. —Austin 1983, writ dismissed w.o.j.).

⁴² *State v. Blankenship*, 170 S.W.3d 676 (Tex. Crim. App.—Austin 2005, rehearing overruled).

⁴³ *Gollibar v. State*, 46 S.W.3d 243 (Tex. Crim. App. 2001).

⁴⁴ Tex. Loc. Gov't Code § 54.012.

⁴⁵ Tex. Loc. Gov't Code §§ 54.033 – 54.041.

⁴⁶ Tex. Loc. Gov't Code § 54.044.

Deadline for 2006 Texas Judicial System Annual Report

In order to capture your court's data for the *2006 Texas Judicial System Annual Report*, the Office of Court Administration (OCA) must receive your municipal court monthly activity reports for state fiscal year 2006 (September 1, 2005 through August 31, 2006) **by October 4, 2006.**

All municipal courts must submit a monthly court activity report to OCA, **even if the court has no activity for the month.**

The monthly court activity report collects information needed by the Legislature to make decisions regarding the jurisdiction, structure and needs of the court system. The information is also used by many other entities or individuals: the Comptroller's Office, the Legislative Budget Board, the Department of Public Safety, local judges, city councils, commissioner's courts, local and state auditors, the media (especially local newspapers), the Texas Municipal Courts Education Center, research or special interest groups, universities (professors and students), attorneys, individuals running against incumbent judges in elections, and members of the general public. Reports from September 1992 to the present are available to the public on the OCA website at www.dm.courts.state.tx.us/oca/reportselection.aspx.

Please call Sandra Mabbett, Judicial Information Specialist, at 512/463-1640 if you need assistance with or have questions about the monthly reports.

Should Your Municipal Court Become a Court of Record?

By Paul Isham, Attorney-at-Law

This article addresses why your city might want to create a court of record, the requirements of a court of record, and the change in the court operation when becoming a court of record.

There are some 870 plus municipal courts in Texas and approximately 75 of them are municipal courts of record. Of the 100 Texas cities that had a 2004 estimated population of 25,000 or more, 36 of them have courts of record and 32 of those courts were created by special legislation. Prior to the passage of H.B. 731 during the 76th Legislature, effective September 1, 1999, creating Chap. 30, Subchapter A, Texas Government Code, cities had to create municipal courts of record by specific legislation. Thirty-eight cities had obtained special legislation to create a municipal court of record prior to 1999. Special legislation for an additional six cities was passed during the 1999 Legislative Session, and four more special acts have been passed since 1999. The 1999 Act, referred to as the Uniform Municipal Courts of Record Act, allows any municipality to create a municipal court of record by the adoption of an ordinance pursuant to the provisions of Subchapter A.

Originally, the provisions of Subchapter A did not apply to cities that obtained specific legislation. In 2003, the 78th Legislature passed H.B. 2799 which applied the provisions of Subchapter A to each municipality listed in Chapter 30, but provided that if the provisions of Subchapter A conflict with a specific provision for a particular municipality, the specific provision controls. Cities may still seek specific legislation to create a

municipal court of record if they desire some specific provision that is not enumerated in the Uniform Act. Since the passage of the Uniform Act in 1999, only about 27 Texas cities have converted to municipal courts of record pursuant to the provisions of the act.

Advantages and Disadvantages of Being a Court of Record

Advantages:

In a non-record municipal court, a defendant may appeal the judgment of the municipal court to the appellate court handling municipal court appeals, usually a county court at law or county court, and have a trial *de novo*, (*i.e.*, a completely new trial on the entire case conducted as if there had been no trial in the first instance). A defendant may even skip a non-record municipal court altogether by entering a plea and appealing the case to the appellate court. This is informally referred to as a “leapfrog appeal.” The subsequent trial in the county court controls the outcome of the case. The trial *de novo* at the county level is eliminated by having a municipal court of record.

A municipal court of record should decrease the number of appeals to the county and the dismissals at the county level. For the 2005 calendar year, 3,246 cases were appealed from non-record municipal courts in cities with a population of 50,000¹ or more while 1,258 cases were appealed from the municipal courts of record in cities within the same population bracket. If the 1,127 cases that were appealed in the City of Houston are removed from the statistics, only 131 cases were appealed in the remaining cities with

courts of record with populations greater than 50,000. For cities with populations between 25,000 and 50,000, 2,690 cases were appealed from non-record municipal courts, while only seven were appealed from municipal courts of record.² A reduction in the number of appeals results in a reduction in the municipal court’s workload with regard to processing appeals.

A municipal court of record will reduce the burden on the county court system since the number of appeals will decrease. The integrity of the municipal court improves since the Code of Criminal Procedure and the Rules of Appellate Procedure govern the trial of cases before municipal courts of record³ and the proceedings are recorded. A municipal court of record should also reduce police officers’ overtime and reduce the time spent in court by city inspectors and other witnesses since they will only have to appear for the trial at the municipal level. The need to have witnesses available for a *de novo* trial at the county level is eliminated. Some cities report that police officer morale improves, and more citations are issued by officers in cities that have a court of record.

A trial in a municipal court of record is recorded by a court reporter or by an electronic recording device. Appeals of the judgment in the municipal court of record are based on alleged errors made during the municipal court trial. A trial *de novo* is not permitted and the appellate court renders a disposition of the appeal based on the transcript from the municipal court, the briefs submitted by the parties, and oral arguments, unless the case is submitted

to the appellate court without oral argument.

The enforcement of code violations and city-ordinance violations improves because defendants cannot avoid a municipal court proceeding (*i.e.*, no “leapfrog appeals”).⁴ The city maintains local control over these violations, appeals are decreased because the violators cannot simply enter a plea and then appeal the case to the county, and if a case is appealed and the judgment affirmed, the fine assessed at the municipal court level is imposed and collected by the municipal court. Thus, defendants cannot negotiate a lower fine amount at the county level which is kept by the county.

In addition to the jurisdiction granted by general law for a municipal court, a municipal court of record has additional authority specifically granted to it by Section 30.00005, and that section also gives the city’s governing body the authority to provide additional jurisdictional powers to the court by ordinance. The jurisdiction of a municipal court of record is more thoroughly discussed later in this article.

Disadvantages:

The disadvantages of creating a municipal court of record include the requirement that the judge be an attorney⁵; the procedure for removing an unsatisfactory judge; the cost of additional court personnel to assist with recording devices, record keeping, trial dockets, paperwork, *etc.*; the cost, if any, to the city of having an appointed court reporter, although the cost of preparing the reporter’s record is paid by the appellant; the possible need for additional office space; possible change in the organizational relationship between the judge(s) and court personnel; and courtroom space. The city will also incur the cost of purchasing and

installing a good quality electronic recording device⁶ although some cities that use the council chambers as a courtroom already have the necessary recording equipment in place. A city with a court of record may also experience additional trial dockets, trials and time spent by court personnel, including the judge and prosecutor, in conducting trials. The court’s increased trial activity may require additional staff. Also, if the city’s judge and prosecutor are not full-time, the city may experience an increase in costs for the additional time spent by the judge and prosecutor in handling the trial docket.

As indicated below, the appellant must pay the costs for the court reporter to prepare the reporter’s record unless he/she is indigent. In the case of an appeal by an indigent person, the city would absorb the costs of the reporter’s record. The cost of a reporter will vary depending on locale, but Haltom City pays a court reporter \$150 for four hours of work.

Since the court proceedings in a court of record are recorded, the conduct of the judge, prosecutor, the defendant, defendant’s attorney, and witnesses are recorded and are subject to scrutiny by the public and the appellate court if the case is appealed. This factor can be positive or negative, depending on the conduct of the participants in the trial. Finally, a more formalized municipal court proceeding may be threatening to *pro se* defendants that appear before the municipal court.

Jurisdiction of the Court

In addition to the jurisdiction granted any municipal court, a municipal court of record acquires additional jurisdiction pursuant to the Uniform Act and may be granted further jurisdiction by action of the governing

body in creating the court of record. A judge of a municipal court of record has the authority to issue a search warrant to search for and seize contraband subject to forfeiture while a municipal judge of a non-record municipal court does not have this authority.⁷ The judge also has the authority to grant writs of *mandamus*, attachments and other writs necessary to the enforcement of the jurisdiction of the court and may issue writs of *habeas corpus* in cases in which the offense charged is within the jurisdiction of the municipal court.⁸

A municipal court of record has additional jurisdiction over criminal cases arising under ordinances authorized by Section 215.072 (inspection of dairies, slaughterhouses or slaughter pens, in or outside the municipal limits, from which milk or meat is furnished to the residents of the city), Section 217.042 (defining and prohibiting any nuisance within the limits of the municipality and within 5,000 feet outside the city limits), Section 341.903 (home-rule municipality policing the following areas owned and located outside the city (1) parks and grounds, (2) lakes and land contiguous to and used in connection with a lake, and (3) speedways and boulevards), and Section 401.002 (home-rule city prohibiting the pollution or degradation of a stream, drain, recharge feature, recharge area, or tributary that may constitute or recharge the source of water supply of the city, and may provide for the protection of and may police any watersheds. The authority granted by this provision for the protection of recharge area or recharge features of groundwater aquifers is limited to cities with a population greater than 750,000 and the groundwater constitutes more than 75% of the city’s source of water supply) of the Local Government Code (L.G.C.). In addition, the governing body of a city

by ordinance may provide that:

- (1) the court has civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, L.G.C.,⁹ Subchapter E, Chapter 683, Transportation Code;¹⁰
- (2) concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, L.G.C.,¹¹ within the municipality's territorial limits and property owned by the municipality located in the city's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances; and
- (3) authority to issue:
 - (a) search warrants for the purpose of investigating health and safety or nuisance abatement ordinance violations; and
 - (b) seizure warrants for the purpose of securing, removing or demolishing the offending property and removing debris from the premises.¹²

Section 30.00006, L.G.C., provides that a municipal judge of a court of record, acting as a magistrate, can issue administrative search warrants. Article 18.05, Code of Criminal Procedure, authorizes any magistrate, including a municipal judge of a non-record municipal court, the authority to issue warrants for fire, health and code inspections. However, Subsection (e) of Art. 18.05 provides that a search warrant may not be issued to a code enforcement official of a county with a population of 2.4 million or more for the purpose of allowing the inspection of specified premises to determine the presence of an unsafe building condition or a violation of a building regulation, statute or ordinance. It can be argued

that the authority set-out in Sec. 30.00006 with regard to the issuance of administrative search warrants would take precedence over the exclusion of Art. 18.05(e) so that a judge of a municipal court of record in a county with a population of 2.4 million or more has the authority to issue a search warrant for inspection of an unsafe building or violation of a building regulation, statute or ordinance.

Requirements

In addition to the requirement for an attorney-judge,¹³ the conversion to a municipal court of record requires that the governing body appoint the clerk and a court reporter. The presiding judge shall supervise and control the operation and clerical functions of the administrative department of the court, including the clerk and other personnel necessary for the proper operation of the court, during the proceedings of the court.¹⁴ However, the governing body shall by ordinance provide for the appointment of the clerk of the municipal court and may provide for the hiring, direction, supervision, and removal of deputy clerks, warrant officers and other personnel necessary for the proper operation of the courts and as authorized in the annual budget for the clerk's office.¹⁵ Normally, home-rule cities provide that the city manager/administrator shall appoint the clerk and other court personnel. In general law cities, the governing body appoints any officer, including the clerk, which it considers necessary for the operation of the city¹⁶ unless the city has adopted the city manager form of government.

City governing bodies may provide that the city manager/administrator, the presiding judge or the governing body be responsible for the administration of the clerk's office. There is a potential for conflict if the city manager/administrator is given

the responsibility to hire, direct, supervise, and remove the clerk and other court personnel, but the court clerk and other court personnel perform their duties under the direction and control of the presiding judge.¹⁷ Cities should be cognizant of this potential conflict when contemplating creating a municipal court of record.

The clerk is charged with the responsibility of preparing the clerk's record if a case is appealed from the municipal court of record.¹⁸ The council shall by ordinance designate the presiding judge, municipal court clerk or the court administrator with the responsibility of supervising the selection of persons for jury service.¹⁹

Chapter 30 also requires that the municipal court of record have a court reporter who meets the qualifications provided by law for official court reporters. The reporter shall be compensated by the city in the manner determined by the governing body. The court reporter is charged with the responsibility of preserving the record of cases tried before a municipal court of record. The court reporter may use written notes, transcribing equipment, video or audio recording equipment, or a combination of these methods to record the proceedings. Instead of providing a court reporter, the governing body of the city may provide that the proceedings be recorded by a good quality electronic recording device.²⁰ In considering converting your court to a municipal court of record, you should factor in the cost of acquiring a proper recording device. The court reporter is not required to be present during the proceedings in order to certify the reporter's record. If there is an appeal of the case, a court reporter must prepare a reporter's record from the recording.²¹

The city can charge an appellant a \$25

fee for the preparation of the clerk's record and also charge for the actual cost of the reporter for preparing the reporter's record including transcription of the proceedings. Thus, these costs are absorbed by the appellant unless the court determines that the appellant is indigent. If the appellant prevails on appeal, the \$25 fee is refunded, but not the cost of preparing the reporter's record.²²

Conclusion

If your municipal court is experiencing a large number of appeals, you may wish to consider creating a municipal court of record. If not, the additional costs incurred by creating a municipal court of record may not justify establishing such a court. Cities that have created municipal courts of record have experienced a drastic reduction in the number of appeals filed in their courts. For FY05, 5,937 cases were appealed from non-record municipal courts in cities with a population of 25,000 or more, while only 137 cases were appealed in the cities (excluding appeals in the City of Houston) with courts of record.²³ Furthermore, a court will likely see an increase in annual revenues as a result of the reduction in the number of appeals. In addition, the enforcement of code violations and city ordinance violations improves because defendants cannot avoid a municipal court proceeding. Cities also may want to create a court of record in order to give its municipal judge additional jurisdictional powers, particularly in the area of issuing search warrants.

TMCEC has compiled a packet of information, including a sample ordinance, with regard to creating a municipal court of record. Please contact the TMCEC office at 512/320-8274, 800/252-3718, or by email at tmcec@tmcec.com if you would like a copy of this information. 

¹ 2005 estimated population from Office of Court Administration's (OCA) statistics.

² Data taken from OCA's Municipal Courts Summary of Reported Activity.

³ Sec. 30.00023, Gov't Code.

⁴ According to OCA's statistics for 2005, 1,809 city-ordinance violations were appealed from non-record municipal courts while only eight were appealed from municipal courts of record in cities with a population greater than 25,000.

⁵ The City of Bullard was successful in obtaining special legislation that does not require its municipal judge to be an attorney. Sec. 30.01482, Gov't Code.

⁶ Such a device could cost upwards of \$3,000 or more.

⁷ Art. 18.01(h) and Art. 18.02(12), Code of Crim. Proc.

⁸ Sec. 30.0006(e), Gov't Code.

⁹ Dangerous structures.

¹⁰ Junked vehicles – public nuisance and abatement.

¹¹ Municipal health and safety ordinances – civil actions and civil penalties.

¹² Sec. 30.00005, Gov't Code.

¹³ The city council also must establish a term of two or four years for the municipal judge(s). Sec. 30.00006, Gov't Code. The judge must be a licensed attorney in good standing with two or more years of experience in the practice of law in Texas. Also see Sec. 30.01482 allowing the City of Bullard to have a non-attorney judge.

¹⁴ Secs. 30.00007 & 30.00009, Gov't Code.

¹⁵ Sec. 30.0009, Gov't Code.

¹⁶ Secs. 22.071, 23.051 & 24.051, L.G.C.

¹⁷ See Texas Code of Judicial Conduct, Canon 3 C.(2) that provides that "a judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties."

¹⁸ Sec. 30.00017, Gov't Code.

¹⁹ Sec. 30.00013(b), Gov't Code.

²⁰ Sec. 30.00010, Gov't Code.

²¹ Sec. 30.00010, Gov't Code.

²² Secs. 30.00014 & 30.00019, Gov't Code.

²³ Data taken from OCA's Municipal Courts Summary of Reported Activity.

Paul Isham is an attorney in Lago Vista. He works with TMCEC on special projects.

Court of Record?

Please email tmcec@tmcec.com if your court has become a court of record (or is in the process) by ordinance pursuant to the provisions of Subchapter A in Chapter 30 of the Texas Government Code.



RESOURCES FOR YOUR COURT

Graduate Certificate in Professional Ethics

A six-hour (two courses) program on *Professional Ethics* is now offered on the Texas State University campus in San Marcos, Round Rock and San Antonio and on the Internet. The program acquaints students with major ethical issues in the workplace and offers instruction on how to address them and act responsibly. This graduate elective course allows students to consider their professional responsibilities in a broader context, such as the environment or the meaning of their lives.

Contact: Dr. Vince Luizzi, Chair
Department of Philosophy
Texas State University—San Marcos
San Marcos, TX 78666
512/245-2285
vluizzi@txstate.edu
<http://www.txstate.edu/philosophy/>

Identity Theft

Identity theft is an issue of concern to judges and court employees, as well as private citizens. The Identify Theft Resource Center (www.idtheftcenter.org) is an excellent website for obtaining information on new trends, scams and consumer alerts on identity crimes.

Reminder

All municipal courts must submit a monthly court activity report to the Office of Court Administration, even if the court has no activity for the month. Questions? Call 512/463-1640. See also, *Deadline for 2006 Texas Judicial System Annual Report* article on page 13 of this newsletter.



e-Courts 2006

The National Center for State Courts is offering an *e-Courts Conference* in Las Vegas, Nevada on December 11-13, 2006. The conference will explore new electronic documents, communications and data systems that can transform your court. Topics will include:

- How e-Filing has transformed the court's work and organization.
- How courts are using GJXDM1 technology to implement long-sought integrated justice systems.
- How judges are using Tablet PCs to be more effective and efficient.
- Improving privacy and public access using technology.
- How open-document standards and open-source software will impact your court.
- Electronic archiving—how the federal government addressing this issue.
- Voice over IP (VoIP), Video over IP, and wireless networks—How courts are using this technology to improve communications and save money.

Early bird registration is \$549.

Conference location: Planet Hollywood Resort and Casino by Sheraton, 3667 Las Vegas Blvd. South, Las Vegas, NV 89109

Reservations: 877/244-9474 (toll-free) or 702/785-5555 (direct). Reference Code: ANCS or National Center for State Courts. Rate: \$105 single/double plus tax.

Reservation cut-off date: November 17, 2006.

www.e-courts.org

Certification continued from page 1

another, with each level using the previous as a stepping-stone. Upon successful completion of Level I and Level II, a clerk is awarded the title of Certified Court Clerk Level I and Certified Court Clerk Level II, respectively. After clerks finish the required education, exams, assessment clinic, court visits/observations, and journal documenting their observations, they achieve the third and final level and receive the title of Certified Municipal Court Clerk (CMCC). This prestigious title demonstrates the dedication and perseverance of court clerks' five-year commitment to complete the program.

The certification program brings together court clerks and administrators from across the Lone Star State helping courts develop uniform procedures. As court clerks utilize the same resources and are consistently trained in court processes, uniformity is becoming a reality. Participation in the certification program also helps improve communication between judges and clerks because they learn similar terminology, reducing misunderstandings in the system.

Since most individuals experience the American justice system through their local courts by way of magistration or adjudication of Class C fine-only misdemeanors, public opinion of the entire court system becomes rooted in municipal court. Consequently, maintaining excellent organization and professionalism is a crucial responsibility of municipal courts. The enhanced communication and improved efficiency resulting from the certification program has created positive public perceptions of the court system. One clerk expressed this opinion on a test evaluation, stating, "I believe the continuing education, knowledge and certification are so important to the overall performance

of the court. The public will then have more confidence in their experience with the local justice system."

In addition to the advantages for municipal courts and their communities, clerks receive many personal benefits from participation in the certification process. Being certified gives clerks a feeling of achievement and provides greater opportunities for career advancement. A clerk with a certified title possesses professionalism and has an improved comprehension of court processes, which contribute to enhanced administration of justice. The program is leaving a positive impression on participants, who readily observe the difference this training makes on job performance, with one clerk commenting:

The study guide is comprehensive and a valuable source of information, even if the person does not test. I think every court clerk and court administrator should attain Level I certification, no matter how much experience the person has ...Because of the program, I'm more confident and comfortable in my job.

The clerks who take the time to become certified are self-starters in the court clerk system. According to Danny Cox and John Hoover in their book entitled *Leadership When the Heat is On*, the way to keep top achievers happy is to:

Give them room to grow and develop their potential. When you recognize the difference in ability and ambition among people don't ignore it. Support their quest for personal and professional growth by subsidizing training and continuing education through seminars, conventions, college, and technical classes, as long as the result helps the person grow and thereby helps the company achieve its goals.

Using Cox and Hoover's approach, mayors, city council members and judges play a significant role in the professional development of municipal clerks. By encouraging

attendance at training programs, offering incentives to become certified and allocating travel expenses for seminars, local officials and judges can support clerks in their quest to further their knowledge base and to become more professional.

When asked his opinion of the program, the Honorable Dan Francis of Robinson said that certification gives clerks recognition. "Certification gives a professional status to clerks and shows that an individual is qualified and capable to perform the duties." Francis has been encouraging his clerk, Linda Vranich, to achieve Level III status, and she is currently working toward this goal. Vranich said that without Francis' urging, she would have been satisfied with her Level II status. "His support and encouragement are fantastic. I wouldn't do Level III if it didn't mean something to my judge. He wants me to be one of the first 100 Level III Certified Municipal Court Clerks in the state." Judge Francis believes that certification will be a prerequisite for employment in the future. The City of Victoria already requires that a clerk be certified to work in its court.

Certification indicates job proficiency, and many municipalities have begun offering incentives to encourage clerks to increase their skill base through certification. Some cities offer recognition in newsletters or rewards at staff meetings, while others grant more substantial rewards such as job promotions and merit raises. Offering incentives for certified employees sends a message not only recognizing the clerks' achievements but also enticing them and other employees to continue on the path of professional growth. Happy employees who are rewarded for their successes make for more productive workers who are prepared and ready to provide outstanding service to those who appear before the court.

Since its implementation in 1996, the clerk certification program has seen tremendous growth and improvements. The number of clerks seeking certification is on the rise as a result of increased awareness and the commitment to the program by both educators and participants. Hilda

Phariss, Court Administrator for the City of Bryan, summed up the reason for the certification program's existence, "[Because of the certification program] the court clerks are being given the recognition long deserved within the Texas Judicial System, particularly at the municipal

level." 🏠

Leisa Hardin serves as the Court Administrator for the City of Crowley. She also serves as the President of the Texas Court Clerks Association. Lauren Waite is the Program Coordinator at TMCEC and a recent graduate of St. Edwards University in Austin.

Certification Incentives

Alvin - The mayor presents a plaque at a city council meeting to a Level III certified clerk.

Andrews - Clerks have one year to complete Level I from the time of hire to maintain employment. Certified clerks begin as "Experienced Clerks" on the pay scale; without this, they start with entry-level pay. After receiving the Level II certification, the clerk receives \$75 certification pay per month. A clerk with Level III certification is compensated \$150 per month.

Arlington - Clerks have three years to complete Level I from the time of hire to maintain employment. The pay incentive for Level I is a step up one pay grade (no less than 5%); Level II steps up another pay grade. The city pays for membership dues, training expenses, testing material, and tests for all required levels.

Bee Cave - Level I certification is required for clerks within the first year of employment. A 1% pay raise and recognition in a city hall meeting and in the annual review is offered.

Benbrook - Recognition is offered at city council meetings.

Castroville - A \$50 pay increase each month is offered for the completion of Levels I and II. A \$25 to \$50 pay increase each month is offered upon completion of Level III.

Cleburne - A \$25 pay increase per month is offered for each level completed (with a maximum of \$100 per month).

Corsicana - Each clerk is provided with a Level I study guide.

Crandall - The court clerk administrator receives a \$1,500 salary raise for every level of certification completed.

Duncanville - A \$25 pay raise is offered for each level of certification completed.



East Tawakoni - Recognition is offered at city council meetings.

Eden - The city pays for the cost of testing.

Flower Mound - Incentive pay is offered for completion of Level I at \$25 per month.

Friendswood - Court administrators are required to achieve Level I. The city pays \$25 per month for each level of certification completed. Recognition is also offered by the city council.

Haltom City - The city pays for testing and travel reimbursement for the courses.

Keller - Pay incentives are as follows: Level I - \$50 per month; Level II - \$75 per month; Level III - \$100 per month.

Lake Dallas - Pay for incentives are as follows: Level I - \$25 per month; Level II - \$50 per month; Level III - \$100 per month.

Laredo - Recognition is offered at city council meetings.

League City - Pay incentives are as follows: Level I - \$1,200 per year; Level II - \$1,800 per year; Level III - \$2,400 per year.

Lockhart - Pay incentives are as follows: Level I - \$20 per month extra; Level II - \$30 per month extra; Level III - \$40 per month extra. The city puts out a newsletter to its utility customers on a quarterly basis in which it will recognize anyone who attained a new level of certification.

Lumberton - A \$20 pay increase per month is offered for each level completed. The city also allows time off and pays expenses (mileage and meals) to attend annual court clerk classes.

Marble Falls - All clerks must complete Level I within one year of employment, awarding a higher pay scale because of this. They once started at \$7.00 per hour, and now all clerks start at \$12.50 per hour plus normal yearly raises. Additional incentives include the following: Level II - raise of \$.40 per hour; Level III - raise of \$.60 per hour.

Mansfield - Completion of Level I and II is required, and the city encourages all employees to complete Level III. After completing the first two levels of certification, employees receive a 2.5% pay increase. Upon

completion of Level III, employees receive an additional 5%. The city also pays for a complete set of Level III books (approximately \$500) for each clerk working towards Level III.

Mart – Recognition is offered at a city council meeting and in the local newspaper.

Midlothian – The city offers a \$50 pay raise per month for each level of certification completed.

Murphy – The city requires the court clerk to complete at least Level I. A court administrator must maintain Level II or III certification; a senior court clerk must have at least a Level I and work on Level II.

Pflugerville – Pay incentives are as follows: Level I - \$30 per month; Level II - \$40 per month; Level III - \$50 per month.

Richardson – Internal recognition is offered in the form of a small article in the employee newsletter, appreciation breakfast or lunch, framed certificate, and/or ribbon.

Rosenburg – A \$25 pay increase per month is offered for each level of certification completed.

Round Rock – The city offers pay incentives for each level of certification as follows: Level I - \$.30 per hour; Level II - \$.50 per hour; Level III - \$.70 per hour. The city budgets to pay for the cost of one test at each level. If enough funds are allotted in the budget, the city will send employees to a study session before testing. The city pays for all education hours required to keep the certification level up to date.

Rowlett – Pay incentives are as follows: Level I - \$50 per month; Level II - \$75 per month.

San Angelo – The city gives each clerk a 1.5% raise for each level attained.

Shoreacres – Pay incentives are as follows: Level I - \$.12 per hour; Level II - \$.24 per hour; Level III - \$.47 per hour.

Universal City – All training and testing are paid for by the city. In addition, Level I, II and III designations are included on employee nametags.

West University Place – Level I is required for the court clerk position. A \$15 pay increase is offered for completion of Levels II and III.

Westlake, Town of – The city offers incentive pay for clerks once they pass a particular level of the certification program. The scale is as follows: Level I - \$50 per month; Level II - \$75 per month; Level III - \$100 per month. Level II certification is required for the court administrator, and clerks are encouraged to attain at least Level I.

Westworth Village – The city pays for certification tests.

White Oak – The city pays for training, materials and testing.

If your city offers certification incentives for participation in this program, please email the Center at tmcec@tmcec.com.

Questions about Certification?

Please contact:

Leisa Hardin: 817/297-2201

Hilda Phariss Cuthbertson:
979/209-5400

Margaret Robbins: 800/252-3718

TCCA Annual Conference

The Gulf Coast Chapter of the Texas Court Clerks Association (TCCA) is pleased to host the Annual Conference this year in Galveston, Texas. The event will be held at the historic Hotel Galvez located on the Seawall, October 1-4, 2006. The theme *Rejuvenating Courts Across Texas: Promoting Balance in the Workplace* is supported by speakers that will inspire attendees to return to their courts rejuvenated and refreshed. Not only will there be motivational speakers, but the conference is home to a one-of-a-kind vendor exhibit. The vendors in attendance cater to Texas municipal court needs.

Clerks in attendance will also have the

opportunity to attend Level I and II preparatory courses and take Level I, II or III exams. Also, the conference counts toward municipal court clerk certification educational requirements.

The conference is a wonderful way to meet clerks from all over the state who are facing the same court-related issues. The Sunday evening President's Reception is an excellent time to visit with other clerks. Also, a trip to *The Strand* shopping district is planned for Monday night. In keeping with tradition, the Annual Awards Banquet will be held Tuesday evening at the Hotel Galvez. Make plans to attend this event, which is followed by a Comedy Improv Show.

Conference, prep course and exam registration forms are available at www.texasclerks.org. Registration forms must be submitted by August 25, 2006. Attendees are responsible for making their own hotel reservations by calling 409/765-7721 or 800/996-3426 and stating they are attending the TCCA Conference. Room reservations must be made by September 6, 2006 to receive the discounted rate of \$90 per night. More hotel information is available online at www.galveston.com/galvez. For questions concerning the conference, please contact Jennifer Sullivan, at 979/885-6733 or jsullivan@ci.sealy.tx.us.

Municipal Court Clerk Certification Program



The Municipal Court Clerk Certification Program was established to encourage professional development and educational growth. It is sponsored by the Texas Court Clerks Association (TCCA) in cooperation with the Texas

Municipal Courts Association (TMCA), the Texas Municipal Court Education Center (TMCEC) and Texas State University-San Marcos.

The program is comprised of three levels: Level I, Level II and Level III. Participants will achieve certification upon successful completion of each of the three levels, earning the titles of Certified Court Clerk Level I, Certified Court Clerk Level II and Certified Municipal Court Clerk.

ELIGIBILITY REQUIREMENTS

All participants must be employed by a municipal court in order to participate in the program.

Education

The applicant must provide proof that within three years preceding application, the applicant has:

- 1) Attended two annual conferences of the TCCA, or two annual conferences of the TMCA or two annual conferences: one of TCCA and one of TMCA; or
- 2) Attended one annual conference of the TCCA or TMCA and successfully completed 16 hours of training sponsored by the TCCA, TMCA, TMCEC, or a combination thereof; or
- 3) Successfully completed 40 hours of training sponsored by the TCCA, TMCA or TMCEC or a combination thereof.

CERTIFICATION EXAMS

Participants in the program must pass a certification test to advance at each of the three levels. The tests are offered throughout the year. The 2006-2007 test schedule and test application can be found on the TMCEC website: www.tmcec.com. An individual may retake an exam until a passing grade is obtained. Level I and Level II study guides can be purchased from TMCEC or printed from the TMCEC website: www.tmcec.com. The Level III exam is derived from 16 management books.

For Level III, there are study questions available; visit www.tmcec.com for more information.

WHAT'S NEW?

Level II Exam Changes

Effective October 1, 2004, Level II re-tests may be taken in parts. If a participant does not pass the Level II exam the first time, they may then take the individual parts they did not pass. This is retroactive, meaning it does include those who have not previously passed the exam. The cost per part is \$25.

Level III Book List

The Level III book list has been updated. After December 31, 2005, all must test using the new book list. Books can be purchased at various bookstores and online or can be borrowed from TMCEC or through local libraries. See www.tmcec.com for required reading.

Certified Municipal Court Clerks

The certification program has increased Level III Certified Municipal Court Clerks to 24. Congratulations to Jeanie Roumell, Keller; Tracie Glaeser, Round Rock; Julie Kubezka, Alvin; Karen Renfrow, Friendswood; Phyllis Mathison, Bastrop, Cynthia Wells, Hickory Creek; Deborah Jessup, Bullard; Krystal Strong, San Antonio; Rhonda Khuen, Brenham; Maria Busche, Jersey Village; Elaine Brown, Katy; Elaine Bourgoin, Wichita Falls; Amanda DeGan, Westlake; Cathy Haney, Missouri City; and Pat Riffel, Pearland.

Continuing Education Requirement

Don't forget to submit your 2005-2006 Renewal Application to TMCEC before September 1, 2006. A Renewal Application can be found on the TMCEC website: www.tmcec.com.

TMCEC

Program Coordinator
1609 Shoal Creek Blvd., #302
Austin, Texas 78701
Phone: 800/252-3718
Fax: 512/435-6118
www.tmcec.com

Frequently Asked Questions

How do I become certified?

In order to become certified at a particular level, a clerk must:

1. Pass the test for the level desired;
2. Fulfill the educational requirements; and
3. Mail a completed application with the required documentation to TMCEC.

When do I need to provide proof of my educational attendance?

Only after passing the test does completion of educational requirements become an issue. At that time, the clerk will put together the application packet to be certified to include:

1. A completed application for certification;
2. Proof of passing the exam within three years preceding the application for certification; and
3. Proof of completion of educational requirements within the three years prior to applying (which may include any or all of the following: certificates of completion from TMCEC court support personnel training seminars; certificates of completion of TMCA or TCCA training seminars; and/or proof of attendance at annual conferences of the TCCA or TMCA).

When are the tests?

The TCCA administers exams usually from 1:00 pm – 5:00 p.m. after the close of each TMCEC 12-hour regional seminar and at the annual TCCA conference. Times may vary, depending on airline schedules. Check with TMCEC (800/252-3718).

How much will it cost to get Level I certification? (My city wants to know so they can include it in the budget.)

Optional Costs:

* *TCCA Annual Membership:* \$25 (www.texascourtclerks.org) or *TMCA Annual Membership:* \$35 (www.txmca.com).

* *Study Guides:*

Level I: \$25 + \$3 Shipping
Level II: \$25 + \$3 Shipping

* *Pre-conference Preparation Courses:*

Level I: \$15 per session (includes study guide)
Level II: \$15 per session (includes study guide)

**Level III Reading List:* Approximately \$500 (contact TMCEC for more information).

Mandatory Costs:

* *Test Registration Fees:*

Level I: \$50 for TCCA or TMCA members; \$75 for non-members
Level II: \$50 for TCCA or TMCA members; \$75 for non-members; or \$25 per part for re-tests
Level III: \$50 for TCCA or TMCA members; \$75 for non-members; or \$25 per part

* *Assessment Center:* \$100 registration fee (required for Level III certification)

Note about the optional costs: Most people feel that in order to pass the test, they will need to use the study guides. Study guides may be downloaded at no charge from the TMCEC website: www.tmcec.com.

These are estimates only and subject to change based on costs of materials and grant restrictions for any given year.

What are the continuing education requirements?

Each academic year (September–August), Level I and Level II certified court clerks **must** attend 12 hours of continuing education. CMCC, Level III certified court clerks, **must** attend 20 hours of continuing education.

Which agencies are approved providers for continuing education?

TCCA, TMCA, TMCEC, Institute for Court Management, National Center for State Courts, and National Association of Court Managers are all approved providers.

What happens if I do not meet my continuing education requirements?

If the continuing education requirements are not met for one academic year, including submitting the renewal application and documentation to TMCEC, those persons will not be viewed as being certified for that year. In order to maintain certification, Level I and Level II certified clerks will be required to attend 24 hours of education the following year and *Certified Municipal Court Clerks* will be required to attend 40 hours of education the following year.

If the continuing education requirements are not met for two or more academic years, including submitting the renewal application and documentation to TMCEC, those persons will be required to re-take and pass the exam and re-apply for certification at Level I, regardless of prior certification.





FROM THE CENTER

October 2006 East Texas Regional Judges and Clerks Conference

In October 2006, TMCEC will offer its first FY07 regional judges and clerks conference in Nacogdoches, rather than in Tyler. The program will be held at the historic Fredonia Hotel. Please make plans to attend. The dates are as follows:

12-hour Clerks Regional Conference
Nacogdoches, October 10-11, 2006

12-hour Judges Regional Conference
Nacogdoches, October 12-13, 2006

The TMCEC Academic Schedule will be mailed to courts in August with additional information about the pre-conferences, testing times for certification, *etc.*

Registration Fees

For FY07, the TMCEC Board of Directors has adopted a \$50 registration fee for participants attending TMCEC programs, except for prosecutors who must pay a \$250 fee. Please remember to budget for this expense next fiscal year. The \$50 fee will apply to the following programs:

- 32-hour New, Non-Attorney Conferences
- 12-hour Regional Judges Conferences
- 12-hour Low Volume Seminars for Judges and Clerks
- 6-hour Legislative Updates
- 32-hour New Clerks Conferences
- 12-hour Regional Clerks Conferences
- 12-hour Court Administrator Conference
- 12- and 24-hour Special Topic Conferences
- 12-hour Bailiff and Warrant Officer Conferences

The TMCEC grant will continue to provide two nights of housing and most breakfast and lunch meals, as well as course materials. Attorney judges opting for MCLE credit will be charged an additional \$100 fee for that credit for 12-hour programs. Attorney judges may opt to take the judicial or age exemption or may opt to not seek MCLE credit.

Webinar Training

Texas Municipal Courts Education Center is proud to present WEBINAR TRAINING PROGRAMS. The Webinars are held on Fridays from 9:00 - 10:00 a.m. and are free of charge to participants (minus any local charges you normally incur for use of the Internet). With a wide array of topics, participants are welcome to attend all webinars or to select those of the most benefit to you or your court. A computer, Internet connection and telephone line are needed for the toll-free teleconferencing. Please log on a few minutes prior to 9:00 a.m. All levels of computer users are encouraged to attend; the programs run themselves. Upon registration, you will receive more instructions on how to participate. These webinars are designed for all court personnel: judges, court administrators, clerks, bailiffs, warrant officers, warrant clerks, and prosecutors.

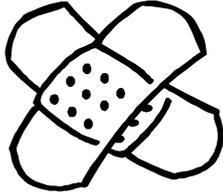
To register, please follow the directions found at <http://tmcec.netspoke.com>. The conferences are limited to 130 participants, so please register as soon as possible to reserve your place online. If you have any questions or problems registering for the conferences, please call the Education Center (800/252-3718), and a staff member will walk you through the process. If you have attended a webinar in the past, your old password will still work. If you have forgotten your password, Netspoke will email it to you.

August 4, 2006 *Enforcement Tools* – Presenter: Margaret Robbins, TMCEC

August 11, 2006 *History and Contemporary Dilemmas of Prosecuting in Municipal Courts* – Presenter: Ryan Turner, TMCEC

August 18, 2006 *Ethics: Dealing with Attorneys in Courts* – Presenter: Ross Fischer, State Bar of Texas

The Webinars do NOT fulfill the mandatory requirements for judicial education for judges and do not qualify participants for TCLEOSE credit. Participation DOES count towards continuing education for the clerks' certification program. MCLE credit has been approved by the State Bar of Texas. Webinars are recorded and may be accessed at www.tmcec.com following the live webcast.



TMCEC presents ONE-DAY Clinic

TMCEC is offering a one-day clinic with participation limited to the first 75 municipal judge, clerks, bailiff/warrant officers, or prosecutors who register. There is no registration fee and lunch will be provided. The individual or city pays for travel and housing. To register, complete this form and fax to TMCEC at 512/435-6118.

Time: 10:00 – 3:30 p.m. (lunch provided at no charge)

Wednesday, August 16, 2006 *Juvenile Now Adult*

Place: Hyatt Town Lake, Austin, Texas

One-day clinics do NOT fulfill the mandatory requirements for judicial education for judges nor do they offer TCLEOSE credit. Participation DOES count towards continuing education for the clerk's certification program and has been approved for MCLE credit by the State Bar of Texas.

ONE-DAY CLINIC REGISTRATION FORM

Last Name: _____ First Name: _____ MI: _____

Municipal Court of: _____

Mailing Address: _____ City: _____ Zip: _____

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

Email: _____

Status: Judge Court Administrator Clerk Prosecutor

Bailiff/Warrant Officer Other: _____

I certify that I am currently serving as municipal judge, city prosecutor or court support personnel in the State of Texas.

Participant Signature

Date

Texas Municipal Courts Education Center
1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701 • Telephone: 800/252-3718 • Fax: 512/435-6118



CLERK'S CORNER

Electronically Created Records

By Margaret Robbins, Program Director, TMCEC

Most municipal courts, even small ones, have technology. Nowadays, it is almost impossible to operate a court without technology. Current case management programs have the capability of maintaining and storing case files, running reports, reporting electronically to state agencies, performing financial management calculations and prorations of fines and costs, and creating documents electronically.

Article 45.012, Code of Criminal Procedure (C.C.P.) provides rules for handling electronic records in municipal court. The statute establishes the following rules:

- Documents issued and maintained by municipal courts may be created electronically.
- A record created by electronic means is an original record or a certification of the original record.
- A printed copy of an optical image of the original record printed from an optical disk system is an accurate copy of the original record.
- A statutory requirement that a document contain the signature of the judge, clerk, defendant, or other person is satisfied if the document contains the signature captured on an electronic device.

These rules mean that documents created electronically are simply like the original document and this makes them legally sufficient for court proceedings. Therefore, a complaint can be created in the computer. The affiant can swear to the complaint on the computer screen, and sign the complaint by pushing a button on the computer.

Likewise, a probable cause affidavit can be created and stored in the computer; it still must be sworn to and signed. Also, warrants can be created and signed electronically: Judges must still review the probable cause affidavit of each warrant before signing and issuing the warrant. Instead of reviewing paper documents, the judge may review the documents electronically.

Because a document is created electronically does not mean that the rules are changed for swearing to and signing documents or for the issuance of documents. Also, documents that require a seal must have a seal. Article 45.012(g) provides that a court seal may be created by electronic means. A municipal court seal must be attached to all papers except subpoenas issued out of the court. The electronic seal is used to authenticate the official acts of the clerk and judge.

Article 45.012(d) provides that judgments can be recorded electronically. This means a municipal judge can sign the judgment electronically. "Recorded" simply means that a document is the authentic or official report of the proceedings. Article 42.01, C.C.P., defines a judgment as "the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant." Article 42.01, Section 3, C.C.P., states that the provisions of Article 42.01 regarding judgment apply to both "felony and misdemeanor cases." Hence, municipal court judgments must be written and signed on paper or electronically.

Another issue regarding electronic records is their retention time. The State

Library and Archives Commission's policy provides that the retention period for a record applies to the record regardless of the medium in which it is maintained. If a record is created electronically, however, the hardware and software necessary to access the data for the retention period must also be retained, unless backup copies of the data generated from electronic storage are retained on paper or on microfilm for the retention period.

The State Library and Archives Commission has published standards and procedures in the Texas Administrative Code for management of electronic records. These rules apply only to records whose retention period is 10 years or more. Since most municipal court records have a retention period of less than 10 years, these rules do not apply. There is one record, however, that municipal courts handle that has a permanent retention and that is the *scire facias* docket for bond forfeitures. If a court maintains the *scire facias* electronically, the court will need to review the electronic rules in the Texas Administrative Code. The rules can be accessed on the Secretary of State's website: www.sos.state.tx.us/tac. The rules are found under Cultural Resources; Texas State Library and Archives Commission; Local Records.

Section 202.002, Local Government Code, provides that a record may not be destroyed if it is currently in litigation or if there is an open records request. This rule applies also to electronically created and maintained records.

Because computers can crash and

records can be lost, courts should have some means of backing-up court records daily. The backup should be kept off site. Anyone who has had to re-enter records can tell how costly it is and the headache it can cause.

Municipal court clerks must remember that as custodians of the records they are responsible for the care, control, maintenance, and archival of municipal court records. Although most municipal courts are not yet paperless, electronic

records play a big part of court records. Just because a record is electronic, courts must be sure to not overlook any legal rule or process. 

TEXAS MUNICIPAL COURTS EDUCATION CENTER FY07 REGISTRATION FORM

32-hour New Clerks Conference at the Doubletree Hotel Austin, September 25-29, 2006

TMCEC computer data is updated from the information you provide. Please print legibly and fill out form completely.

(Please print legibly): Last Name: _____ First Name: _____ MI: _____
Names also Known By: _____ Female/Male: _____
Position Held: _____
Date Appointed/Hired/Elected: ____/____/____ Years Experience: _____
Emergency Contact: _____

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. **TMCEC will pay for a single occupancy room at all seminars** (four nights at the 32-hour seminars). To share with another seminar participant, you must indicate that person's name on this form.

___ I need a private, single-occupancy room.

___ I need a room shared with a seminar participant. [Please indicate roommate by entering seminar participant's name: _____ (Room will have 2 double beds.)]

___ I need a private double-occupancy room, but I'll be sharing with a guest. [I will pay additional cost, if any, per night.]
I will require: ___1 king bed ___2 double beds

___ I do not need a room at the seminar.

How will you be traveling to the seminar? ___Driving ___Flying

Arrival date (Class begins at 1:00 p.m. on 9/25/06): _____ ___Smoker ___Non-Smoker

Municipal Court of: _____ Email Address: _____

Court Mailing Address: _____ City: _____ Zip: _____

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

Primary City Served: _____ Other Cities Served: _____

STATUS (Check all that apply):

___Full Time ___Part Time ___Court Administrator ___Court Clerk ___Deputy Court Clerk

Other: _____

I certify that I am currently serving as a municipal court clerk in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. I will cancel by calling the Center. If I must cancel on the day before the seminar due to an emergency, I will call the TMCEC registration desk at the seminar site. If I am a "no show," TMCEC reserves the right to invoice me or my city for meal expenses, course materials and possibly housing (\$85 plus tax per night). If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the seminar site. **A \$50 registration fee is required. Only checks and credit card payments are accepted.**

Payment due with registration form.

Participant Signature _____

Date _____

PAYMENT INFORMATION: (\$2.00 is added for each registration with credit card payment.)

Check made payable to TMCEC is enclosed. MasterCard Visa

Credit Card Number: _____ Expiration Date: _____

Name as it appears on card (print clearly): _____

Verification # (found on back of card): _____ Authorized signature: _____

Please return to TMCEC, 1609 Shoal Creek Blvd.#302, Austin, TX 78701. Fax registration forms with credit card information to 512/435-6118.



Seven Dollars that Add Up: An Inside Look at the Municipal Court Building Security and Technology Funds

By Lois Wright, TMCEC Program Attorney

Has a disgruntled defendant's voice ever made the hair on the back of your neck stand up? Have you ever winced at a quick movement by a stranger seated in the back row of your courtroom? How do you expect your court's emergency plan to withstand this year's hurricane season?

In a June 2006 poll of 80 municipal court personnel, 75% said they had encountered a situation in their court that made them question their safety. While sitting at the judge's bench or the clerk's window, walking into the court building or through the lobby, your safety could invariably be better protected.

History

In response to the rampant increase in courtroom violence over the past 15 years, the Texas Legislature introduced the Courthouse Security Fund in 1993. Originally applicable only to district courts, county courts and county courts at law, the amended 1995 version brought municipal courts into the mix, allowing a city's governing body to adopt an ordinance to collect the three-dollar security fee as a cost of court.

That same year, reacting to a law that allowed municipal courts to use computer technology to conduct court business, the Legislature passed a nearly identical statute concerning the Municipal Court Technology Fund. The four-dollar technology fee collected as a cost of court was

intended to finance technological enhancements such as imaging systems, hand-held ticket writers and computer hardware and software.

Ordinance Required

The Legislature has provided authority for cities to adopt an ordinance to collect certain fees. Both of these costs of court must be approved through ordinance by the city council or other governing body of the municipality before the court is authorized to collect them. Please see the TMCEC *Forms Book* for sample ordinances if you are interested in establishing these funds.

The court clerk collects the fees and sends them to the delegated treasurer, who deposits them into the Municipal Court Building Security Fund or the Municipal Court Technology Fund. The funds are to be administered by or under the direction of the governing body of the municipality. Procedurally, the court should either make a request for expenditure to the city council or include the proposed expenditure as part of the annual budget for approval by the city council.

Dedicated Funds Must Be Kept Separate

These funds are dedicated, meaning they must be used according to the specific purpose authorized by state regulations. Because of this distinction, the funds must be kept completely separate from any other monies,

including the general revenue account. Dedicated funds may be put in interest-bearing accounts, but remember that any interest must be used for the same designated purpose as the fund itself.

Fee Applied to All Convictions and Deferred Dispositions

The fees apply to any municipal court conviction of a misdemeanor offense. "Conviction" includes any instance where a sentence is imposed on a person, including guilty pleas by mail and those cases where the court defers final disposition of the person's case. "Conviction" for the purpose of these statutes does not extend to pre-trial hearings, arraignments or docket calls. Letter Op. Att'y Gen. Tex. 97-025. Remember that in deferred disposition cases, court costs are taken before the deferral period begins.

Expenditure of Dedicated Funds

It is important to keep in mind the *purpose* for which the Legislature intended these funds. The Code Construction Act (Sec. 311.023, Gov't Code) allows the court to consider the object sought to be attained in construing a statute. We know the historical purposes for creating these funds, but must examine the statutory purposes included in both pieces of legislation.

For the court security fund, the explicit purposes are 1) to finance security personnel for a municipal court; and 2) to finance items when used for the

purpose of providing security services for buildings housing a municipal court. The purpose of the technology fund is to finance the purchase of or to maintain technological enhancements for municipal courts.

Enumerated lists are included along with each statute, but they should be read as inclusive, not exclusive. [The original construction of the statute specifically and narrowly enumerated the list to include “only” the items listed. See Op. Att’y Gen. JC-0014 (1999).] The 76th Legislature amended the statutes to “include” the listed items. The Code Construction Act (Sec. 311.005(13), Government Code) says that the word “including” is a term of enlargement, not limitation or exclusive enumeration, and use of the term does not create a presumption that components not expressed are excluded.

Reproduced below are both of the lists from the Code of Criminal Procedure statutes. Use these lists as guidelines indicating the

Legislature’s best estimation of the court security and technology expenditures most likely to confront municipal courts. If something is a natural extension of the enumerated item, you can probably feel comfortable that it is still in accordance with legislative intent. Also, don’t forget the small things. The technology fund can be used for telephone systems, fax machines, copiers, and printers, as well as the more advanced technological uses listed below. Additionally, the fund may be used to finance the *maintenance* of these systems, possibly amounting to more

dollars than the purchase price of the system itself over the course of its lifetime.

If you can justify the expenditure as being encompassed by the purposes outlined in the statutes, you have a good argument for its legitimacy. Remember to consult your city attorney with any questions of propriety, and always consider how your expenditure would look on the front page of your local newspaper.

You will notice in time that the increase in court security and technology has an invisible benefit of protecting the integrity of court procedures, increasing efficiency and maintaining decorum in the courtroom. Enjoy the positive changes these court improvements afford.

On June 9, 2006, TMCEC offered a webinar on the Municipal Court Building and Technology Funds. This one-hour program may be viewed on the TMCEC website at www.tmcec.com/webinar.html. Sample ordinances for both funds may also be downloaded. 

Use the Municipal Court Building Security Fund to pay for your TMCEC registration fees next year! Since court security is part of next year’s curriculum, you can use fund money to pay for your registration.

Municipal Court Building Security Fund

- The purchase or repair of x-ray machines and conveying systems
- Handheld metal detectors
- Walk-through metal detectors
- Identification cards and systems
- Electronic locking and surveillance equipment
- Bailiffs, deputy sheriffs, deputy constables, or contract (non-benefited) security personnel during times when they are providing appropriate security services
- Signage
- Confiscated weapon inventory and tracking systems
- Locks, chains, alarms, or similar security devices
- The purchase or repair of bulletproof glass
- Continuing education on security for court personnel and security personnel

Municipal Court Technology Fund

- Computer systems
- Computer networks
- Computer hardware
- Computer software
- Imaging systems
- Electronic kiosks
- Electronic ticket writers
- Docket management systems



COLLECTIONS CORNER

Collections Improvement Program: “The Future of Court Collections”

By Jim Lehman, Collections Specialist, Office of Court Administration

Author and playwright James Baldwin once said, “Not everything that is faced can be changed, but nothing can be changed unless we face it.” As most of us are aware, during the most recent Regular Session, the Texas Legislature passed a law that requires the largest cities and counties in the state (cities with populations of 100,000 or more and counties with populations of 50,000 or more) to implement a program designed to make it more difficult for defendants to get away with not paying court costs, fees and fines in criminal cases. If successful, moderate and smaller cities and counties could one day be included.

The mandate affects 54 counties and 24 cities. Approximately half of the affected counties and cities (26 counties and 12 cities) must implement a program by April 1, 2006, and the remaining number (28 counties and 12 cities) must implement a program by April 1, 2007.

To illuminate the Legislature’s seriousness in encouraging compliance, the law includes a component that financially penalizes a city or county that fails to implement a program that complies with the Office of Court Administration’s (OCA) model collections improvement program (they will not be able to retain a portion of certain fees they collect for the State until compliance is achieved).

Why would the State mandate such a program? The obvious answer would appear to be revenue. It is estimated that more than \$400 million dollars in

court-ordered costs, fees and fines were uncollected in the State of Texas each of the last two years. However, collecting these funds is about more than lost revenue. These uncollected dollars represent many thousands of court orders, issued by judges, and ignored by lawbreakers. Ultimately, the taxpayers and citizens of every community in Texas pay the price for this breakdown in the criminal justice process. While the impact in terms of dollars is significant, the greater damage is inflicted by the erosion of our system of government from the loss of respect for judicial authority.

To comply, the affected cities and counties must implement a program that has two components. The first component is designed to improve in-house collections, and the second component is designed to improve the collection of balances more than 60 days past due. The in-house component must conform to a model program developed by OCA. A city or county may comply with collecting balances of more than 60 days past due by entering into a contract with a private attorney or public or private vendor.

The OCA collections improvement program model has its origins in a program initially developed in Dallas County. OCA tested the program model in a pilot project in the county-level courts in Brazoria County in 1996-1997. After the success of the Brazoria County pilot project, OCA began to assist cities and counties interested in improving compliance

and revenue collections with the implementation of its model program. As of September 1, 2005, OCA assisted with the development and implementation of voluntary collection programs in 50 counties and 17 cities. In most of the counties, however, the voluntary program did not serve all levels of court within the county (*i.e.*, district, county and justice courts). In FY04, those voluntary programs reporting both a pre-program and a post-program collection rate averaged a 91% increase in their collection rate (from an average pre-program collection rate of 33% to an average post-program collection rate of 63%), bringing in an additional approximate \$39 million in revenue. Ultimately, this success coupled with the mounting estimates of uncollected court costs, fees and fines, caught the attention of the Legislature.

The collections improvement program has two major benefits. First, it encourages personal responsibility and, second, it increases revenue. Improving collections benefits both the local jurisdiction and the State of Texas. Most of the funds collected are retained locally and used to fund local programs (*e.g.*, courthouse security, court technology and records management), and to increase local general revenue. A portion of what is collected is remitted to the State to fund numerous worthwhile programs (*e.g.*, compensation to victims of crime, criminal justice planning and indigent defense). And of the money that goes to the State, a large amount

Collections continued on page 32



TRAFFIC SAFETY

Because of the vast number of roads and highways in Texas, traffic safety is an essential element in maintaining our quality of life. Shown below is an interesting description of Texas which is an excerpt from the Problem Identification Statement of the TxDOT Texas Safety Plan. It is also an informative reminder of the changes going on in the Lone Star State.

Texas' population was 20,851,820 per the 2000 Census and is projected to be 22,556,027 in 2005 (Texas State Data Center). In 2000, approximately 53 percent of the population was Anglo, 32 percent Hispanic, 12 percent Black, and 3.3 percent "other" racial/ethnic groups. Both Hispanic and "other" demographic groups are projected to increase as a proportion of the states' total population.

About 31% of the population is 19 years-old or younger, 59% are 20-64, and 10% are 65 or older.

Texans live in 254 counties that range in population from 67 (Loving) to 3,400,578 (Harris), and in area from Rockwall County's 149 square miles to the 6,193 square miles of

Brewster County - equal to the combined area of the states of Connecticut and Rhode Island.

There are 79,500 centerline miles of state maintained roadways, including 3,233 miles of Interstate highways, and more than 12,000 miles of US highways and 16,000 miles of Texas State highways. Another 41,000 miles on the state system are designated as Farm or Ranch to Market roads. In addition to the state-maintained roads, there are more than 222,000 miles of city and county-maintained streets and highways.

Approximately 72% of the more than 218 billion vehicle miles traveled in Texas in 2003 were on rural roadways and 28% on urban roads. Despite vast expanses of low density population, Texas has more than 200 cities with populations of 10,000 or more. Of these, 51 have populations in excess of 50,000 and 24 have more than 100,000 residents.

In 2005, there were 18.9 million registered vehicles in the state. Licensed drivers numbered 13,979,806 in 2001. Of these 8%, more than 1.1 million were under 21 years old (with more than 372,000 under 18) and 11.3% were 65 or older.

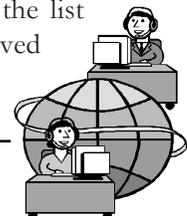
With so many drivers and vehicles on Texas roads, the work of the municipal courts in Texas is important. TMCEC is setting up a listserv of municipal judges and court support personnel interested in promoting traffic safety in local communities. Email tmcec@tmcec.com if you are interested in joining. It will be a way to share interesting facts, presentations for community groups and effective strategies for keeping our roads safe.

CENTERLINE MILES (2005)	
	3,233
	12,102
	16,199
	40,985
Frontage Roads	6,677
Park Roads	339
TOTAL MILEAGE	79,535

Reprinted from <http://home.att.net/~texhwyman/tex.htm>.

What is a Listserv?

Listservs work like a mailing list of people who are interested in the same topics. One person can correspond with many people at once. Every message posted to the list is sent to all of the list subscribers by electronic mail received automatically.



is returned to the cities and counties. For example, in FY 2005, the Compensation to Victims of Crime (CVC) Fund received approximately \$79.8 million in state court cost revenue - from the allotted portion of the State Consolidated Court Cost. In FY05, the CVC Program paid out approximately \$85 million in compensation benefits including hospital bills, medical provider payments and funeral benefits. These payments were awarded directly to victims and the providers of those

services (hospital districts, medical clinics, EMS providers, funeral homes, *etc.*), essentially returning millions of dollars generated from court cost revenue back to the cities and counties that provided the revenue.

Most of the cities and counties required to implement a program by April 1, 2006 met that deadline or will do so shortly. And a number of cities and counties required to implement programs by April 1, 2007 have already started to work

toward implementation.

OCA's collections improvement program is a logical and timely approach to the court compliance issue, and Texas is not alone in changing its approach. In recent years, states like California, Washington and Florida have passed similar legislation in an effort to improve court compliance and increase revenues. This concept is not being embraced because it is easy—change never is. It is being embraced because it works. 

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To provide high quality judicial education, technical assistance and the necessary resource material to assist municipal court judges, court support personnel and prosecutors in obtaining and maintaining professional competence.

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