

# Legal Basis for Legislative Continuances

by Lois Wright, Program Attorney, TMCEC

With the Texas Legislature well into its 80<sup>th</sup> Regular Session, municipal courts may encounter an uncommon request from defendants and their law-making attorneys in the form of a motion for legislative continuance. This unique tenet has a history dating back to the 1920s, and is available to legislators who are parties or attorneys of record in a matter before the state as a means of postponing proceedings throughout the legislative session.<sup>1</sup>

A continuance is the adjournment or postponement of a trial or other court proceeding to a future date.<sup>2</sup> Chapter 29 of the Code of Criminal Proce-

dures outlines the three ways in which a case is generally continued: by the court as a matter of law,<sup>3</sup> through the consent of both the defense and prosecutor in open court,<sup>4</sup> or by a prosecutor or a defendant for good cause.<sup>5</sup> The “for cause” continuance is the most prevalent form of continuance heard by municipal courts.

A special “for cause” continuance is reserved for members and member-elect of the Texas Legislature in Chapter 30 of the Civil Practice and Remedies Code.<sup>6</sup> Through it, a legislative member or member-elect who is either a party or legal counsel in

a civil or criminal case may delay his or her cases from 30 days before Session begins until 30 days after the Legislature adjourns.<sup>7</sup> This would include matters ancillary to the suit, probate matters, and appeals, but excludes temporary restraining orders.<sup>8</sup>

During the 2003 meeting of the 78<sup>th</sup> Legislative Session, legislators answered intense public criticism that these continuances were widely abused by law firms and defendants as an unwarranted delay tactic. Notably, legislative continuances were obtained in two of the high profile Ford-Firestone rollover

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## Citations - Part II

### (Tickets are for Concerts & Sporting Events)

by Ryan Kellus Turner, TMCEC General Counsel & Director of Education

*This is the second part of a two part series.*

In Part II of this article we will delve into some more complicated issues pertaining to citations, including the circumstances where a peace officer is authorized and prohibited from issuing a citation, the consequences of refusing to sign a citation, why citations should not be mailed, and other constitutional and procedural issues relating to charging and trial.

**11. Under what circumstances is a peace officer legally authorized to issue a citation?**

In recent years, especially with the increased presence of peace officers in schools, TMCEC has received comments from judges and prosecutors that anecdotally suggest that peace officers inappropriately issue citations. This begs the question: When is a peace officer legally authorized to issue a citation?

This question should be distinguished from a question addressed in Part I: Are peace officers required to issue citations in lieu of arrests for most

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# AROUND THE STATE

## TMCA Fall Annual Meeting

The Texas Municipal Courts Association has scheduled its Annual Meeting on September 13 -15, 2007 in Dallas. The host hotel will be the Hilton Dallas Lincoln Centre at 5410 LBJ Freeway, Dallas 752040-6276 (972/934-8400), located near the Galleria. In addition to the annual business meeting of the Association, a legislative update will be offered on changes from the 80<sup>th</sup> Session. Participants are responsible for making and paying for their own hotel rooms. The conference rate is \$100 for a king room. Only a limited number of rooms are available. The registration fee for the Annual Meeting is \$95. Additional information about the conference may be obtained by writing or calling:

Hon. Robert Doty  
(TMCA First Vice-President)  
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City of Lubbock  
P.O. Box 2000  
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At the Annual Meeting, the Outstanding Judge and Clerk of the Year will be announced. See page 13of this journal for information about the award and the deadline for entries.

## TMCEC, a 501(c)(3), Now Accepts Donations

The new 501(c)(3) tax status for the Texas Municipal Courts Education Center went into effect January 1, 2007. The purpose of this new organization is stated in the new bylaws— *The Corporation is organized exclusively for charitable, literary, and educational purposes of providing: (1) judicial education, technical assistance, and the necessary resource material to assist municipal judges, court support personnel, and city attorneys in obtaining and maintaining professional competence in the fair and impartial administration of criminal justice; and, (2) information to the public about the Texas judicial system and laws relating to public safety and quality of life in Texas communities.* The complete bylaws may be found on the TMCEC website: [www.tmcec.com/files/BylawsMaster.doc](http://www.tmcec.com/files/BylawsMaster.doc). The bylaws are written such that the officers and directors are the same as those of TMCA.

As a non-profit organization, TMCEC now accepts contributions and memorials that are tax deductible. The TMCEC Board of Directors and staff members are very appreciative of the following donations that have been received since the last issue of *The Recorder*.

### **In Honor**

Judge Steve Ballanytne, Terrell Hills, in honor of TMCEC  
Hope Lochridge, Austin, in honor of Margaret Robbins

### **In Memory**

Judge Brian Holman, Lewisville, in memory of Louise Katherine Novak Turner  
(grandmother of Ryan Turner)  
Judge Walter Dick Kettler, Waco, in memory of Louise Katherine Novak Turner  
Hope Lochridge, Austin, in memory of Louise Katherine Novak Turner  
Judge Robin A. Ramsay, Denton, in memory of Louise Katherine Novak Turner  
Judge C. Victor Lander, Dallas, in memory of Louise Katherine Novak Turner  
Judge John Vasquez, Austin, in memory of Louise Katherine Novak Turner



# FROM THE GENERAL COUNSEL

**Ryan Kellus Turner**

## **The Death of Local Courts Costs: Are Your Juvenile Case Manager, Court Security, and Court Technology Funds in Peril?**

By the time you read this column, the May 14 deadline for submitting responses to RQ-0579-GA will have passed. Nevertheless, I am sure that many city attorneys will have submitted letters and briefs to the Attorney General. With this said, allow me to bring those who don't spend their days reading AG opinion requests up to speed.

### **“Houston, we have a problem.”**

The question posed by Harris County Attorney Mike Stafford on March 27<sup>th</sup> in RQ-0579 asks if the juvenile case manager fee, authorized by Article 102.0174 of the Code of Criminal Procedure, is constitutional. After reviewing case law and Attorney General Opinions, Harris County concludes that it violates due process and equal protection guaranteed by both the Texas and U.S. Constitutions.

Most local governments that question the legality of a state statute like the one at issue (giving local governments the choice to collect a court cost for a designated purpose, if the need exists) ask for an Attorney General opinion before they begin collecting the cost. Harris County Commissioners voted on December 19, 2006 to create a juvenile case manager fund and to begin collecting “a fee not to exceed \$5” as a court cost effective March 1, 2007.

On March 27, 2007, the Harris County Attorney requested the AG's opinion. The crux of the argument contained in the request is that the court costs, imposed pursuant to the decision of local government to fund juvenile case managers, results in a “considerable

possibility” that defendants will receive unequal punishment compared to localities who have not opted to adopt the juvenile case manager fund. The request suggests that the better practice is for the Legislature to mandate the collection of the juvenile case manager fee even if there is no local need or justification for the collection of the cost.

The essence of Harris County's argument is by no means new to those who have kept up over the years with the law of court costs. While the same arguments have been used twice unsuccessfully in two different district courts to attack the constitutionality of another court cost statute (Section 51.702, Government Code), this is the first time that such arguments have been made towards a “local court cost” (*i.e.*, a court cost authorized by state law that local governments choose to collect, depending on need, for a designated purpose that relates to the operation of the court).

From the perspective of the judicial operations, RQ-0579-GA has the potential to be one of the most important Attorney General opinions to be issued during Greg Abbott's administration. The Attorney General, in responding to RQ-0579, will have an opportunity to bring the role of contemporary court costs into focus and build upon the missing details from earlier AG opinions. To date, despite clear legislative intent, no AG opinion has differentiated between “fines,” “court costs,” and “fees.” Such a distinction is long overdue.

While Harris County argues that there must be a clear relationship between

an offense and a court cost for it to be valid, “court costs” and “fees” often do not directly relate to the operation of the court in which the defendant is charged; may have nothing to do with the offense for which the defendant is charged; and can vary depending on where you live. Such “user fees,” are woven throughout Texas statutes and are accepted throughout the nation. They are especially common in states where trial courts are not funded by the state. All the more reason that in responding to RQ-0579 local governments must hope that the Attorney General will distinguish between “fines,” “court costs,” and “fees.”

The authorities cited by Harris County in RQ-0579 for the proposition that Article 102.0174 is unconstitutional rely on a cluster of Texas Court of Criminal decisions handed down between the years 1928 and 1942, a time where court costs were nominal and long before the notion of “user fees” or “local court costs” ever reached the Texas Legislature. The circumstances and statutes at issue in these cases are readily distinguishable from Article 102.0174. Furthermore, because they were issued prior to the contemporary era of court costs and fees, they fail to differentiate between the purpose of a fine (which is to punish and/or deter) and “court costs and fees” (including local court costs) that are used to fund vital initiatives of both state and local government. While court costs and fees have an economic impact on those ordered to pay, they are administrative in nature rather than punitive, and should not be placed in the same category as fines

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for the purpose of equal protection analysis.

### **The Bigger Picture**

The stakes are high, especially for municipal courts. If the Attorney General opines that Article 102.0174 is unconstitutional, it would presumably place other state statutes authorizing the adoption of “local court costs” pursuant to ordinance in danger of being labeled unconstitutional. While most cities have not adopted a juvenile case manager fund, the vast majority of cities have adopted the municipal court building security fund (Article 102.017, Code of Criminal Procedure) and the municipal court technology fund (Article 102.172, Code of Criminal Procedure).

Article 102.0174 was modeled and closely parallels in content the municipal court building security fund and the municipal court technology fund. While district, county, and justice courts have their own statutes governing security and technology fees, the Legislature and the appellate courts have long realized that municipal courts are procedurally different and have needs that are best assessed at the local level. For instance, rural municipal courts that adjudicate a

low-volume of cases meet once or twice a year and likely have no actual court facilities. Such cities can hardly justify the establishment of a security or technology fund. The constitutionality of these statutes has not been called into question because of an obvious rational basis: Local governments should not collect a state court cost for a designated purpose if the need does not exist.

### **The Rest of the Story**

RQ-0579 does not explain the legislative history or the role juvenile case managers play in the adjudication of juvenile cases in municipal and justice courts, let alone the substantial role that municipal and justice courts have assumed in the Texas juvenile justice system during the last 20 years.

The juvenile case manager fund was supported by the Texas Judicial Council and was part of the last “juvenile omnibus bill” compiled under the leadership of the late Professor Robert O. Dawson of the University of Texas Law School. The reason that Article 102.0174 addresses municipal, county, justice, and juvenile courts and did not impose a “one size fits all” fee is that Dawson realized that rural counties and cities (even with

the juvenile case manager fund) may be unable to afford a juvenile case manager without the cooperation of their neighbors. This is where the juvenile case manager concept is unique and different than the municipal court building security fund and the municipal court technology fund. Article 45.056(a) of the Code of Criminal Procedure allows for cities and counties to enter into interlocal agreements to collectively fund and operate a juvenile case manager program (*e.g.*, in rural Texas, three small towns could partner together or could partner with the county). This is the reason that Article 102.0174 was not written as a mandatory court cost.

### **Final Thoughts**

While many Texas cities, because of potential unintended consequences, may not initially welcome Harris County’s request for an Attorney General opinion, RQ-0579 is a valuable opportunity for the Attorney General to provide greater detail to an area of the law that needs further clarification. To this end, regardless of the outcome, Mike Stafford and his staff deserve acknowledgment for their efforts in bringing such issues to the forefront of our public legal dialogue. 🗑️

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## **Child Support Magistration: Do Municipal Court Judges Have Authority to Magistrate Child Support Offenders?**

**By Meichihko Proctor, Program Attorney & Deputy Counsel, TMCEC**

Many children across Texas rely on child support payments. Parents who refuse to follow the laws regarding child support should be held accountable. Texas Attorney General Greg Abbott has said that failure to follow court orders that require payment of financial and medical support must be prosecuted to ensure Texas children receive the support they need.

As a magistrate, you may encounter violators of Texas child support laws in the jails where you magistrate. Several judges throughout the state have asked whether there are different laws for child support magistration than other criminal offenses. In addition, if there are different laws, what authority, if any, do municipal judges acting as magistrates have regarding these violators in the jails

where municipal judges are magistrating?

The answer is that there are different laws for child support magistration. Essentially, no judge other than the judge handling the child support case has the statutory authority to set or change bond for child support offenders. Bond for these offenders is addressed in Chapter 157 of the

*Child Support continued on page 17*

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cases in 2001 and for Fen-Phen defendant, Wyeth, in 2002.<sup>9</sup>

As a result of those concerns, Governor Perry signed into law House Bill 1606, requiring public disclosure of all legislative continuances sought, the case(s) involved, the date the lawyer-legislator was retained, and the status of the motion before the court. Legislators must now file a report with the Texas Ethics Commission within three business days after the date an application for legislative continuance is filed with the court.<sup>10</sup>

Additionally, since 2005 lawyer-legislators have been required to report these continuances on their personal financial statements, which are open to the public.<sup>11</sup>

In municipal court, a legislator requesting a continuance must file an affidavit stating the grounds for the continuance<sup>12</sup> and a declaration of his or her intent to participate actively in the preparation or presentation of the

case, with a statement that he or she was not retained solely as a delay tactic.<sup>13</sup> Then, the court should make a finding regarding the employment of the lawyer-legislator by the defendant. For criminal cases, if the employment began on or after the 15th day before the date on which the suit was set for trial, the continuance is discretionary with the court. For any longer period of employment, the continuance is mandatory upon the court.<sup>14</sup>

After receiving an application for a legislative continuance and making the necessary findings, the court is obligated to reschedule the case not before 30 days after the Legislature adjourns.<sup>15</sup> Moreover, the legislative continuance is considered to be a matter of right, and should not weigh in the court's decision to grant subsequent requests for continuance.<sup>16</sup>

Although rare, the legislative continuance is clearly binding law on municipal courts, and there exists a particular need to be cognizant of its existence and proper execution during legislative

periods.

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<sup>1</sup> Tex. Civ. Prac. & Rem. Code Ann. § 30.003 (Vernon 2006).

<sup>2</sup> *Black's Law Dictionary* 257 (Bryan A. Garner ed., 7th ed., West 2000).

<sup>3</sup> Tex. Crim. Proc. Code Ann. Art. 29.01 (Vernon 2006).

<sup>4</sup> *Id.* at Art. 29.02.

<sup>5</sup> *Id.* at Art. 29.03.

<sup>6</sup> Tex. Civ. Prac. & Rem. Code Ann. § 30.003 (Vernon 2006).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at § 30.003(a).

<sup>9</sup> Texans for Pub. Justice, *Continual Perks Slow Texas Courts: How 32 Lawmakers Claimed 431 Court Delays in Two Years* 4 (2006).

<sup>10</sup> Tex. Civ. Prac. Rem. Code Ann. § 30.003(g) (Vernon 2006).

<sup>11</sup> Tex. Gov't Code Ann. § 572.0251 (Vernon 2006).

<sup>12</sup> Tex. Civ. Prac. & Rem. Code Ann. § 30.003 (d) (Vernon 2006).

<sup>13</sup> *Id.* at § 30.003 (e).

<sup>14</sup> *Id.* at § 30.003 (c-1).

<sup>15</sup> *Id.* at § 30.003 (a).

<sup>16</sup> *Id.* at § 30.003 (f).

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**Citations continued from page 1**

fine-only offenses? While the former question dealt with the discretion of a peace officer to either make a full custodial arrest versus, for lack of a better term, a "non-custodial arrest and release" (*i.e.*, issue a citation), the Code of Criminal Procedure provides no express guidelines for the circumstances where the issuance of a citation is preferred or contemplated.

However, since both the Code of Criminal Procedure and the Transportation Code describe the issuance of a citation as being incident to an arrest, presumably a citation can only be issued under the same circumstances that a peace officer can make a warrantless arrest.

As all arrests (including warrantless arrests) require probable cause, the peace officer issuing a citation must

have probable cause that the suspect has committed a Class C misdemeanor or an offense otherwise punishable upon conviction by the imposition of a fine-only. The probable cause presumably must be coupled with one of the following statutory exceptions to the warrant requirement contained in the Texas Code of Criminal Procedure: (1) Offense within presence or view if "classed as an offense against the public peace;"<sup>1</sup> (2) Offense within the view of a magistrate;<sup>2</sup> (3) Class C offense involving family violence; (4) Preventing the consequences of theft;<sup>3</sup> and (5) The cacophony of confusion known as "suspicious places."<sup>4</sup>

While most of the statutory authorization for warrantless arrests are relatively straight forward, suspicious places is not.<sup>5</sup> Article 14.03(a)(1) states that "[a]ny peace

officer may arrest without warrant persons found in suspicious places and under circumstances which reasonable show that the persons have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code, breach of the peace, or offense under Article 49.02, Penal Code, or threaten, or are about to commit some offense against the laws."

Assuming that citations can be issued only under the same circumstances as a peace officer can make warrantless arrest, one instance where Article 14.03(a)(1) appears applicable is where a suspect is alleged to have engaged in disorderly conduct but not within the view of a peace officer. The peace officer presumably could issue a citation for disorderly conduct after conducting an investigation and determining probable cause.

Because the Code of Criminal Procedure does not define a suspicious place, the meaning of the term has largely been left to the courts. Since appellate courts have not held that any place is inherently suspicious, courts should use the totality of the circumstances test in deciding if Article 14.03(a)(1) is appropriate.<sup>6</sup>

It is not uncommon for peace officers to show up at the location of an automobile accident and, after conducting an investigation, issue a citation to one or more persons involved in the accident. Assuming probable cause exists, the peace officer's authority to issue a citation in such instances (despite not having seen the accident) ostensibly comes from the notion that the scene of the accident is a suspicious place.

### **12. Are there any circumstances where a peace officer is not authorized to issue a citation?**

Yes. The law does not authorize peace officers to issue citations for public intoxication and for traffic offenses committed on private roadways.

**Public intoxication.** While public intoxication is listed as one of the statutory exceptions to the warrant requirement,<sup>7</sup> the Code of Criminal Procedure provides a specific rule governing the arrest and release of individuals accused of public intoxication. Citations are not listed as an option. This is presumably due to the danger that an intoxicated person may pose to themselves or others. Rather, Article 14.031 provides that the individual may be released if: (1) the officer believes that incarceration is unnecessary for the protection of the individual or others; and (2) either the individual is released to the care of an adult who agrees to assume responsibility for the individual, or verbally consents to chemical dependency treatment and is admitted for treatment in a program in a treatment facility licensed by the Texas

Commission on Alcohol and Drug Abuse (TCADA).

Presumably when public intoxication cases are handled pursuant to Article 14.031 such individuals are to be charged by the filing of a sworn complaint.

**Private roadways.** A peace officer has no authority to issue a citation for a traffic offense on private streets; if such a citation is issued, it may not be prosecuted. Article III, Section 52 and Article XI, Section 3 of the Texas Constitution prohibit the use of public monies to enforce state and municipal traffic laws on its private streets.<sup>8</sup>

### **13. What happens if a peace officer attempts to issue a citation, but the suspect refuses to sign the citation?**

Rather than being an "arrest and release," the arrest becomes a "full custodial arrest."

If the offense is a Subtitle C, Rules of the Road violation, Section 543.005 of the Transportation Code provides that "[t]o secure release, the person arrested must make a written promise to appear in court by signing the written notice prepared by the arresting officer."<sup>9</sup>

Section 543.002 of the Transportation Code states that a person arrested for a violation of Subtitle C shall be immediately taken before a magistrate if the person either demands an immediate appearance before a magistrate, or refuses to make a written promise to appear.

Notably, the Code of Criminal Procedure contains no language parallel to Sections 543.002 or 543.005 of the Transportation Code. Article 14.06 requires peace officers to present arrested persons before a magistrate within 48 hours.<sup>10</sup> Despite specific language, it is logical to assume that someone refusing to sign a citation for a non-traffic offense, like their Subtitle C counterparts, would be subject to a

full custodial arrest. Other than Chapter 543 of the Transportation Code, which is limited in scope to Subtitle C Rules of the Road violations, Article 14.06(b) of the Code of Criminal Procedure is the only other statutory authority for the issuance of a citation. Article 14.06(b) does not require a person to make any promise to appear nor does it expressly require the defendant to sign the citation. While this potentially could pose a proof problem in the event the case goes to trial, persons issued citations pursuant to Article 14.06(b) may nonetheless be prosecuted for failing to appear under Section 38.10 of the Penal Code.<sup>11</sup>

The provisions relating to citations contained in the Transportation Code and the Code of Criminal Procedure appear to be inconsistent. However, in *Berrett v. State*,<sup>12</sup> the Houston 1st Court of Appeals held that in the context of a seat belt violation there is no discrepancy between Article 14.06(b) and the requirement of Chapter 543 of the Transportation Code. Rather, the two provisions should be read in unison, and Chapter 543 merely builds upon the framework of Article 14.06(b). As of date, the holding in *Berrett* has not been adopted by other courts of appeals.

An alternative available to peace officers encountering a suspect who refuses to sign a citation is to have the peace officer or another person with knowledge file a sworn complaint in court. Upon a request from a prosecuting attorney, the defendant may be summonsed to appear in court.<sup>13</sup>

### **14. Does the law authorize citations to be issued via mail?**

No. Remember, a citation is best analogized to an "arrest and release." You cannot arrest someone by mail, nor can they promise to appear. Accordingly, a citation should only be issued under the same circumstances where a peace officer can make most warrantless arrests. When a citation

cannot be lawfully issued by a peace officer, the Code of Criminal Procedure contemplates that a peace officer may attest to a probable cause affidavit and either a warrant may be issued or, with a prosecutor's motion, a summons shall be issued to order the accused to appear in court.

In *Carson v. State*, the Fort Worth Court of Appeals stated, "We cannot hold that the mailing or receipt of a Class C misdemeanor citation constitutes an arrest."<sup>14</sup>

While a defendant who responds to a mailed citation presumably submits to the authority of the court and waives the ability to make any meaningful arguments about service of process, it is interesting to imagine what would happen if a defendant refused to respond to a mailed citation and was subsequently arrested.

The practice of mailing citations should not be condoned. Peace officers who mail citations are likely to appear unaware of procedures stated in law and/or too lazy to do what is necessary to procure a summons.

**15. Is a person's obligation to appear in court following the issuance of a citation in anyway effected by the addition of protest words, e.g., "forced to sign under threat, duress, and coercion?"**

No. The issuance of a citation is not a civil contractual matter.<sup>15</sup> This is, however, one of the favorite maneuvers of sovereign defendant groups such as the Republic of Texas.

**16. If an individual is arrested and taken to jail, can the citation alone serve as probable cause for the defendant's arrest?**

No. In simplest terms, a citation alone does not provide enough information for a magistrate to determine probable cause. It is not sworn to or under oath.

Despite this truth, many judges have experienced individuals who have been

arrested for Class C misdemeanors and placed in jail with nothing more to substantiate the person's arrest than a manila folder containing a citation with the word "INSTANTER" written on it. Such arrests, which have long been part of Texas criminal justice folklore, are not authorized by statutory or case law.

In 1975, the U.S. Supreme Court held in *Gerstein v. Pugh*<sup>16</sup> that a suspect arrested without a warrant is entitled under the 4<sup>th</sup> Amendment to a prompt determination of probable cause.

Seven years later, in *Sanders v. City of Houston*, a federal district court enforced the general mandate stated in *Gerstein* and held that a probable cause determination must occur at the Article 15.17 presentation before a magistrate. It enjoined the City of Houston for detaining arrested persons for longer than 24 hours.<sup>17</sup>

Finally in 1991, in *County of Riverside v. McLaughlin*, the U.S. Supreme Court created a right to have probable cause determined generally within 48 hours of any warrantless arrest.<sup>18</sup>

Probable cause determinations during the presentation before a magistrate have become a matter of local practice.<sup>19</sup> Article 15.17 of the Code of Criminal Procedure does not contain any such requirement. Article 15.17(b) does, however, authorize a magistrate after an accused is charged with a fine-only offense to "identify the accused with certainty" and release them without bond and order them to appear for arraignment in "county court or statutory county court." The problem with this language, of course, is that only municipal and justice courts have original jurisdiction of fine-only offenses. This is a long standing oversight in the Code of Criminal Procedure that has yet to be corrected by the Texas Legislature.

While it would have been logical to assume that the constitutional right

created by *County of Riverside v. McLaughlin* would be codified in the Code of Criminal Procedure (presumably in Article 15.17) during the next regular session of the Texas Legislature, it did not happen. In fact, it took nearly 10 years for the right provided in *County of Riverside v. McLaughlin* to find its way into the Code of Criminal Procedure.

As part of the Texas Fair Defense Act of 2001, Article 17.033(b) of the Code of Criminal Procedure was amended to require that misdemeanants be released on a \$5,000 personal recognizance bond if probable cause has not been determined by a magistrate within 24 hours of arrest.<sup>20</sup> While this amendment is not part of Article 15.17, to a certain degree it codifies the essence of *Gerstein* and its progeny.

**17. Without more, can a citation be the basis for issuing an arrest warrant?**

No. A sworn complaint (a.k.a. a probable cause affidavit) is required before a warrant is issued. The Court of Criminal Appeals has held however, that a citation can be the basis from which an affiant may attest to information that may suffice as probable cause and justify the issuance of a warrant.<sup>21</sup>

Beware of the confusion over the word "complaint" that is unique to Texas criminal law. Though it is easy to do, do not confuse the complaint (probable cause affidavit) with the complaint which is the charging instrument.<sup>22</sup>

**18. If the issuance of a citation is an "arrest and release," can a peace officer search a person's automobile?**

No. In *Knowles v. Iowa*,<sup>23</sup> the U.S. Supreme Court decided not to extend the "search incident to arrest" doctrine<sup>24</sup> to circumstances where a peace officer elects to issue a citation in lieu of

making a full custodial arrest. The state law authorizing a “search incident to citation” was deemed a violation of the 4th Amendment. In the decision, the Court emphasized that: (1) the threat to a peace officer issuing a citation is less than that of a peace officer making a full custodial arrest; (2) there were less invasive measures available to peace officers issuing citations that could minimize the danger they experience while issuing citations; and (3) once a peace officer has all of the information necessary to issue a citation, there is presumably no need to preserve and protect evidence.<sup>25</sup>

### 19. Is a citation an “arrest” for 5<sup>th</sup> Amendment self-incrimination purposes?

No. In *Berkeimer v. McCarty*,<sup>26</sup> the Court explained:

*Two features of an ordinary traffic stop mitigate the danger that a person questioned will be induced ‘to speak where he would not otherwise do so freely’. First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of roadside detentions last only a few minutes. A motorist’s expectations, when he sees a policeman’s light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way. In this respect, questioning incident to an ordinary traffic stop is quite different from stationhouse interrogation, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek.*<sup>27</sup>

### Charging and Trial Issues

#### 20. Is it legal for an issuing agency to “void” a citation?

It depends on when it is voided and what you think “voided” means. In *City of Houston v. Cotton*,<sup>28</sup> the Houston 14th Court of Appeals held that a former

sanitarian’s alleged ticket fixing scheme did not constitute a whistleblower action because she failed to provide substantial proof that a violation of law occurred. In dicta, the court accepted the proposition that if the sanitarian’s supervisor or any other person “destroyed” a citation once it was “in the system,” there would have been a violation of the law. In this instance, however, citations were being voided and placed in a folder for voided citations. One witness testified, and the court did not disagree, that a document was officially designated a “government document” once “it goes through the system.” Accordingly, under the unambiguous language of Section 37.10 of the Penal Code (tampering with a governmental document), if managers in the City of Houston Health Department—in the course of their official duties—marked citations as void or decided not to pursue them further without destroying, concealing, removing, or otherwise impairing the verity, legibility, or availability of the citations, their conduct would not violate Section 37.10.

While a plain reading of Section 37.10 of the Penal Code reveals other possible ways that a citation could be the basis of an alleged violation of the statute (e.g., selling, stealing, or otherwise fraudulently using citations), the Court of Criminal Appeals decision in *State v. Vasilas*,<sup>29</sup> rejected the notion that a “governmental record” excludes documents filed with courts. Debatably, this lends credence to the notion that a citation is a governmental record when filed in municipal court. It should not, however, be construed to mean that a document such as a citation cannot be a governmental record until it is filed in court.

#### 21. Is a citation a formal charging instrument?

No. As the Court of Criminal Appeals explains in *Huyh v. State*, “There are

three types of charging instruments — indictments, informations, and complaints. Indictments and informations are provided for and defined in the Texas Constitution. They are also defined in the Code of Criminal Procedure. Complaints are not addressed in the Constitution, but are provided for in the Code of Criminal Procedure in a variety of contexts. A complaint is a sworn affidavit charging the commission of an offense and serves as the basis for an arrest warrant.”<sup>30</sup>

#### 22. Under any circumstances, can a citation serve as a complaint?

Yes, but only in two limited circumstances: when the defendant is not contesting guilt, and when the defendant waives the right to be charged by sworn complaint.

Article 27.14(d) of the Code of Criminal Procedure states, “The written notice serves as a complaint to which the defendant may plead ‘guilty,’ ‘not guilty,’ or ‘*nolo contendere*.’ If the defendant pleads ‘not guilty’ to the offense, a complaint shall be filed that conforms to the requirements of Chapter 45 of this Code, and that complaint serves as an *original* complaint” (emphasize added).<sup>31</sup>

Article 27.14(d) also states, “A defendant may waive the filing of a sworn complaint and elect that the prosecution proceed on the written notice of the charged offense if the defendant agrees in writing with the prosecution, signs the agreement, and files it with the court.”<sup>32</sup>

Otherwise, a case in municipal court commences with the filing of a sworn complaint. “The purpose of a complaint in corporation [municipal] court is to commence the proceedings and thereby confer jurisdiction upon the court. This is the ordinary purpose and lawful use of a complaint.”<sup>33</sup>

In instances where cases are initiated by citation but a complaint is never filed,



there is a good argument to be made that the court has no jurisdiction.

While the Code of Criminal Procedure has dedicated provisions relating to when an indictment is presented and when an information is presented,<sup>34</sup> it contains no similar provisions relating to when a complaint is presented.

Professors Dix and Dawson note in their treatise: “There is no parallel provision for the presentment of a complaint, but presumably it is considered presented when it is filed with the court.”<sup>35</sup>

### 23. Does the filing of a citation toll the statute of limitations?

No. The Texas Code of Criminal Procedure does not state that the filing of a citation tolls the statute of limitations. Nor does it, however, expressly state that the filing of a sworn complaint tolls the statute of limitation.

Article 12.02 of the Code of Criminal Procedure states “An *indictment* or *information* for any misdemeanor may be presented within two years from the date of the offense, and not afterward.”<sup>36</sup>

Is the omission of the term “complaint” from Article 12.02 an oversight by the Legislature? Without clear statutory guidance, we turn to case law.

The Court of Criminal Appeals has stated that “in absence of a statute there is no period of limitation barring prosecution because of the lapse of time.”<sup>37</sup> Furthermore, the Court in *Huynh v. State* refused to read references to “indictments” and “informations” to also imply complaints.<sup>38</sup>

This hardly should be construed to mean that Class C misdemeanors have no statute of limitations. The vast majority of judges and prosecutors in Texas believe that the statute of limitations in Class C misdemeanors is two years, despite the fact that the

statute contemplates only indictments and informations. This popular law is supported by an older Court of Criminal Appeals decision, *Ex parte Hoard*, where a complaint in justice court alleging illegal gaming was held barred by the two year statute of limitations.<sup>39</sup>

### 24. Do defects in a citation invalidate a criminal charge?

It depends on the circumstances.

Data entry errors (*i.e.*, typos) and other erroneous information made in the citation by peace officers can generally be corrected by a sworn complaint. The question is who is going to be the complainant? TMCEC commonly receives telephone calls from clerks who are given citations that are defective or ambiguous in stating an offense. Ethically, court clerks should not be expected by peace officers to “fill in the blanks.” Peace officers or prosecutors should remedy the defects.

Ambiguous citations that fail to state a specific offense would likely be deemed an insufficient source of information for an affiant to attest to in obtaining a warrant.<sup>40</sup> Nor, presumably, can a citation that fails to state an offense satisfy Article 45.019(a)(4) of the Code of Criminal Procedure that requires that a complaint “must show that the accused committed an offense against the laws of this state, or state that an affiant has good reason to believe and does believe that the accused has committed an offense against the laws of this state.”

A trial court, in very limited circumstances can dismiss a charging instrument.<sup>41</sup> However, as previously explained, the charging instrument in municipal and justice court is a sworn complaint, not the citation. Accordingly, it would be inappropriate for a court to dismiss a defective citation without giving the State an opportunity to be heard or remedy the defect since under Article 27.14(d), a citation is intended

only an interim complaint and time saving device. The exception to this, of course, would be the rare instances where the defendant has waived their right to be charged by a sworn complaint. In such limited instances where a valid waiver has occurred and the citation is the charging instrument, case law suggests that a court has the power to dismiss a case without the State’s consent if it contains a defect.<sup>42</sup>

It’s hard to imagine many circumstances where it is in the prosecutor’s advantage to ask the defendant to waive being charged by a sworn complaint. If the defendant waives the right to be charged by a formal complaint and elects that the prosecution proceed on the written notice of the charged offense, pursuant to Article 27.14(d), Code of Criminal Procedure, any defect in the citation could prove fatal to the prosecution (*e.g.*, instances where the citation states the wrong day, month, year, location, *etc.*).

### 25. Can a citation be admitted to evidence at trial?

Yes, in limited circumstances. Generally, under Texas Rules of Evidence, Rule 803(8), public records and reports are not excluded by the hearsay rule, even though the declarant is available as a witness. Rule 803(8)(b) allows testimony of matters observed pursuant to duty imposed by law as to those matters where there was a duty to report. The exception, however, specifically excludes public records and reports “in criminal case matters observed by police officers and other law enforcement personnel.” Nor, under Rule 803(6), can such a record or report be admitted as a record of a regularly conducted activity.<sup>43</sup> The exclusions do not apply, however, if the record or report is offered by the accused. 🚫

<sup>1</sup> Tex. Crim. Proc. Code Ann. Art. 14.01(a) (Vernon 2006).

<sup>2</sup> *Id* at Art. 14.02.

<sup>3</sup> *Id* at Art. 18.01.

<sup>4</sup> *Id* at Art. 14.03(a)(1).

<sup>5</sup> Gerald S. Reamey, *Arrests in Texas's 'Suspicious Places': A Rule in Search of Reason*, 31:3 Tex. Tech L. Rev. 931.

<sup>6</sup> *Johnson v. State*, 722 S.W.2d 417 (Tex. Crim. App. 1986) Tex. Crim. Proc. Code Ann. (Article 14.03(a)(1)).

<sup>7</sup> Tex. Crim. Proc. Code Ann. Art.

14.03(1)(1) (Vernon 2006).

<sup>8</sup> Op. Tex. Att'y Gen. No. JC-0016 (1999).

<sup>9</sup> Tex. Trans. Code Ann. § 543.005 (Vernon 2006).

<sup>10</sup> Tex. Crim. Proc. Code Ann. Art. 14.06 (Vernon 2006).

<sup>11</sup> The language of Sec. 38.10 still poses serious problems for citations that are unsigned or that do not contain a promise to appear. The statute provides in (a) "A person lawfully released from custody, with or without bail, on condition that he subsequently appears commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release." Tex. Pen. Code Ann. § 38.10(a) (Vernon 2006).

<sup>12</sup> *Berrett*, 152 S.W.3d 600 (Tex. App.—Houston 1st 2005).

<sup>13</sup> Tex. Crim. Proc. Code Ann. Art. 45.018 & 23.04 (Vernon 2006).

<sup>14</sup> *Carson*, 65 S.W.3d 774, 782 (Tex. App.—Fort Worth 2001). Despite the unauthorized mailing of a citation, the court went on to grant the petitioners' request for an expunction on the grounds that *actual submission to an assertion of*

*authority* by appearing at the time and place indicated on the citation to dispute the charges against him was a restraint and liberally constituted an arrest for purposes of considering an expunction request.

<sup>15</sup> Op. Tex. Att'y Gen. No. JC-0317 (2000).

<sup>16</sup> *Gerstein*, 420 U.S. 103 (1975).

<sup>17</sup> *Sanders*, 543 F. Supp. 694 (1982).

<sup>18</sup> *County of Riverside*, 500 U.S. 44 (1991).

<sup>19</sup> *Dix and Dawson*, *Texas Practice Series* § 15.04 (West 2006).

<sup>20</sup> Tex. Crim. Proc. Code Ann. Art. 17.033(b) (Vernon 2006).

<sup>21</sup> *State v. Martin*, 833 S.W.2d 129 (Tex. Crim. App. 1992).

<sup>22</sup> See Ryan Kellus Turner, *Complaints, Complaints, Complaints: Don't Let the Language of the Law Confuse You*, 13:6 Municipal Court Recorder 6 (2004).

<sup>23</sup> *Knowles*, 525 U.S. 113 (1998).

<sup>24</sup> *U.S. v. Robinson*, 414 U.S. 218 (1973).

<sup>25</sup> *Id.*

<sup>26</sup> *Berkeimer*, 468 U.S. 420, 427-428 (1984).

<sup>27</sup> *Id.* at 427-428.

<sup>28</sup> *City of Houston*, 171 S.W.3d 541 (Tex. App.—Houston [14th Dist.] 2005).

<sup>29</sup> *Vasilas*, 187 S.W.3d 486 (Tex. Crim. App. 2006).

<sup>30</sup> *Huynh*, 901 S.W.2d 480, 482 n.3 (Tex. Crim. App. 1995).

<sup>31</sup> Tex. Crim. Proc. Code Ann. Art. 27.14(d) (Vernon 2006).

<sup>32</sup> *Id.*

<sup>33</sup> *Bass v. State*, 427 S.W.2d 624 (Tex. Crim. App. 1968).

<sup>34</sup> Tex. Crim. Proc. Code Ann. Art. 12.06 (Vernon 2006).

<sup>35</sup> Texas Practice Series § 3.44 (West 2006). See Tex. Crim. Proc. Art. 45.019(c) (Vernon 2006): "A complaint filed in municipal court must alleged that the offense was committed in the territorial limits of the municipality in which the complaint is made."

<sup>36</sup> Tex. Crim. Proc. Code Ann. Art. 12.02 (Vernon 2006).

<sup>37</sup> *Vasquez v. State*, 557 S.W.2d 779, 781 (Tex. Crim. App. 1977).

<sup>38</sup> *Huynh*, 901 S.W.2d 480 (Tex. Crim. App. 1995). The Court's decision in *Huynh* brought about the statutory language that is now Article 45.019(f), which prevents defendants from raising defects in the charging instrument on the day the trial on the merits commences.

<sup>39</sup> *Ex parte Hoard*, 140 S.W. 449 (Tex. Crim. App. 1911).

<sup>40</sup> See generally *Gordon v. State*, 801 S.W.2d 899 (Tex. Crim. App. 1990).

<sup>41</sup> *State v. Mungia*, 119 S.W.3d 814 (Tex. Crim. App. 2003). With no inherent authority for a trial court to dismiss a charging instrument without consent of the State, a court must gain its authority to do so from a constitution, statute, or common law.

<sup>42</sup> *State v. Johnson*, 821 S.W.2d 609, 612 n. 2 (Tex. Crim. App. 1991).

<sup>43</sup> *Cole v. State*, 839 S.W.2d 798, 805-806 (Tex. Crim. App. 1990).

## Municipal Court Week: November 5-9, 2007

TMCEC expresses its appreciation to Representative Burt Solomons for sponsoring H.R. No. 973, declaring November 5-9, 2007 and November 3-7, 2008 Municipal Court Week across Texas. A former municipal judge for the Cities of Carrollton and Flower Mound and a former President of The Texas Municipal Courts Association, Representative Solomons serves the House District 65 which is composed of the cities of Carrollton, Frisco, Hebron, Lewisville, Plano, The Colony, and a portion of Dallas. Municipal Courts Week is a great time not only to recognize how much municipal courts do, but to share with the public the important role that local courts and their personnel play in the criminal justice system and the larger community. In the past, courts have celebrated the event with local proclamations, courthouse tours, speeches to civic groups, mock trials with school groups, newspaper articles about the court, videos, and employee luncheons and recognitions. See [www.tmcec.com/Court](http://www.tmcec.com/Court) for more ideas and details.



# 75 Percent of Young Texans Affected by Dating Violence

**“Red Flags” campaign to highlight early warning signs, prevent further incidence**

The Texas Council on Family Violence (TCFV) and Texas Attorney General Greg Abbott recently released results from the first-ever statewide survey on dating violence among teens and young adults. Findings show that three out of four 16- to 24-year-old Texans have personally experienced dating violence or know someone who has.

The survey polled more than 900 young Texans on their attitudes toward and experiences with dating violence behaviors, ranging from controlling actions to physical harm. Fifty percent reported having personally experienced dating violence (whether as the target or abuser). Two out of five teens and young adults said they’ve experienced verbal abuse, one out of four reported physical violence, and one out of five reported sexual violence.

To tackle this problem and educate young Texans about the characteristics of healthy relationships, TCFV also launched a public awareness project called “Red Flags.” The project is funded by the Office of the Texas Attorney General and the Texas Health and Human Services Commission. Through online and community outreach, Red Flags will deliver the messages of “Control Isn’t Love” and “Red Flags: Know When to Raise Them” to youth in five target cities – Austin, Dallas, Fort Worth, Houston, and San Antonio.

The project will reach out to both males and females. According to survey results, three out of five young Texas females and two out of five young males have personally experienced dating violence (again, whether as the

target or abuser).

“Dating violence is a pervasive problem that affects young Texans of all ethnic and educational backgrounds. It is imperative that we prevent further teens and young adults from having these experiences while offering help and solutions to those who are currently in unhealthy or dangerous situations,” said Texas Attorney General Greg Abbott.

Research found that young Texans are much more likely to be scared by or worried about more tangible behaviors like explosive temper or physical harm. They were more likely to rate things like controlling a person’s actions or exhibiting jealousy as making them “nervous” or “uncomfortable.” Red Flags will concentrate most on teaching youth to listen to their instincts and deal with the early warning signs of dating violence – the “red flags” that indicate trouble – before they escalate into more severe abuse.

The National Domestic Violence Hotline, operated by TCFV in its Austin office, receives the largest percentage of its calls from 25- to 34-year-olds who are experiencing domestic violence. However, advocates are trained to counsel victims on dating violence and create safety plans on how to leave the relationship, if need be.

“With Red Flags, we hope to reach young Texans at a critical period in their dating lives, helping them learn to distinguish healthy behaviors from more dangerous ones so they, hopefully, never need to call us,” said Sheryl Cates, Chief Executive Officer

of the Texas Council on Family Violence and the National Domestic Violence Hotline. “This is the time to learn how to make the best choices in relationships because family and financial commitments can later make it harder for people to break free from violent relationships.”

In addition to reaching out to current and potential victims of abuse, the Red Flags project is designed to give young Texans guidance in having more constructive dialogue with friends who may be experiencing dating violence. Research shows three out of four teens and young adults who’ve personally experienced dating violence report having told someone what happened. Friends were most commonly turned to first, followed by parents or guardians. When asked what they’d do if a peer told them about a dating violence problem, 42 percent said they’d advise them to break up with their partner. However, dating partners can often turn more violent when a relationship ends.

The Red Flags website, [www.knowtheredflags.com](http://www.knowtheredflags.com), is full of relationship quizzes, warning signs, advice, and scenarios designed to guide teens and young adults in discussing dating violence issues and making safe plans for dealing with or leaving unhealthy relationships. The site also aims to educate young Texans about healthy behaviors like being honest with each other, trusting each other when apart, and feeling safe to express feelings – which survey respondents rated as their top three most valued characteristics in a relationship. TCFV

will direct traffic to the site through outreach on MySpace and other online channels, at events, and through youth outreach with its community partners in the project's target cities.

"The survey results, along with qualitative data gathered from youth statewide, has shown us that young Texans want very serious, mature, and detailed information about dating violence so they can get help and lend help. They've also indicated that online and peer-to-peer methods of receiving information are effective given the complex subject matter," said Cates. "Red Flags is designed uniquely for Texas youth, and we're excited about this step in ultimately making our state a kinder and safer place."

Data for the statewide survey was conducted on behalf of TCFV by GCI Read-Poland and Equation Research. All respondents were unmarried and between the ages of 16

and 24. Respondents were randomly drawn to reflect a sample representative of the Texas population. The "Red Flags" brand and project materials were created by Austin communication firms GCI Read-Poland, White Hat Creative, and Action Figure.

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## About Texas Council on Family Violence

As the state coalition against domestic violence, the Texas Council on Family Violence has been the voice of the movement against domestic violence in Texas and a national leader in the work to end domestic violence since 1978. TCFV provides public education,

training and technical assistance, and public policy advocacy on the issue of domestic violence in Texas. As a statewide coalition, TCFV members include domestic violence service providers, criminal justice personnel, and allied professionals. Additionally, TCFV operates the National Domestic Violence Hotline, which is the only toll-free, 24-hour hotline, providing crisis intervention and connecting victims of domestic violence to more than 5,000 domestic violence service providers across the nation. TCFV is a nonprofit organization funded by both private and public sources. ↗



### Municipal Court Offenses Potentially Involving Family or Dating Violence

The following table outlines Class C misdemeanor offenses that could potentially involve family or dating violence, and should be examined with due prudence.

Assault: Threatens Bodily Injury	§ 22.02 (a)(2), Tex. Pen. Code
Assault: Physical Contact	§ 22.02(a)(3), Tex. Pen. Code
Attempted Assault: Against Sport Participant	§ 22.01(c)(2), Tex. Pen. Code
Attempted Criminal Trespass: Property, Building, Vehicle	§ 30.05, Tex. Pen. Code
Attempted Enticing a Child	§ 25.04, Tex. Pen. Code
Attempted Harassment	§ 42.07, Tex. Pen. Code
Attempted Indecent Exposure	§ 21.08, Tex. Pen. Code
Child Under 7 Left in Vehicle	§ 22.10, Tex. Pen. Code
Criminal Mischief	§ 28.03, Tex. Pen. Code
Disorderly Conduct	§ 42.01, Tex. Pen. Code
Disruption of Classes	§ 37.124, Tex. Educ. Code
Disruption of Transportation	§ 37.126, Tex. Educ. Code
Failure to Attend School	§ 25.094, Tex. Educ. Code
False Report: Missing Child or Person	§ 37.081, Tex. Pen. Code
Firearm, Accessible to Child	§ 46.13, Tex. Pen. Code
Obscene Display or Distribution	§ 43.22, Tex. Pen. Code
Parent Contributing to Nonattendance	§ 25.095, Tex. Educ. Code
Reckless Damage or Destruction	§ 28.04, Tex. Pen. Code
Tampering w/Gov't Record: School Enrollment	§ 37.10(c)(3), Tex. Pen. Code

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# Texas Municipal Courts Association

## 2007 Judicial Awards for Excellence in the Administration of Justice

### PURPOSE:

To recognize each year a municipal judge and a court support staff member who have made an outstanding contribution to the fair and impartial administration of justice by meeting any one or more of the following standards:

- Setting up an exemplary court whose procedures and staff are models for all municipal courts in Texas;
- Providing inspiring leadership among municipal judges and court support personnel such that networking and professionalism has been encouraged and established;
- Providing community leadership to ensure the protection of the public's interest;
- Increasing communication and understanding between the public, the municipal courts, and other levels of the judiciary;
- Serving as an outstanding faculty member in the judicial education programs which have strengthened the competence of the municipal judges and court support personnel.

### ELIGIBILITY:

Any individual presently serving or having served in the 2006-2007 fiscal year as a municipal judge or as a member of a court's support staff (including but not limited to clerks, court administrators, and bailiffs) in the State of Texas may apply for one of these two awards. Members or materials prepared by members of the TMCA Judicial Recognition Committee are ineligible.

### JUDGING COMMITTEE:

The judging committee will consist of members of the TMCA Annual Meeting Committee (board members and members of TMCA appointed by the TMCA president).

Applicants applying for the awards will be judged on the basis of one or more of the following criteria (and all other relevant criteria):

- Excellence in the administration of municipal court procedures;
- Record of outstanding leadership in the community of profession;
- Effective use of community resource persons in support of the work of the municipal courts; and/or
- Initiative in innovative and cost effective problem solving solutions of issues facing the municipal courts.

### ENTRY RULES:

1. Nominations must be submitted **in triplicate** and presented in a plain manila folder or envelope.
2. Cover letter should indicate nominee for "Judge" or "Court Support Personnel".
3. Nomination application should also include the following:
  - Resume of the nominee (maximum two (2) pages);
  - Summary of contributions worthy of recognition in improving municipal courts (maximum two (2) pages);
  - Letters of recommendations or support (maximum five (5) pages); and
  - Relative evidence like newspaper articles, resolutions, publications, *etc.*

### DEADLINE:

Entries must be received no later than **July 13, 2007**. Send applications to:

TMCA Annual Meeting Committee  
c/o City of Lubbock Municipal Court  
P.O. Box 2000  
Lubbock, TX 79457  
Attention: Hon. Robert A. Doty  
*For inquiries only:* (806) 775-2462 or [rdoty@mail.ci.lubbock.tx.us](mailto:rdoty@mail.ci.lubbock.tx.us)



### PRESENTATION:

The two (2) award winners will be notified by August 10, 2007 and invited to attend the Awards Dinner and Banquet on Friday night, September 14, 2007 during the TMCA Annual Meeting at the Hilton Lincoln Centre in Dallas, Texas.



# Born to Be a Collector

By Jim Lehman, Collections Specialist, Office of Court Administration

Is it true that good collectors are born, not made? No. There are principles and guidelines that consistently produce positive results if they are consistently applied. Practice, not genetics, makes perfect. But practice does reveal certain key characteristics that are generally associated with successful collectors. We'll call them the six P's of successful collectors.

**1. Package.** What is the appearance of the collector? Does he or she present a positive professional look? What facial expressions and body language are present when the collector interacts with a defendant in-person? The old adage "you only have one shot to make a good first impression" applies here. Successful collectors will present a professional, calm, and assertive demeanor and will remain in this mode regardless of the circumstances. Effective collectors usually look the part. High-level training exercises for professional collectors now include video taping collectors at work and allowing them to see themselves as the customer sees them. This has proven to be a very effective training tool.

**2. Presentation.** How does the collector sound when addressing the defendant? Is his/her tone crisp, businesslike, intelligent, confident? The delivery determines whether the defendant takes the collector seriously. Successful collectors practice delivery, everything from greeting to closing. Many high-level training courses for collectors now also require the collector to listen to audio tapes of him or her for self evaluation.

**3. Predisposition.** Is the collector comfortable collecting? Successful


collectors have no problem asking for payment in full and the request sounds perfectly natural. Effective collectors can be firm without being insensitive. This cannot happen if the collector lacks confidence or interest.

**4. Persuasion.** Is the collector convincing? Successful collectors are usually masters of passive persuasion. They can usually use their powers of reason and suggestion to overcome objections or defuse hostility. Effective collectors can convince a defendant that it is in his or her best interest to comply.

**5. Persistent.** How quickly does the collector give up or give in? Successful collectors are tenacious and rarely give up easily. That's not saying they don't know when to quit and move on. Effective collectors have a very good feel for when to say when. But this will not occur until every reasonable scenario for resolution has been examined and exhausted.

**6. Punctual.** Is the collector time conscious? Successful collectors are generally extremely time sensitive. They have learned the value of time, especially as it relates to collections. Effective collectors are effective clock managers and they keep clear and concise records of their collection efforts. In short, they can tell you who, what, where, and WHEN on every account in their assigned caseload.

One of my favorite sayings is "plans don't work, people do". However, the key to successful collections begins with sound process. Without a specific process new hires have no starting point and no destination, they will be lost. Establishing concrete steps to

work from will provide them with a road map. Practicing those steps will lead them to success. 

*(Jim Lehman is Collections Program Manager for the Office of Court Administration.*

*For information about collections education and training you may contact him at 512/936-0991.)*

## Upcoming Collections Conferences

### 8th Annual Court Collections Conference & Workshop

May 29-31, 2007

Marriott Horseshoe Bay Resort.

800/452-5330 for hotel reservations.

Horseshoe Bay, Texas (near Marble Falls, Texas). Sponsored by the

Governmental Collectors Association of Texas and the Texas

Association of Counties. Online registration available at

[www.govecat.net](http://www.govecat.net). Topics include:

*An Auditor's View of Collections, Using*

*In-House Computer Resources,*

*The Comptroller's Side of*

*Collections, and*

*Legislative Update &*

*Overview.*



### National Court Collections Conference

September 24-26, 2007

Golden Nugget Hotel

Las Vegas, Nevada

800/846-5336

Online registration available at

[www.govcat.net/Conferences/](http://www.govcat.net/Conferences/)

2007/

2007\_Natl\_conf\_register.htm.

Agenda to be determined.



## FROM THE CENTER

### Summer 2007 First Friday Webinars

Looking for an extra hour of continuing education for CLE or clerk certification? TMCEC will be offering interactive, web-based training programs on the first Friday of each month from 10:30–11:30 a.m. Please register by logging on to <http://tmcec.premierglobal.com>.

Webinars are free of charge to participants, but you will still be charged any applicable local fees for the use of your Internet. Participants will need a computer, an Internet connection, and a telephone line for toll-free teleconferencing.

Upcoming Webinar Schedule:

June 1, 2007      *Juvenile Confessions*, Sharon Pruitt, Assistant Attorney General, Office of the Attorney General  
July 6, 2007      *Crime Victims*, Suzanne McDaniel, Office of the Attorney General

### TMCEC Bench Book & Forms Book

TMCEC staff members will be revising and editing both The TMCEC *Bench Book* and *Forms Book* over the summer of 2007. If you have suggestions, please call (800.252.3718) or email Ryan Turner ([turner@tmcec.com](mailto:turner@tmcec.com)). Both will be updated with recent changes by the 80<sup>th</sup> Legislature and case law and the Center would like to also improve on any checklists or forms that are insufficient or flawed. Suggestions for new forms and checklists are also invited.

### Codebooks

Watch for a copy of the *Texas Criminal and Traffic Law Manual* in the mail in September. The TMCEC Board of Directors voted to send one copy at grant expense to every municipal judge in the State. After every legislative session, the TMCEC staff members work with the publisher to include statutes used in municipal courts and to improve the index. If you have suggestions on changes for the new edition, please call or email Lois Wright at TMCEC (800.252.3718 or [wright@tmcec.com](mailto:wright@tmcec.com))

### Court Administrator Program

TMCEC will offer a court administrators' program in Corpus on June 11-12 at the Omni Hotel Marina Tower. The program will include sessions on *Employment Law* and *Effective Communication and Conflict Resolution*. To register, please use the registration form found on page 19 in this journal.

### Legislative Updates

The TMCEC staff is looking forward again to offering a series of Legislative Updates in August 2007. These elective programs are six-hour in length. They do not count toward mandatory judicial education requirements for judges, but do offer CLE credit for attorneys and certification credit for clerks in the certification program. The registration fee is \$50, which includes lunch and course materials. There is an additional \$50 fee for those attorneys seeking CLE credit. Participants are responsible for making and paying for their own hotel reservations. Please register using the registration form on page 19 of this newsletter.

August 7, 2007 Lubbock Holiday Inn Towers  
806/763-1200

August 14, 2007 Houston Omni Westside  
281/556-8338

August 17, 2007 Austin Hyatt Regency  
512/477-1234

The registration deadlines for the Legislative Updates are in mid-July. Registration, however, is based on a first-come-first served policy, so register early with TMCEC to ensure a seat in the program. Contact the hotel and reserve a room ASAP, as there are a limited number of \$85 night sleeping rooms rates available at the conference rate.

Note: Clerk certification exams will be offered the day before each Legislative Update from 1:00-5:00 p.m.

## Prosecutor Seminar

TMCEC will offer the second of two 12-hour prosecutor programs on May 23-24, 2007 at the Omni Westside Hotel in Houston. The TMCEC Annual Municipal Prosecutors Conference is the only program in the state designed to specifically assist such attorneys in obtaining and maintaining professional competence. Presentations will focus on ethics, as well as procedural, substantive, and case law. Municipal prosecutors may register for the 12-hour prosecutor's conference for \$250. Housing, two breakfasts, one lunch, and course materials are included in the fee. Municipal prosecutors who do not need housing at the conference hotel may pay a \$100 registration fee. Prosecutors who must cancel for personal or professional reasons will be charged a \$100 cancellation fee if notice of cancellation is not received five working days prior to the conference. A registration fee of \$300 (or \$150, if no housing is needed) will be charged for non-municipal prosecutors or attorneys. A registration form can be found in the TMCEC Academic Schedule or on page 19 in this journal. Course materials may be purchased for \$50.

Note: In FY08, there will be an additional fee of \$100 for MCLE credit.

## Bailiffs and Warrant Officers Corpus Christi Conference

There will be a 12-hour bailiffs and warrant officers conference June 11-12, 2007 in Corpus Christi at the Omni Hotel Marina Tower. Bailiffs, warrant officers, and contract security personnel are encouraged to attend. A four-hour pre-conference will be offered on Sunday, June 10<sup>th</sup> by Noel Johnson, TMPA, on *Legislative Changes*. Tentatively, regular session courses are: *Force Options, Violence in the Courtroom, Bailiffs 101, Methods of Improving Collections, Warrants: From the Code to the Field, Sovereign Defendants, Juvenile Issues in Municipal Court, Civil Process, Served!, Transporting Prisoners, Fraudulent Documents, and Citations*.

The course has been pre-approved for 12 hours of TCLEOSE continuing education credit. Another four hours of credit will be available for attending the pre-conference. The fee for attending the conference is \$50 and includes three meals and housing accommodations for the two program nights at the Omni. To register, please use the registration form found on page 19 in this journal.

### Translated Forms

Go to TMCEC website! TMCEC has posted revised forms that have been translated into Spanish. These may be downloaded from the TMCEC website and adapted for use in your court.

# The Recorder

The Journal of Texas Municipal Courts

Does this issue of *The Recorder* look different to you? You probably noticed a modified masthead and a uniform format for referencing the law. Moreover, after conferring with many courts regarding the important archival value of *The Recorder*, we will now refer to the publication as a journal rather than a newsletter. All past issues of *The Recorder* are still available online at [www.tmcec.com](http://www.tmcec.com) free of charge.

Along with these modifications, TMCEC adopted a new style manual: *ALWD Citation Manual: A Professional System of Citation*. Copies may be obtained by calling Aspen Publishers at 800/638-8437 or at [www.aspenpublishers.com](http://www.aspenpublishers.com). The ALWD manual was selected over other citation manuals for its clarity, brevity and the resultant ease with which our readers will be able to effectively locate cited sources within this work.

In adopting this new citation manual, you may see some new symbols in this and subsequent editions of *The Recorder*:

§ - Section

¶ - Paragraph

& - Ampersand (*and*)

§§ - Consecutive Sections

¶¶ - Consecutive Paragraphs

Questions? Comments? As always, we welcome your input regarding any changes in the form or substance of our work product. Additionally, TMCEC encourages members of its constituency to submit articles on effective municipal court procedures and practices, pertinent issues involving municipal courts, or letters that raise noted concerns experienced by our readership. Please submit articles and letters to TMCEC, 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701 or at [tmcec@tmcec.com](mailto:tmcec@tmcec.com), Subject: Submission to *The Recorder*. We look forward to hearing from you.





# 2006-2007 TMCEC Academic Schedule At-A-Glance



Conference	Date(s)	City	Hotel Information
1-day Clinic: Juveniles Now Adults	May 16, 2007	Austin	Hyatt Town Lake Austin 208 Barton Springs
12-Hour Prosecutors	May 23-24, 2007	Houston	Omni Houston Hotel at Westside 13210 Katy Freeway
8-Hour Court Interpreters	May 23, 2007	Houston	Omni Houston Hotel at Westside 13210 Katy Freeway
1-day Clinic: Bond Forfeitures	May 30, 2007	Austin	Hyatt Town Lake Austin 208 Barton Springs
Bailiffs/Warrant Officers	June 11-12, 2007	Corpus Christi	Omni Corpus Christi Hotel Marina Tower, 707 North Shoreline
12-Hour Court Administrators	June 13-14, 2007	Corpus Christi	Omni Corpus Christi Hotel Marina Tower, 707 North Shoreline
1-day Clinic: Magistrate Duties	June 20, 2007	Austin	Hyatt Town Lake Austin 208 Barton Springs
12-Hour Regional Judges and Clerks	June 27-28, 2007	Odessa	MCM Elegante 5200 E. University
1-day Clinic: Warrants, Summonses, <i>Capiases</i> , and <i>Capias Pro Fines</i>	July 11, 2007	Austin	To be determined
32-Hour New Judges and Clerks	July 16-20, 2007	Austin	Omni Hotel Southpark 4140 Governor's Row
2007 Legislative Updates:	August 7, 2007	Lubbock	Holiday Inn Hotel & Towers 801 Avenue Q
	August 14, 2007	Houston	Omni Westside 13210 Katy Freeway
	August 17, 2007	Austin	Omni Southpark 4140 Governor's Row

## Child Support continued from page 4

Family Code. This article discusses the mechanics of child support bonds so that you will have a better understanding of why municipal judges acting as magistrates may not change or set bond in these cases. Under the statute, that authority lies only with the court that has continuing, exclusive jurisdiction of the case.

Section 25.05 of the Texas Penal Code creates a criminal offense if an individual intentionally or knowingly fails to provide support for the individual's child younger than 18 years of age, or for the individual's child who is the subject of a court

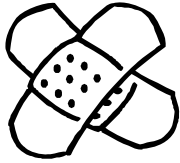
order requiring the individual to support the child.<sup>1</sup> Such an offense is a state jail felony.<sup>2</sup> Chapter 157 of the Texas Family Code provides the mechanism for enforcing child support orders against individuals (child support offenders are referred to as "Respondents" in the Family Code).<sup>3</sup>

### **Enforcing Child Support Orders**

A motion for enforcement of a child support order is filed to enforce a final order for child support in the court of continuing, exclusive jurisdiction.<sup>4</sup> Upon the filing of such a motion, the court sets a date, time, and place for a hearing so that the

Respondent may personally appear and respond on the motion.<sup>5</sup> If a Respondent fails to appear for the hearing, the court may not hold the Respondent in contempt but may, on proper proof, grant a default judgment for the relief sought and issue a *capias* for the arrest of the Respondent.<sup>6</sup> If the court orders the issuance of a *capias*, the court must also set an appearance bond or security, payable to the obligee (the person entitled to receive child support on behalf of the children) or to a person designated by the court in a reasonable amount.<sup>7</sup> An appearance bond or security in the amount of

*Child Support continued on page 18*



# TMCEC presents One-Day Clinic

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

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

**Wednesday, May 16 *Juvenile Now Adult\****

**Wednesday, May 30 *Bond Forfeitures\****

**Wednesday, June 20 *Magistrate Duties\****

**Wednesday, July 11 *Warrants, Summonses, Capiases, and Capias Pro Fines***

\*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: \_\_\_\_\_

Title:  Judge  Court Administrator  Clerk  Prosecutor

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

### Child Support continued from page 17

Municipal judges acting as magistrates have no statutory authority to change this amount. For more information regarding child support enforcement in Texas, visit the Texas Attorney General's website at:  
[www.oag.state.tx.us/AG\\_Publications/txts/crimnonsup](http://www.oag.state.tx.us/AG_Publications/txts/crimnonsup).

<sup>1</sup> Tex. Penal Code § 25.05(a).

<sup>2</sup> *Id.* at 25.05(f).

<sup>3</sup> While this article expressly addresses the issue of child support magistration, the same procedures apply to final orders for conservatorship, possession of or access to a child, or other provisions of a final order

as intended by Chapters 157 and 158 of the Texas Family Code.

<sup>4</sup> Tex. Fam. Code § 157.001

<sup>5</sup> *Id.* at 157.061

<sup>6</sup> Tex. Fam. Code § 157.066

<sup>7</sup> *Id.* 157.101

<sup>8</sup> *Id.*

# TEXAS MUNICIPAL COURTS EDUCATION CENTER FY07 REGISTRATION FORM

**Conference Date:** \_\_\_\_\_ **Conference Site:** \_\_\_\_\_

- Check one:**  Non-attorney Judge (\$50 fee)       Clerk (\$50 fee)       Prosecutor (\$250 fee)  
 Attorney Judge **not seeking CLE credit** (\$50 fee)  Court Administrator (\$50 fee)       Prosecutor **not requiring a room** (\$100 fee)  
 Attorney Judge **seeking CLE credit** (\$150 fee)       Assessment Clinic (\$100 fee)       Bailiff/Warrant Officer\* (\$50 fee)

*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, three nights at the 24-hour seminars/assessment clinics and two nights at the 12-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 seminar?     Driving     Flying

Arrival date: \_\_\_\_\_       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):

- |   |  |   |   |
|---|--|---|---|
| <input type="checkbox"/> Full Time                | <input type="checkbox"/> Part Time                 | <input type="checkbox"/> Attorney             | <input type="checkbox"/> Non-Attorney                     |
| <input type="checkbox"/> Presiding Judge          | <input type="checkbox"/> Associate/Alternate Judge | <input type="checkbox"/> Justice of the Peace | <input type="checkbox"/> Mayor ( <i>ex officio</i> Judge) |
| <input type="checkbox"/> Court Administrator      | <input type="checkbox"/> Court Clerk               | <input type="checkbox"/> Deputy Court Clerk   | <input type="checkbox"/> Other:                           |
| <input type="checkbox"/> Bailiff/Warrant Officer* | <input type="checkbox"/> Prosecutor                |   |   |

**\*Bailiffs/Warrant Officers:** Municipal judge's signature required to attend Bailiff/Warrant Officer programs.

Judge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Municipal Court of: \_\_\_\_\_

I certify that I am currently serving as a municipal judge, prosecutor or court support personnel 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 conference. Participants in the Assessment Clinics must cancel in writing two weeks prior to the seminar to receive refund. 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 conference site. If I do not attend the program, TMCEC reserves the right to invoice me or my city for meal expenses, course materials and, if applicable, housing (\$85 plus tax per night). I understand that I will be responsible for the housing expense if I do not cancel or use my room. If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the conference site. Payment is due with registration form. **Registration shall be confirmed upon receipt of registration form and payment.**

Participant Signature \_\_\_\_\_ Date \_\_\_\_\_

## PAYMENT INFORMATION

- Check Enclosed (Make checks payable to TMCEC.)  
 Credit Card (Complete the following; \$2.00 will be added for each registration made with credit card payment.)

Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)

Credit card type:	<u>Credit Card Number</u>	<u>Expiration Date</u>	<u>Verification Number</u> <small>(found on back of card)</small>
<input type="checkbox"/> MasterCard	Name as it appears on card (print clearly): _____	_____	_____
<input type="checkbox"/> Visa	Authorized Signature: _____	_____	_____

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701.

Fax registration forms with credit card information to 512/435-6118.





# Who Can Accept Payments from Defendants?

by Margaret Robbins, Program Director, TMCEC

Who can accept payment of fines and costs from defendants? You are probably thinking, this is an easy answer—the court. You are right, except in reality it becomes a harder question to answer. To address the issue, you have to consider the meaning of the word “accept” and what happens when the court accepts the payment.

One of the definitions of “accept” in *Webster's Encyclopedic Unabridged Dictionary of the English Language*, 1996 Edition, is “to receive with approval.” According to *Black's Law Dictionary, Fifth Edition*, “accept” means “to receive with approval or satisfaction or to receive with intent to retain.”

Article 27.14(c) of the Code of Criminal Procedure provides that “...payment of the fine or an amount *accepted* [emphasis added] by the court constitutes a finding of guilty in open court as though a plea of *nolo contendere* had been entered by the defendant and constitutes a waiver of a jury trial in writing.”

Who in the court may “accept” the payment from defendants? It is only the judge. It is only the judge who has the discretion to decide whether the payment offered by the defendant satisfies the judgment. Because it is only the judge who may make the decision whether to approve the payment and whether to retain the payment for satisfaction of the fine even though the amount may not be the same as the amount listed on the suggested minimum fine schedule. The clerk must present all fine payments to the judge to “accept.”

The clerk's role as custodian of the

court records is to collect and process the payment and prepare the judgment for the judge's signature if the judgment has not already been signed. A judgment is a court's final determination of the defendant's obligation in the case against the defendant. It is a written record of the defendant's plea, the verdict, findings, the adjudication, and acquittal or order to pay the fine and costs.

Before clerks collect money, judges must set the guidelines for the collection of the fines and costs. The guidelines include how to process payment plans for defendants who are unable to pay the total amount of ordered fines and costs. Time payment plans become part of judgments. Article 45.041(b) of the Code of Criminal Procedure is the municipal court's judgment statute regarding convictions. It requires payment of a fine and costs and provides the judge authority to grant extensions and time payments. Judges may also require defendants who have defaulted on their judgments to discharge the fine and court costs by performing community service under Article 45.049 of the Code of Criminal Procedure.

Many courts use application forms for extensions, time payments, and community service. Clerks have defendants complete the forms and swear to the information. Judges then do indigent hearings to determine the defendant's ability to pay.

What does process mean? It means that the clerk:

- collects the fine money (fine set by judge);

- prepares the receipt or generates it from the computer;
- notes the receipts in the docket and on the case file;
- prepares the judgment;
- after the judgment is signed, notes the judgment in the docket;
- deposits the money;
- properly allocates the court costs;
- has defendants complete applications for time payments, extensions, or community service;
- monitors the time payments and adds the time payment fee when applicable if a time payment has been granted by the judge;
- monitors community service; and
- brings the case to the attention of the judge if the defendant defaults in payment or fails to complete community service and the judge needs to decide whether to issue a *capias pro fine* to enforce the judgment.

What happens if a city contracts with an outside vendor to collect unpaid criminal judgments or find defendants who have failed to appear? Can the city allow the vendor to collect payments from defendants?

The city has authority to contract with outside vendors under Article 103.0031 of the Code of Criminal Procedure. The city should not, however, contract away the judge's discretion regarding the “acceptance” of payments. Judicial discretion, which is the judge's authority to make choices governed by the rule of law, must be taken into account when contracting

with an outside vendor on court issues. The city must keep in mind that this is not like collecting a utility bill. Courts deal with people's rights. Vendors are hired by the city to represent the city, not the defendant.

Defendants who failed to appear have not made an appearance before the court and still have a right to a jury trial. Because payment of the fine or an amount accepted by the court is regarded as the defendant entering a plea of *nolo contendere* and a written waiver of jury trial, the vendor may not collect money from the defendant and present the payment to the court. This gives the appearance that the vendor is representing the defendant by offering the payment to the court on behalf of the defendant. Hence, all


letters from vendors to defendants who have failed to appear must direct the defendant to contact the court.

Defendants who have defaulted on their payments have already pled, and all that is required is the payment of the fine and/or costs. Should the payment be made directly to the court? In this situation, the vendor could collect the money *if* the total amount owed is paid. If the defendant needs a payment plan, the defendant must come to the court. Only the judge has the authority to grant extensions and time payments.

Even though defendants fail to appear or fail to pay, they still have rights. Judges are there to ensure the rights of defendants are not trampled.

Therefore, the better practice is for the court to collect all the money and work with the defendant to determine the best manner for the defendant to discharge the fine and costs.

Who ensures that the court processes maintain an orderly flow; that the paperwork is properly maintained and secure; and that the money is timely and appropriately accounted for, including the vendor's share, the state's share and the city's share? It is the clerk who is the custodian of the court records.

As you can now see, the question of who can "accept" payments is an answer that involves being educated about the authority of the judge and the responsibilities of the clerk. 



## Municipal Traffic Safety Initiative: News You Can Use

### Progress! Motor-Vehicle Deaths Down 2% in First Three Months of 2007

Motor-vehicle deaths for January through March of 2007 totaled 9,670. This figure is down 2% from the corresponding 3-month period in 2006. The January to March figure for 2007 was less than 0.5% lower than the 2005 figure. The 3-month total for 2006 was 9,870, a 2% increase from 2005. The 2005 figure was 3% lower than 2004. The estimated annual mileage death rate is 1.5 deaths per 100 million vehicle miles traveled, unchanged from 2006.

Disabling motor-vehicle injuries for the first three months of 2007 are estimated to be about 503,000, a 6% decrease from 2006.

The estimated cost of motor-vehicle deaths, injuries, and property damage through March was \$52.2 billion, a 2% decrease from 2006. The costs include wage and productivity losses, medical expenses, administrative expenses, employer costs, and property damage.

Source: Statistics Department, National Safety Council, 1121 Spring Lake Drive, Itasca, Illinois 60143-3201, [rssdept@nsc.org](mailto:rssdept@nsc.org).

### Texas Transportation Forum

In our accelerated world, getting from point A to point B quickly has never been more essential. Unfortunately, it has rarely been more difficult. An efficient transportation network is the lifeblood of economies and communities across Texas and the nation. At the second annual Texas Transportation Forum, July 18-20, 2007 in Austin, Texas, local, regional, and state leaders will join national experts to discuss ways to "Keep Texas Moving."

The Forum is sponsored by the Texas Department of Transportation, the Associated General Contractors of Texas, the Texas Good Roads Transportation Association and the Texas Transportation Institute. It will be held at the Hilton Austin. Find out more at [www.texas transportation forum.com](http://www.texas transportation forum.com).

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## Traffic Safety Calendar of Events

<i>Date</i>	<i>Event</i>	<i>Sponsor</i>
May 21 - June 3, 2007	“Click It or Ticket” National Enforcement Mobilization: Occupation Protection	NHTSA <a href="http://www.nhtsa.gov">www.nhtsa.gov</a> <a href="http://www.buckleup.org">www.buckleup.org</a>
June 24 - July 7, 2007	Fourth of July: Impaired Driving	NHTSA <a href="http://www.nhtsa.gov">www.nhtsa.gov</a>
July 18, 2007	Ride to Work Day	RTW <a href="http://www.ridetowork.org">www.ridetowork.org</a>
July 18-20, 2007	Texas Transportation Forum - Austin Hilton	TxDOT <a href="http://www.dot.state.tx.us">www.dot.state.tx.us</a>
August 4-11, 2007	National Stop on Red Week	Federal Highway Administration <a href="http://www.fhwa.dot.gov">www.fhwa.dot.gov</a>
August 15-17, 2007	Save a Life Summit Crowne Plaza, San Antonio	TxDOT <a href="http://www.dot.state.tx.us">www.dot.state.tx.us</a>
Aug 15 - Sep 3, 2007	Impaired Driving National Enforcement Crackdown (Drunk driving. Over the limit. Under arrest.)	NHTSA <a href="http://www.nhtsa.gov">www.nhtsa.gov</a>
October	Walk to School Month	Partnership for a Walkable America <a href="http://www.walktoschool.org">www.walktoschool.org</a>
October 3, 2007	Walk to School Day	Partnership for a Walkable America <a href="http://www.walktoschool.org">www.walktoschool.org</a>
October 26-31, 2007	Halloween: Impaired Driving (Buzzed driving is drunk driving.)	NHTSA <a href="http://www.nhtsa.gov">www.nhtsa.gov</a>
November 12-25, 2007	Thanksgiving Weekend Travel: Occupant Protection (Buckle up America. Every trip).	NHTSA <a href="http://www.nhtsa.gov">www.nhtsa.gov</a>
Thanksgiving - New Year’s Eve	Tie One on for Safety Campaign	MADD <a href="http://www.madd.org">www.madd.org</a>
December	National Drunk & Drugged Driving Prevention Month (3D Month)	National Commission Against Drunk Driving (NCADD)
December 1-14, 2007	Holiday Season: Impaired Driving (Buzzed driving is drunk driving.)	NHTSA <a href="http://www.nhtsa.gov">www.nhtsa.gov</a>
December 15-31, 2007	Holiday Season: Impaired Driving (Drunk driving: Over the limit. Under arrest.)	NHTSA <a href="http://www.nhtsa.gov">www.nhtsa.gov</a>
April 13-15, 2008	Lifesavers Conference Oregon Convention Center – Portland, Oregon	Lifesavers <a href="http://www.lifesaversconference.org">www.lifesaversconference.org</a>
March 29-31, 2009	Lifesavers Conference Gaylord Opryland – Nashville, Tennessee	Lifesavers <a href="http://www.lifesaversconference.org">www.lifesaversconference.org</a>

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### Click It or Ticket

From May 21-June 3, 2007, law enforcement officers across the country will enforce seat belt laws as a part of the “Click It or Ticket” Mobilization. Law enforcement’s goal is *not* to write tickets but to get everyone buckled up, especially teen drivers and their passengers. Remind your employees and encourage them and their families to buckle up — every trip, every time, day and night.

There is a free, online planner and materials at [www.nhtsa/link/CIOT.gov](http://www.nhtsa/link/CIOT.gov).

