

# The Recorder

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## WHEN IS A COURT ORDER NEEDED TO DESTROY EVIDENCE?

by Jana K. McCown

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When is a court order required in order to destroy evidence? Which judges may sign the order? Is there a time limit during which the order must be signed? Searching through the assorted statutes governing evidence destruction shows, yet again, that the Legislature never intended for police agencies to keep evidence indefinitely. The key to the decision to destroy evidence is to examine *when* and *why* it might be helpful to retain evidence. And the answer is definitely *not* a vague “somebody might need it someday.” That’s a packrat’s answer.

Has the Legislature already

addressed the potential future need for evidence in the “biological material” retention statute in Article 38.43 of the Code of Criminal Procedure? Actually, I believe so. I have not been able to think of a single additional category of evidence where one could conclusively establish the guilt or innocence of a defendant other than with DNA. I know that DNA isn’t *always* the smoking gun, but it may come closer than any other category of physical evidence. By requiring an extended period for retention of DNA evidence, our laws have addressed the when and why questions. So *why* are you keeping that beer can in evidence?

### Court Order Required

If you look at all of the destruction statutes, you may be surprised to find that no court order is required in some of them. Certainly the courts do not want to be bothered every time some piece of abandoned or unclaimed property is disposed of. Frankly, neither do you. Remember [in the previous article] when I covered all the kinds of unnecessary items that end up in an evidence room? (Find it online at <http://www.tdcaa.com/node/3894>.) They are still there. So let’s look to see when you *must* obtain a court order before we

*Court Order Needed? continued pg 5*

## CONTINUING THE CASE LAW CONCENTRATION

by Mark Goodner

Program Attorney and Deputy Counsel, TMCEC

The Texas Municipal Courts Education Center maintains a list of cases of interest to municipal courts. These cases can be found at [www.tmcec.com](http://www.tmcec.com) under programs>judges>case law. This collection of case summaries is part three of a continuing look at important municipal case law.

### *Franklyn v. State*<sup>1</sup> and *Givens v. State*<sup>2</sup>

The name of the defendant as stated in the complaint may not be changed by amendment, even if the amendment is approved by the defendant. A complaint or affidavit which is materially amended or

*Case Law continued pg 10*

### INSIDE THIS ISSUE

Around the State .....	2
Complaint Bank .....	12
DPS Driver License Offices .....	2
Ethics Update .....	17
From the Center .....	27
From the General Counsel .....	3
Jury Charge Bank .....	12
Moving Violations .....	11
Registration Form .....	31
Resources for Your Court .....	21
TMCA Annual Meeting .....	2
Traffic Safety Conference .....	29
Unrestrained Children & Unlawful Parking .....	13
Warrant Round Up .....	26

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## AROUND THE STATE

# DPS RE-ALIGNS SERVICES AT DRIVER LICENSE OFFICES

The following information is from a Department of Public Safety (DPS) press release issued October 19, 2009:

Beginning October 29 and 30 [2009] citizens who need to reinstate their driver license or get a copy of their driver record must submit their required documentation online or via federal mail, rather than at DPS offices. With this change, DPS employees will be able to focus on reducing wait times in Driver License offices.

Customers who need to reinstate their licenses or receive their driver record for court dates must go to <http://www.texasonline.com>, the DPS website, or conduct their business via the federal mail.

The elimination of these services at Driver License offices will not change the processing time for driver records or driver license reinstatement, which will remain at seven to 10 business days. However, customers should submit their paperwork in a timely fashion and keep a copy of the paperwork they have submitted.

For more information on driver records and driver license reinstatement, go to [http://www.txdps.state.tx.us/administration/driver\\_licensing\\_control/dlindex.htm](http://www.txdps.state.tx.us/administration/driver_licensing_control/dlindex.htm).

## TMCA ANNUAL MEETING

The Annual Meeting of the Texas Municipal Courts Association will be held in Galveston, June 17 - 19, 2010 at the Hilton Hotel (409.744.5000). There will be educational sessions for judges and clerks beginning Thursday at 1:30 p.m. through Friday at 4:00 p.m. Although **not** approved for credit toward mandatory judicial education for municipal judges, the program will offer CLE credit for attorneys and certification credit for court clerks. The annual business meeting will be held at 9:00 a.m. on Saturday, June 19th. Register by May 25, 2010. For more information, contact Judge Steve Williamson, TMCA 1st Vice President ([steven.williamson@fortworthgov.org](mailto:steven.williamson@fortworthgov.org)).



## FROM THE GENERAL COUNSEL

# A RETROSPECTIVE RECAP OF THE 81<sup>ST</sup> REGULAR LEGISLATURE

by Ryan Kellus Turner

General Counsel & Director of Education, TMCEC

At the beginning of a new year and a new decade, with a crop of new legislation now in full effect, let us reflect on all that was the 81st Regular Legislature (with an eye to the future). In terms of legislation affecting municipal courts, 2009 was a year to remember. In the three months following the end of Session, the TMCEC staff attorneys fielded more than one thousand questions relating to new legislation. This is par for the course. It is how the legal staff “gets a grip” on the content of new law and gauges where to focus training efforts. However, in terms of legislation impacting municipal courts, something was strangely different this year. As any veteran of past sessions can attest, there were an exceptional number of bills with too many loose ends and unanswered questions. Thus, if you have been frustrated by some of the most recent legislative enactments, you are in good company.

In this issue of *The Recorder*, Cathy Riedel explains how new legislation, H.B. 3389 (a new court cost on moving violation convictions to fund the Civil Justice Fund), requires courts to carefully scrutinize the classification of offenses. Katie Tefft delves into the morass caused by H.B. 3095 and S.B. 52 (both bills providing penalties for parking in places designated for persons with disabilities). She also takes you inside the interpretive hullabaloo of S.B. 61 (child safety seats; offense and penalties).

This is not to say that it was all bad. To the contrary, there were a number of good bills. So let us begin by stressing the positives of certain new legislation (and then vent a little).

### The Good

#### **The Marriage Bill (S.B. 935)** –

Many municipal judges thought that the day they would have the authority, long held by all other judges in Texas, to conduct civil marriage ceremonies would never come. For decades, the inability of municipal judges to conduct civil marriage ceremonies hindered relations between municipal judges and justices of the peace. The issue was divisive, and for decades it prevented cooperative efforts. As judges of local trial courts of limited jurisdiction, such courts constituting 60 percent of the Texas judicial system, municipal judges and justices of the peace have a mutual interest in a broad spectrum of issues. Especially when it comes to legislative matters, local trial courts stand to gain more by working together. Let us hope that municipal judges and justices of the peace can, in the future, identify areas of agreement and work together for the benefit of local trial courts and the communities they serve.

#### **The Blood Draw Warrant Bill**

**(S.B. 328)** – Whether or not a judge is an attorney judge in a court of record is irrelevant to a magistrate’s determination of probable cause.

This limitation, which was contained in the old law, simply limited the number of individuals who could issue blood draw warrants. Now that any attorney who is a judge can, in their capacity as a magistrate, sign a blood draw search warrant, the number of municipal judges authorized to issue such a warrant has increased. Contrary to the initial fear of some, there is no sign that this bill has resulted in more requests for such search warrants, nor has it resulted in more telephone calls in the wee hours of the morning. This may be attributed to the fact that under the new law there are more circumstances where blood may be legally drawn without a search warrant.

#### **Statute of Limitations for Class C Misdemeanors (S.B. 410)** –

The statute of limitations for a Class C misdemeanor, as is with all misdemeanors, is two years. As most people have long believed, the filing of a complaint (read “charging instrument”) stops the statute of limitations in a Class C misdemeanor case and activates the jurisdiction of a municipal or justice court. Citations, which act both as a substitute for a full custodial arrest and a limited duration quasi-charging instrument for defendants not wanting to contest the charges against them, do not toll the statute of limitations.

#### **The Mandatory Filing of a**

**Complaint (S.B. 413)** – While a citation does serve as a limited duration quasi-charging instrument

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for defendants not wanting to contest their guilt of a Class C misdemeanor, the filing of a formal charging instrument (the complaint) tolls the statute of limitations. This bill answers a recurring question: what should occur if the defendant fails to appear? The answer: file a complaint. Why? The defendant's failure to appear does not stop the statute of limitations and once the two-year statute of limitations period has run, the prosecution of the offense is generally barred. S.B. 413 requires the State to file a complaint when a defendant fails to appear and enter a plea to a citation in a Class C misdemeanor case. This ought to be relatively easy in the age of automation. Requiring a complaint when a defendant fails to appear and enter a plea will toll the statute of limitations and permit prosecutions for Class C offenses more than two years after the date of the offense.

**Commitment Hearing for Capias Pro Fine by Electronic Means (S.B. 414)** - In 2007, H.B. 3060 (80th Regular Legislative Session) laid the ground work for clearing up years of confusion surrounding various writs (capias, warrant, and capias pro fine). As a result of some last minute amendments by its sponsor, it also mandated that commitment determinations (and a "hearing") for capias pro fine arrests occur by the next business day, and that such commitment orders be done in writing. While these were good amendments, most municipalities do not have their own jail. Consequently, the last minute changes effectively strapped Texas cities (especially in rural areas) with the cost of either transporting capias pro fine arrestees to the court or transporting the judge to the jail. With high speed internet becoming more available statewide and video conferencing software becoming more affordable, this bill should meet

the needs of all judges who utilize the capias pro fine (especially if the city does not have its own jail or the jail is not near the city). Investing in the infrastructure to conduct a capias pro fine commitment hearing by electronic means is an ideal expenditure of the municipal court technology fund. Just in time. The price of gasoline is roughly a dollar higher than it was at this time last year.

**Prohibition on Using Traffic Revenue as a Basis for Not Reappointing a Municipal Judge (S.B. 420)** - Regardless if a city chooses to elect a municipal judge or appoint a municipal judge, the people of Texas want fair, impartial judges, not bean counters in robes who rubber stamp every defendant guilty while keeping one eye on the till. Section 720.002(c) of the Transportation Code long undermined one of the primary purposes of the statute: specifically, prohibiting municipal governments from using revenue as a basis for reappointing municipal judges. With the repeal of Section 720.002(c), let us all say good riddance.

## **The Bad (and the Ugly)**

**Nondisclosure Orders in Cases Involving Children (S.B. 1056)** - This is proof positive that the road to hell is paved with good intentions. Unfortunately, this is what can happen when a bill is tacked onto other legislation at the end of Session. Though many people in Texas believe that there must be parity between the treatment of children adjudicated for fine-only offenses in criminal court with children adjudicated for comparable conduct in juvenile court, this bill is so plagued with application problems that sadly its legislative intent is unlikely to be realized without a complete legislative overhaul.

The mechanics of non-disclosure are generally understood in the context of its use in county and district courts. Its expanded use in municipal and justice courts, however, is riddled with logistical problems and vagaries. The process for obtaining non-disclosure, contained in Section 411.081 of the Government Code, was designed for use in courts that adjudicate fewer cases. It was never intended for the large volume of juvenile cases adjudicated in municipal and justice courts. As illustrated by various provisions in Chapter 45 of the Code of Criminal Procedure, rather than using a "one size fits all" approach, sometimes the best solution is to adapt a concept so that it can be utilized more efficiently in municipal and justice court.

**Nickeled and Dimed** - Early in the Session, it was rumored that, in light of the worst economic downturn since the Great Depression, an influential member of the Texas Senate made it known that there would be no new court costs passed into law during the 81st Regular Session. While no *existing* court costs were increased, the promise of no new court costs was not kept. Rather, two new court costs were created: H.B. 3389 (a new 10 cent court cost on moving violation convictions to fund the Civil Justice Fund) and S.B. 61 (a new 15 cent court cost on convictions relating to improper restraint of a child passenger in a safety seat system).

These two bills highlight some issues that really deserve to be memorialized and shared with your state representative and senator.

First, from a court administration perspective, it takes as much time and money to implement the collection of a 10 cent court cost as it does a \$50 court cost. Typically, statutes allow a court to retain 10 percent of a state cost as a collection fee. Thus,

hypothetically, a \$50 state court cost would allow local courts to recoup their cost by means of a \$5 collection fee. On the other hand, 10 percent of a dime is one red penny. Thus, in the case of the new Civil Justice Fund court cost, it will take a lot of pennies, and a lot of time, for the average rural municipal court to recoup their costs for implementing such a court cost.

Second, whatever happened to the promise of “consolidated court costs?” In 2003, the Legislature decided that court costs in criminal cases had become unnecessarily complicated and difficult to administer. Consolidated court costs promised to make it easy. Rather than having to figure out which costs applied, there would simply be one flat fee. The flat fee would, in turn, be remitted to the State and then prorated among various designated funds. Unfortunately, this promise was not kept. By the time the next session began, the Legislature began creating new court costs rather than simply adding them to the index of consolidated court costs. Today the consolidated court cost is just one of the many other court costs that are calculated together. It need not be so complicated. Would it not be wonderful if the Legislature took another look and actually stuck to the notion of a consolidated court cost?

Third, for purposes of imposing court costs, a singular definition of “conviction” in state law is long overdue. While most new court costs have a provision that states, for purposes of collecting the cost, a “conviction” includes a finding of guilt and any type of deferral in final disposition (*i.e.*, DSC, deferred disposition, teen court, etc.), such is not always the case. Consider S.B. 61. No such provision was included. Thus, under its provisions, the new 15 cent court cost is only imposed when the defendant is found guilty

of improper restraint of a child passenger in a safety seat system. It is rumored that this court cost will cost over a million dollars for local governments to implement and that it will generate in the ballpark of \$10,000 per year for the State of Texas. While raising money for the purchase of child passenger safety seat systems for low income families is a noble and worthy goal, most cities and counties would have been happier to “pass the hat” than implement another state court cost.

It has been nearly a decade since a singular definition of “conviction” was recommended to the Legislature. On March 12, 2000, Texas Comptroller Carol Keeton Rylander, issued, as required by Senate Concurrent Resolution 12 (76th Regular Legislature), a report entitled *Issues and Recommendations Regarding the Structure of State Court Costs and Fees*.<sup>1</sup> Recommendation 4 of the report stated:

A single definition of “conviction” should be applied uniformly to all court costs. A consistent definition could ease local administrative burdens by clarifying which court costs apply in various situations. The definition suggested by the cities and counties should apply to all court costs uniformly. ... This recommendation would produce no fiscal impact on state funds, but would reduce the administrative burden on cities and counties.

Though it has been more than a decade since this recommendation was made to the Legislature, it is better late than never.

Mark your calendars. Pre-filing for new legislation begins on November 8, 2010.

<sup>1</sup>Available on-line at <http://www.window.state.tx.us/specialrpt/scr12/index.html>.

**New court costs took effect January 1st. Download the updated court cost chart at [www.tmcec.com/tmcec/resources/charts/](http://www.tmcec.com/tmcec/resources/charts/).**



*Court Order Needed?  
Continued from pg 1*

talk about when you do not have to get one.

## **Firearms and Other Seized Weapons**

Weapons seized in connection with an offense involving the use of a weapon or under Chapter 46 of the Penal Code [weapons offenses except prohibited weapons and weapons that are stolen property] shall be held by the law enforcement agency making the seizure. If it was not seized pursuant to a search or arrest warrant, an inventory of the seized weapons must be delivered to a magistrate.

If there is a prosecution ending with a conviction or deferred adjudication for an offense under Chapter 46 of the Penal Code, the defendant may request the court in which the case was handled to return the weapon. The request must occur before the 61st day after the date of the judgment.

The weapon shall not be returned but ordered destroyed or forfeited to the state for use by the law enforcement agency or by a county forensic lab if:

1. no request for return has been made before the 61st day;
2. the person has a previous conviction under Chapter 46 of the Penal Code;
3. the weapon is a prohibited weapon;
4. the offense was committed in or on the premises of a playground, school, video arcade facility, or youth center; or
5. the court determines based on the prior criminal history of the defendant or based on the circumstances surrounding the commission of the offense that possession of the seized weapon would pose a threat to the community or one or more individuals.

If the person found in possession of a weapon is convicted of an offense involving the use of a weapon (presumably other than under Chapter 46),<sup>1</sup> the court entering judgment shall order the destruction of the weapon or forfeiture to the state for use by the law enforcement agency or county forensic lab within 61 days of the date of the conviction. If no order is made, the law enforcement agency may request an order of destruction or forfeiture from any magistrate.

If there is no prosecution or conviction for an offense involving the weapon seized, the magistrate to whom the seizure was reported shall, within the stated time (61 days after determining there will be no prosecution) period, notify in writing the person found in possession of the weapon that the person is entitled to the weapon upon written request to the magistrate.

1. If the person makes the written request within 61 days of the notification, the magistrate shall order the weapon returned.
2. If the person does not make a timely written request

(within 61 days from the date of notification) before the 121st day after the date of notification, the magistrate shall order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the magistrate.

3. The law enforcement agency holding the weapon may request an order of destruction or forfeiture from the magistrate if no order has been made within the 121 days from the date of notification.

### **Gambling Evidence, Prohibited Weapons, Obscene Materials, et al**

Article 18.18 of the Code of Criminal Procedure is the statute that deals with items which are generally illegal to possess and should not be returned to the owner. In addition to prohibited weapons, it consists of a jumble of categories including gambling paraphernalia, criminal instruments, obscene devices or material, child pornography, scanning devices or re-encoders, and dog-fighting equipment.<sup>2</sup>

#### **Prohibited Weapons**

Prohibited weapons are treated differently from the disposition of other firearms or seized weapons covered by Article 18.19. Texas, more so than many states, respects the rights of gun owners to keep their firearms except in specific situations. Not so for prohibited weapons.

When there is a conviction for an offense involving a prohibited weapon, the court entering the judgment of conviction shall order the prohibited weapon destroyed or forfeited to the law enforcement agency that initiated the complaint. Notice that the statute says “an

offense involving a prohibited weapon.” This presumably means any offense, not just a weapons charge, under Section 46.05 of the Penal Code. If the murder weapon is a sawed-off shotgun (a short barrel firearm), then this statute governs, meaning that the prosecutor in a case involving a prohibited weapon should be thinking about that weapon when negotiating a plea agreement. It should be made clear to the defendant that the weapon will not be returned. Furthermore, the judge should be asked to include a sentence ordering the destruction (or forfeiture) of the prohibited weapon in the judgment.

The statute anticipates that the destruction order by the convicting court will be entered within 30 days. If more than 30 days have passed since sentencing, any magistrate in the county of the offense may enter the order. Notice the short time frame?

If there is no prosecution for the prohibited weapon that has been seized, the law enforcement agency must make a motion “in a timely manner” after the prosecutor informs it in writing that no prosecution will arise (preferably right after notice). There are some additional notice requirements to the person found in possession and an opportunity to appear and show cause before a magistrate why the prohibited weapon should not be destroyed, but the bottom line is that unless that person can show by a preponderance of the evidence that the weapon is NOT a prohibited weapon and that he or she is entitled to possess it, destruction is mandatory.<sup>3</sup>

#### **Other Illegal Items**

What do gambling devices, criminal instruments, obscenity, child pornography, and scanning devices or re-encoders have in common? They are all included in the same statute for

destruction. Why? Because when it is illegal in most situations to possess or use something, prosecutors shouldn't put it back into circulation!

When there is a final conviction<sup>4</sup> for the following offenses, the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, instrument, obscene device or material, child pornography, or scanning device or re-encoder be destroyed or forfeited to the state.<sup>5</sup>

The offenses include:

- possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia (Penal Code § 47.06);
- offenses involving a criminal instrument (Penal Code § 16.01)
- offenses involving an obscene device or material (Penal Code §§ 43.22-23, 43.25);
- offenses involving child pornography (Penal Code § 43.26);
- offenses involving a scanning device or re-encoder (Bus. & Com. Code §§ 35.60 and 522.001); and
- offense involving dog fighting (Penal Code § 42.10).

If there is no final conviction, the same procedure as that used for prohibited weapons is specified.<sup>6</sup> Again, the person found in possession or any person interested in the evidence may appear before the magistrate and show cause why the item should not be destroyed. Unless the item can be proved by a preponderance of the evidence that it is not from a prohibited category, it will be destroyed or forfeited.

Interestingly enough, the statute allows any magistrate in the county to enter a destruction order for prohibited weapons after 30 days, but the same permission is not

specifically granted for the remaining categories. Frankly, this is probably an oversight in the statute.

### Stolen Property

Chapter 47 of the Code of Criminal Procedure governs the disposition of stolen property and any other property acquired in a manner which makes the acquisition a penal offense.<sup>7</sup> When an officer seizes property alleged to be stolen, he or she is supposed to immediately file a schedule of the property and its value with the court having jurisdiction of the case. The officer is also supposed to notify the court of the names and addresses of each party who has a claim to possession of the seized property.<sup>8</sup> If the ownership of the stolen property is contested or disputed, the officer with custody of the property shall hold it subject to the order of the proper court.<sup>9</sup>

This all sounds very logical and organized, but in many counties the "court having jurisdiction of the case" may transfer from a JP or municipal court where a complaint is filed and warrants issued, to a county or district court where the criminal charges will actually be prosecuted. If a criminal action related to the stolen property is not pending, certain judges may hold a hearing to determine the right to possession of the property. This "property hearing" may be done by a district judge, county court judge, statutory county court judge, justice of the peace having jurisdiction as a magistrate, or a municipal judge having jurisdiction in the city where the property is being held. In Williamson County, most property hearings are done at the municipal or JP level.

The court which conducts the hearing has three choices:

1. order the property delivered to whomever has the superior right to possession, without

conditions;

2. order the property delivered to whomever has the superior right to possession, subject to the condition that the property be made available to the prosecutor if needed for future prosecutions; or
3. award custody of the property to a peace officer pending resolution of any criminal investigation regarding the property.<sup>10</sup>

If the actual owner can't be determined, the court shall order the peace officer to:

1. deliver the property to a government agency for official purposes;
2. deliver the property to the person designated by a municipality (PDA), county purchasing agent (CPA), or sheriff to be treated like abandoned or unclaimed property; or
3. destroy the property.

There is no specific time by which the property hearing must occur. Clearly from the statute's wording, the hearing may even occur before an investigation is complete when charges may be anticipated but have not yet been filed. Most of the time when a true owner is known and not in dispute, law enforcement will return the property to the owner without the necessity of a property hearing. It is only when ownership is uncertain that the officer is required to hold the property subject to a court order.

When there is a trial for theft or any other illegal acquisition of property that is a crime, the trial court shall order the property be restored to the "person appearing by proof to be the owner." While the case is still pending, the trial judge may, upon hearing, make a written order

directing the property to be restored to the true owner.<sup>11</sup> Article 47.04 is nearly identical but calls the hearing an examining trial and, upon motion by the state, authorizes the court to make a written order directing the property be restored subject to the condition that it be made available to the state or by order of any court with jurisdiction over the offense to be used as evidence.

If the prosecuting attorney gives written consent, any magistrate having jurisdiction in the county where the case is pending may hold a hearing to determine the right to possession of property subject to the Certificate of Title Act found in Chapter 501 of the Transportation Code. If (stolen) property is not claimed within 30 days from the conviction, it is treated like abandoned or unclaimed property.<sup>12</sup>

## Court Order Optional

### Biological Material Evidence

Although Article 38.43 of the Code of Criminal Procedure requires that the convicting court be notified when the decision to destroy evidence containing biological material is made, there is no follow-up requirement that the court enter an order actually permitting the destruction. My recommendation still stands, however, that prosecutors apply for an order authorizing the destruction once the defendant and last attorney have been notified and the applicable time periods have passed without any objection being received. It is a simple process to tell the judge that notice has been properly given and no objection has been received. It takes away the appearance that the prosecutor, clerk, or law enforcement agency has unilaterally decided to destroy evidence, thereby avoiding accusations of improper destruction.

### Controlled Substance Plants

A controlled substance plant is a plant from which a Schedule I or II controlled substance may be derived. Marijuana is a controlled substance plant. Section 481.152 of the Health and Safety Code specifically authorizes the seizure and forfeiture to the state without the necessity of a court order if the plants are wild growth, the owners or cultivators are unknown, or the plants have been planted, cultivated, or harvested in violation of the Texas Controlled Substance Act.<sup>13</sup> Don't ask me why, but unharvested peyote growing in its natural state is excepted from summary forfeiture.<sup>14</sup>

If a controlled substance plant is seized and summarily forfeited, the department or a peace officer may destroy the controlled substance plants under the rules of the department and without a court order OR a court order for destruction (or other disposition) may be obtained under Section 481.159.<sup>15</sup>

### Controlled Substance Property<sup>16</sup>

Controlled substance property is defined to include controlled substances, mixtures containing a controlled substance, controlled substance analogue, counterfeit controlled substances, drug paraphernalia, chemical precursors, chemical lab apparatus, and raw materials.<sup>17</sup> Marijuana is also a controlled substance.<sup>18</sup> The Health and Safety Code authorizes the forfeiture without a court order and/or the destruction without a court order according to the rules of the department. However, as in Section 481.152, a court order may be obtained pursuant to Section 481.159 for the disposition/destruction of controlled substance property.

For both controlled substance property and plants, there is no specific time frame set out for the

destruction, nor does it specify which courts may issue the optional court order. This may differ from jurisdiction to jurisdiction. In Williamson County, the justice of the peace courts are generally used in all drug cases except those involving a trial.

### No Order Required Abandoned or Unclaimed Property<sup>19</sup>

The category described as "abandoned or unclaimed property" encompasses a wide range of property that may end up in the evidence room. Law enforcement acts as a repository for all sorts of abandoned vehicles, bicycles, found weapons, and assorted items that are turned in because the owner is unknown. The statute does **not** cover the following:

- contraband subject to forfeiture under Chapter 59;
- whiskey, wine and beer;
- property that has been ordered returned by a magistrate to the person entitled to possession; or
- property held as evidence, *i.e.*, property related to a charge that has been filed or a case under investigation.

When this type of property remains unclaimed for 30 days,<sup>20</sup> it should be delivered to either 1) the PDM if seized by a municipal peace officer or 2) the CPA where it was seized if seized by any other peace officer. If there is no county purchasing agent, the property shall be disposed of by the sheriff.<sup>21</sup>

**If the owner is known**, notice of the intended disposition shall be sent by certified mail to the last known address of the owner, giving the owner 90 days to claim it. **If the owner or address is unknown and the value is \$500 or more**, the PDM, CPA, or sheriff must publish

a notice in a newspaper and allow 90 days to claim from the date of the publication. If unclaimed, there must be an additional notice published in the newspaper 14 days before the date of sale. **If the owner or address is unknown and the value is less than \$500**, the PDM, CPA, or sheriff may sell or donate the property. No notice by publication is required.

If all the provisions of the statute have been met and the property is scheduled for disposition, the law enforcement agency that originally seized the property may request and have the property converted to agency use. The statute does not specify to whom that request should be directed, but in the absence of specific instructions, it appears that the request may be simply directed to the PDM or the CPA. The property may also be transferred to another law enforcement agency for that agency's use. When the property is no longer useful, it should be returned to the PDM, CPA, or sheriff for disposition.

### **Excess Quantities of Drugs<sup>22</sup>**

When a large seizure of controlled substance property or plants is made, the law enforcement agency which made the seizure is authorized to destroy the excess quantity before the case is disposed and without obtaining a court order. There are very specific steps which must be followed in order to preserve a sufficient quantity for testing and for discovery. These steps were discussed in a previous article and will not be repeated here.

Included in the excess quantity statute you will also find the authorization to destroy without a court order items which consist of hazardous waste, residuals, contaminated glassware, associated equipment, or by-products for illicit chemical laboratories. When the items either a) created a health or environmental hazard, or b) are not

capable of being safely stored, they may be forfeited and destroyed rather than placed into evidence.

### **Explosive Weapons and Chemical Dispensing Devices**

In Article 18.181 of the Code of Criminal Procedure, the Legislature clearly recognizes the inability of certain types of evidence to be safely stored and preserved. Without requiring a court order or any other type of intervention, law enforcement is authorized to destroy explosive weapons after steps are taken to photograph and document the weapon prior to destruction and the effects of any destruction. Because the destruction is allowed prior to any criminal case conclusion, the statute specifically makes admissible representative samples, photographs, and records made of the destruction process, in lieu of the actual weapon itself.

### **The Moral of this Story**

Having made this journey through the land of evidence destruction, I have come back to my initial conclusions. The evidence destruction statutes are scattered all over, overlap in some instances, are hard to understand, and are occasionally vague. There are too many courts involved and not enough direction for a prosecutor or an evidence technician to ever be absolutely sure that they are doing it correctly. The time schedules are inconsistent depending upon who must be notified and what manner of notification is required.

There is some good news, however. Somewhere along the way somebody gave some thought to whether and when evidence in a criminal case should be released, returned, or destroyed. While they may not have gotten it perfect, the underlying concepts are solid. Evidence is only useful for a specific case and for a finite amount of time. When the

investigation and prosecution are concluded, the evidence should be disposed of once any applicable statute mandating retention has been complied with fully. Let's be careful out there!

<sup>1</sup> The Texas Parks and Wildlife Code also allows a weapon to be forfeited or destroyed when there is a conviction for certain Parks and Wildlife Code offenses. Sections 61.0221 and 62.017, Parks and Wildlife Code.

<sup>2</sup> Dog fighting equipment includes the dogs which may be forfeited or destroyed. If destruction is necessary, it must be performed by a veterinarian licensed in Texas or by trained personnel in an animal shelter or humane society if not vet is available. Article 18.18(a), Code of Criminal Procedure.

<sup>3</sup> Article 18.18(b)-(e), Code of Criminal Procedure.

<sup>4</sup> Deferred adjudication is not a final conviction for purposes of this section.

<sup>5</sup> Article 18.18(a), Code of Criminal Procedure.

<sup>6</sup> Article 18.18(b)-(e), Code of Criminal Procedure.

<sup>7</sup> Article 47.11, Code of Criminal Procedure.

<sup>8</sup> Article 47.03, Code of Criminal Procedure.

<sup>9</sup> Article 47.01, Code of Criminal Procedure. Note: Property governed by Chapter 371 of the Finance Code must be held regardless of whether ownership is disputed.

<sup>10</sup> Article 47.01A, Code of Criminal Procedure.

<sup>11</sup> Article 47.02, Code of Criminal Procedure.

<sup>12</sup> Article 47.06, Code of Criminal Procedure.

<sup>13</sup> Chapter 481, Health and Safety Code.

<sup>14</sup> Section 481.152(b), Health and Safety Code.

<sup>15</sup> Section 481.152(d), Health and Safety Code.

<sup>16</sup> Section 481.153, Health and Safety Code.

<sup>17</sup> Section 481.151(1), Health and Safety Code.

<sup>18</sup> Marihuana is a Schedule I hallucinogenic substance in the 2009 Controlled Substance schedules as published in the January 2, 2009 issue of the Texas Register. See also [http://www.dshs.state.tx.us/dmd/control\\_subst\\_sched.shtm](http://www.dshs.state.tx.us/dmd/control_subst_sched.shtm).

<sup>19</sup> Article 18.17, Code of Criminal Procedure.

<sup>20</sup> Although the start date is not specified, the 30 days should begin with the discovery and collection of the abandoned or unclaimed property.

<sup>21</sup> Article 18.17(a), Code of Criminal Procedure.

<sup>22</sup> Arrest was suppressed. Section 481.160, Health and Safety Code.



changed is no longer the affidavit of the affiant and is therefore not the sworn accusation of anyone.

**Guerra v. Garza**<sup>3</sup>

Qualified magistrates have the power to set bail. However, if bail has already been set by a qualified magistrate, only the court before which the case is pending may alter the amount or type of bail. Until a charging instrument is filed, the magistrate that enters orders under Article 15.17 of the Code of Criminal Procedure possesses sole jurisdiction of the defendant’s charge. Once a charging instrument is filed in a court with jurisdiction, the court assumes jurisdiction, and the magistrate has no further jurisdiction or responsibility.

**Hill v. State**<sup>4</sup>

A *Batson* motion or objection that the opposing party made a peremptory strike based upon race is timely so long as it is made before the jury is impaneled and sworn. In *Hill*, the appellant lodged his objection after the peremptory strike list had been delivered and the stricken venire members excused but before the jury was sworn, and it was found to be timely.

**In re Bell**<sup>5</sup>

When evaluating whether an act should be considered direct contempt, an affront to a judge’s personal sensibilities should not be confused with obstruction to the administration of justice. Offensive comments, even if spoken in open court, are not contemptuous unless they are disruptive or boisterous.

**Kindley v. State**<sup>6</sup>

A fundamental right of a defendant is notice of the specific charges filed against them. In *Kindley*, the court

said that a charging instrument must notify a person of the offense so that he or she may prepare a defense. A complaint provides notice and is not defective if it is clear, concise, and would notify anyone of reasonable intelligence of the nature of the charge.

**Miller v. State**<sup>7</sup>

When a magistrate is determining probable cause, the “four corners” doctrine prohibits information not in the affidavit from being considered. In *Miller*, the only affidavit in support of arrest was the conclusory statement of the officer. Such an affidavit is insufficient to establish probable cause for a neutral and detached magistrate to issue an arrest warrant.

**Montoya v. State**<sup>8</sup>

All motions for continuance must be sworn to and in writing in order to be appealed. In *Montoya*, the appellant made an oral motion asking for a two day continuance, and the trial court denied the motion. Because the appellant’s motion for continuance was neither in writing nor sworn to, the Court of Criminal Appeals found that nothing was presented for review.

**Naff v. State**<sup>9</sup>

A person swearing to a complaint in municipal court may do so based on information contained in the citation. Although the prosecutor’s secretary swore to the complaint and did not have firsthand knowledge of the events, there is no such requirement that the person swearing do so on firsthand knowledge, and she did so based upon information contained in the citation written by the police officer.

*Naff* is also useful as it states that driving an automobile is a privilege and not a right.

**Sharp v. State**<sup>10</sup>

A municipal court clerk does not

have the authority to issue a *capias*. In *Sharp*, a municipal court clerk issued a *capias*, and a defendant was subsequently arrested. As a result of the arrest, the defendant was charged with and convicted of possession of methamphetamine. Because the *capias* was not issued by the court after a magistrate had determined probable cause, the arrest was illegal and all evidence discovered as a result of the arrest was suppressed.

<sup>1</sup>762 S.W.2d 288 (Tex. App.—El Paso 1988).

<sup>2</sup>235 S.W.2d 899 (Tex. Crim. App. 1951).

<sup>3</sup>987 S.W.2d 593 (Tex. Crim. App. 1999).

<sup>4</sup>827 S.W.2d 860 (Tex. Crim. App. 1992).

<sup>5</sup>894 S.W.2d 119 (Tex. 1995).

<sup>6</sup>879 S.W.2d 261 (Tex. App.—Houston [14th Dist.] 1994).

<sup>7</sup>736 S.W.2d 643 (Tex. Crim. App. 1987).

<sup>8</sup>810 S.W.2d 160 (Tex. Crim. App. 1989).

<sup>9</sup>946 S.W.2d 529 (Tex. App.—Fort Worth 1997).

<sup>10</sup>677 S.W.2d 513 (Tex. Crim. App. 1984).

**DOES THE TEXAS MUNICIPAL COURTS EDUCATION CENTER HAVE YOUR CURRENT EMAIL ADDRESS?**

The Texas Municipal Courts Education Center frequently sends out important information via e-mail. To ensure you receive this information in a timely manner, please keep your e-mail address current with us. Also, please make sure that you show [tmcec.com](http://tmcec.com) as a safe sender. To submit or update your e-mail information, please contact Pat Ek, Registration Coordinator, at 800.252.3718, or [ek@tmcec.com](mailto:ek@tmcec.com).



# MOVING VIOLATIONS AND RULES OF THE ROAD OFFENSES:

## NEW LEGISLATION REQUIRES COURTS TO SCRUTINIZE CLASSIFICATION OF OFFENSES

by Cathy Riedel  
Program Director, TMCEC

New legislation has court personnel scrambling to their code books or the TMCEC 800-line to find the meaning of the term “moving violation.” Why the sudden interest in this seemingly self-explanatory term? As of January 1st, courts are now required to collect the new 10 cent court cost on *moving violations*. This legislation has court personnel throughout the State asking the following questions: “What is the definition of a ‘moving violation’?” “What offenses are categorized as ‘Rules of the Road’ offenses?” “What is the difference?” and “Why does it matter?” (And you thought you had mastered the hard stuff when you learned the definitions of a *capias pro fine*, a judgment *nisi*, and writ of *procedendo*.)

### **First Things First: Why does it matter how the offense is categorized?**

In order to properly categorize and collect the court costs for submission to the State Comptroller, it is necessary for court personnel to understand the distinction between a “moving violation” and a “Rules of the Road” offense. Yes, the task of sorting and tracking court costs has become more complicated.

In 2004, the Legislature made it easy for courts to calculate costs. Section 133.102 of the Local Government Code created one superhighway of court costs—the consolidated court cost. No longer would there be a separate court cost for law enforcement education,

abused children’s counseling, or judicial training. It was a worthy plan. However, since 2004, many arterial court cost roadways have been created in the form of the Time Payment Fee, State Traffic Fund, Court Technology Fund, and others. And now, maneuvering the court cost chart is even trickier: enter the Moving Violation Fee.

### **What is a Moving Violation?**

In 2009, the Legislature instituted a new court cost to fund the “Statewide Repository of Data Related to Civil Justice.” Article 102.022 of the Code of Criminal Procedure, referred to as the “moving violation fee” by the State Comptroller and the “Civil Justice Fee” in the Government Code, is a 10 cent fee to be imposed on all convictions for moving violations. For the purpose of collecting this court cost, a moving violation is defined as an offense: (1) involving the operation of a motor vehicle, and (2) classified as a moving violation by the Texas Department of Public Safety (DPS) under Section 708.052 of the Transportation Code.

The search for the definition of moving violation moves to the Transportation Code. Section 708.052 pertains to surcharge points to be assigned to convictions under the Driver Responsibility Program. Section 708.052(c) states that DPS, by rule, shall designate what constitutes a moving violation. These rules designated by DPS are found in the Texas Administrative Code

(T.A.C.). In these rules, DPS has compiled a list of offenses which constitute moving violations. This is found in Title 37, Part 1, Section 15.89. Section 15.89 defines moving violation as follows:

- (a) Moving violations are defined as an act committed in connection with the operation of a motor vehicle on a public street or highway, which constitutes a hazard to traffic and is prohibited by state law or city ordinance.
- (b) A list of traffic offenses that constitute a moving violation is available in Table 1.<sup>1</sup>

Voila! So, to determine whether or not the Moving Violation Fee (MVF) applies to a conviction, the Code of Criminal Procedure, by way of the Transportation Code and Texas Administrative Code, directs us to apply the fee to all offenses on this list. The list can be found at: <http://info.sos.state.tx.us/fids/200602829-1.html> or can be accessed at [www.tmcec.com](http://www.tmcec.com) under our Legislative Update 2009 page. It is significant to note that this list of moving violations was last updated in 2006.

### **Is there any other time it matters if the offense is a moving violation?**

Yes, the MVF is not the only instance requiring the determination of which offenses constitute moving violations. In Article 45.0511 (a-1) of the Code of Criminal Procedure, the driver safety course statute, a defendant younger than age 25 is required,

in addition to the requirements imposed on older defendants, to be charged with an offense “classified as a moving violation.” This statute, unlike the MVE, does not reference the DPS list in the T.A.C. However, that list contains the only statutory classification of moving violations.

### Now that we’ve cleared that up, what is a “Rules of the Road” offense?

Subtitle C of Title 7 of the Transportation Code is titled “Rules of the Road.” This Subtitle, which includes Chapters 541 through 600, contains the traffic violations concerning speeding, stop signs, traffic lights, driving on the right side of the road, turning, passing, stopping, standing, parking, safety restraints, and vehicle equipment standards. Also contained in Subtitle C is the statute authorizing the \$3 court cost for the Local Traffic Fund (TFC) (Section 542.403) and the \$30

State Traffic Fine (STF) (Section 542.4031).

### Rules of the Road vs. Moving Violations: Why the confusion?

It turns out that most, but not all, Rules of the Road offenses are moving violations and many, but not all, moving violations are Rules of the Road violations. For example, if a person is convicted for no driver’s license (Section 521.021 of the Transportation Code), that person has committed a moving violation. A driver convicted of an open container offense under the Penal Code has also committed a moving violation. Yet, neither defendant has committed a Rules of the Road offense, and neither can be assessed the \$3 TFC or \$30 STF.

As you categorize these offenses, be careful. At this time, the DPS

moving violation list does not include new offenses created by the 81st Regular Legislature, such as using a wireless communication device in a school crossing zone (Section 545.425 of the Transportation Code) or carrying a person under age five on a motorcycle (Section 545.416 of the Transportation Code), even though these offenses cannot be committed in a stopped vehicle. Don’t rely on logic. No matter how your court tracks court costs, be sure to check the moving violation list and the Rules of the Road statutes to verify that you are collecting the right amounts for the right convictions. Meanwhile, we will be watching for a revised moving violation list and will post it on the TMCEC website when it becomes available.

<sup>1</sup> Don’t be confused by the “Yes/No” column on the right side of the list. This column solely pertains to whether or not surcharge points are assessed to the moving violation offenses.

## TMCEC Wants Your Help!

### Complaint Bank

With limited exception, it is a complaint that vests jurisdiction over a criminal case in municipal courts. Article 45.018(a) of the Code of Criminal Procedure defines a complaint, for municipal court purposes, as a sworn allegation charging the accused with the commission of an offense. While Article 45.019 of the Code of Criminal Procedure lays out the statutory requirements for a complaint, there is no magic form or substance required. For those who have tried, drafting a complaint is a fine art and a sometimes daunting task. As a resource, TMCEC has drafted sample complaints for a variety of state law offenses for use by Texas municipal courts; however, every day courts need complaints for the over one thousand fine-only misdemeanors under state law and limitless city ordinance violations. The Complaint Bank is a portal for prosecutors and clerks to submit complaints for use by those cities in need.

To access the Complaint Bank, go to the TMCEC website at: [www.tmcec.com/tmcec/Resources/Complaints](http://www.tmcec.com/tmcec/Resources/Complaints).

### Jury Charge Bank

Once jurisdiction is vested and criminal charges are filed, defendants have a constitutional and statutory right to trial by jury. In FY 2009 Texas municipal courts held over 5,600 jury trials (out of a 99.7% reporting rate). Article 36.14 of the Code of Criminal Procedure provides that “in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury...a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument...calculated to arouse the sympathy or excite the passions of the jury.” To assist courts in meeting this requirement, TMCEC’s Jury Charge Bank was established in 2007 with contributions by Sara Hartin, Presiding Judge of the New Braunfels Municipal Court.

To access the Jury Charge Bank, go to: [www.tmcec.com/tmcec/Resources/Jury\\_Charges](http://www.tmcec.com/tmcec/Resources/Jury_Charges).

The Jury Charge Bank and Complaint Bank both consist of a series of Microsoft Word documents with suggested language for fine-only state law violations and selected city ordinance violations. Download the documents to your own computer, and then edit the language carefully so that it includes the information required for your specific case(s).

We invite prosecutors, clerks, and judges to submit both model complaints and jury charges as resources for other prosecutors and courts in need. Submissions to the Complaint and Jury Charge Banks are welcome, and should be directed to [tmcec@tmcec.com](mailto:tmcec@tmcec.com).

# UNRESTRAINED CHILDREN AND UNLAWFUL PARKING

## USING THE CODE CONSTRUCTION ACT TO DECODE THE CONFUSION

by Katie Tefft  
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In 2001, when the sale of defective cars became a problem, the Texas Legislature stepped in and passed “Lemon Laws” to provide recourse to consumers who were agitated and confused. Now in 2010, new legislation passed by the 81st Regular Legislature has left municipal court personnel agitated and confused. But what can be done when the Legislature hands us lemons?

There may not be any recourse for the agitation, but a little guidance from the Code Construction Act can relieve some of the confusion. Like a legend aids in reading a map, the Code Construction Act aids in reading legislation. Codified in Chapter 311 of the Government Code, the Code Construction Act applies to all laws, amendments, repeals, revisions, and reenactments passed since the 60th Legislative Session (1967). Specifically, provisions in the Code Construction Act can help navigate the chaos surrounding the passage of S.B. 61 (child passenger safety seat offense and penalty) and conflicting amendments to the penalties for parking in spaces designated for persons with disabilities (H.B. 3095 and S.B. 52).

### **Buckle up! It’s going to be a bumpy ride!**

The Legislature strengthened passenger safety restraint laws in Texas by requiring *all* passengers be appropriately restrained, regardless of age or position in the vehicle. That much is clear. The implementation and practical implications of S.B. 61,

however, have left many scratching their heads. So what exactly did S.B. 61 do?

**1. Increased age limit.** Prior to September 1, 2009, Section 545.412 of the Transportation Code made it an offense for a driver to operate a motor vehicle with a child under five years of age and less than 36 inches tall not secured in a child passenger safety seat. Then along came Texas’ “booster seat law” - S.B. 61 - with an effective date of September 1, 2009. Section 545.412 was thus amended, effective September 1, 2009, to make it an offense for a driver to operate a motor vehicle with a child under the age of eight (unless that child is taller than 4’9”) not restrained in an appropriate safety seat.

The statute seems simple, but Section 4(c) of the bill itself creates a warning period: if the offense under the amended statute would not have been an offense under the statute before the amendment, and if the child who is the subject of the offense is otherwise secured in a safety belt, then an officer may issue only a warning and the case may not be prosecuted until June 1, 2010. Not so simple anymore...

Somewhere this misnomer of “old law” and “new law” arose creating a mass of confusion and resulting in varying interpretations across the state. Some argue that because the new law does not go into effect until June 1, and because the new law replaced the old law, there is no offense under the old law - there is no

child safety seat offense period until June 1, 2010. Others interpret the warning period to apply only to five, six, and seven-year-olds, and believe the old law to still be in effect for those under age five.

The Code Construction Act instructs us to presume that in enacted statutes, the entire statute is intended to be effective and a reasonable result is intended.<sup>1</sup> One can then logically presume that in amended statutes, one should look for a construction that can be given effect and reasonably makes sense.

S.B. 61 was *effective* September 1, 2009. Reading only the law and looking only at the bill’s effective date, it is reasonable to conclude that, as of September 1, 2009, all children under age eight (unless taller than 4’9”) are required to be in a child passenger safety seat. It is reasonable to then conclude that those children who were already covered under the law prior to September 1 (under five and less than 36 inches tall) can still be the subject of an offense. The warning period provision introduced only an *enforcement* date, not another effective date. This warning period only applies to those drivers with children now covered under the law that were not covered prior to September 1 (five to seven-year-olds) who are secured in a regular safety belt. No, the officer cannot write a citation for an offense with a subject child this age, but the officer can issue a warning. If it were not against the law, there would be nothing for the officer to issue a warning about.

**Why the warning period?** (These are suggestions only, and not recorded or assumed legislative intent.)

Ignorance of the law is no defense, especially in strict liability traffic offenses. Those parents and drivers who on August 31, 2009 buckled their five-year-old child into a safety belt were following the law, but without this warning period, that same parent could be arrested the very next day for the same behavior. The warning period provides time for the public to learn of the change without risking punishment. It also gives parents and drivers time to get an appropriate child safety seat. As many parents can attest, a respectable seat is not cheap! Finally, the warning period gives parents and drivers time to transition their child into compliance with the new law. It cannot be easy to get a seven-year-old boy back into a “baby seat” when he’s been in a “big boy” seatbelt for the past two years! With rationales like this, the warning period makes sense.

The argument that there is no child safety seat offense-period-until June 1, 2010 does not give the bill full effect (why give an effective date of September 1 if the Legislature did not intend it to go into effect until June 1?) or seem reasonable (if the intent was to increase child safety by requiring more children be restrained in safety seats, why give a nine-month period where no children are required to be in a car seat or booster seat?). Imagine a one-month-old riding in a regular safety belt or, worse, with no belt at all!

**Is there a sensible interpretation that gives full effect to the law?** Yes. It is an offense for a driver to operate a motor vehicle with a child under the age of eight (unless taller than 4’9”) without being secured in a child safety seat, effective September 1, 2009. If the child who is not secured in a safety seat is a five, six, or seven-

year-old and is instead secured in a safety belt, the driver can be issued only a warning, but may not be cited or prosecuted. Beginning June 1, 2010, all drivers may be arrested (or cited) and prosecuted for operating a vehicle with a child under age eight (unless taller than 4’9”) not secured in an appropriate child passenger safety seat.

Of course, other questions arise for which no one has a definitive answer. For example: if an officer stops a driver with a seven-year-old *not* in a child safety seat and *not* in a safety belt, with which offense should the driver be charged? (Remember, the warning period under S.B. 61 only applies to those five, six, and seven-year-olds not otherwise secured in a safety belt.) Section 545.413 makes it an offense for a driver to operate a motor vehicle (or a passenger van) and allow a child under the age of 17—who is not required to be in a child passenger safety seat under Section 545.412—to ride without a safety belt. Could a driver be cited and prosecuted for not having a seven-year-old in a safety seat or a safety belt under the child *safety* seat offense?

**2. Decreased fine.** S.B. 61 amended the punishment for an offense under Section 545.412 to be a fine not to exceed \$25 for a first offense or \$250 for a second or subsequent offense.<sup>2</sup> (Prior to the amendment, the fine was not less than \$100 or more than \$200.) Courts have questioned when the change in the fine amount took or takes effect: September 1 or June 1. Again, S.B. 61 was effective September 1, 2009. All parts of the bill that could be given effect on that date went into effect on that date. The bill text contains no *effective* date to the contrary. The June 1 enforcement date pertains only to the offense and the warning period afforded to those drivers with children newly covered

under the law. Most accept that the change in fine amount took effect September 1, 2009 when the bill took effect. Remember the catchy phrase: *when in doubt, go with the lower amount.*

Though not pertaining to effective date, the Code Construction Act does speak to amendments regarding penalties and punishment for offenses: “if the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.”<sup>3</sup> Thus, any punishment not yet imposed as of September 1, 2009 for a child safety seat offense had/has to conform to the reduced fine amount.

It should be noted that S.B. 61 had no effect on the defense to prosecution found in Section 545.4121 or on the requirement that 50 percent of the fine amount be remitted to the State. It is also interesting to note that if one judges the severity of an offense by the punishment linked to the crime, it is now worse for a driver to operate a vehicle with an unbuckled 16-year-old (\$100 - \$200 fine) than a 16-month-old (\$25 maximum fine). Although it is clear the Legislature intended to strengthen passenger safety restraint laws, it seems they made a U-turn by lessening the punishment here.

**3. New 15 cent court cost.** The confusion about this new cost could fill the new Cowboys stadium. The most commonly asked question: when to begin collecting it? Again, S.B. 61 was effective September 1, 2009. Disregard the enforcement date. Instead look to Section 51.607(c) of the Government Code, which provides that an imposition or change in the amount of a court cost does not take effect until January 1 after the

law takes effect. Most accept that the new cost should be collected starting January 1, 2010. As confirmation, in the recently updated publication, *Court Costs, Fees and Fines for Municipal Courts*, the Comptroller's Office reports that the additional 15 cent court cost on conviction for failing to secure a child passenger in a motor vehicle went into effect on January 1.<sup>4</sup>

**How does this cost get reported?**

The Child Safety Seat (CSS) cost is to be reported monthly, unlike other costs reported quarterly. Because the law does not require any data be submitted, the Comptroller's Office created a payment voucher to be remitted only when there are collected costs to be submitted.

**Download the CSS voucher (Form 40-149) from the Comptroller's website at <http://www.window.state.tx.us/taxinfo/taxforms/40-forms.html>.**

For questions regarding the reporting of court costs, fines, and fees, contact the Comptroller's Miscellaneous Taxes Section at 800.531.5441, ext. 34276 or 512.463.4276 or by email at [court.costs@cpa.state.tx.us](mailto:court.costs@cpa.state.tx.us).

**Does the cost get collected on deferred dispositions or just straight convictions?** See Ryan Turner's "From the General Counsel" column in this issue of *The Recorder* for a discussion on this point.

Thankfully, the confusion surrounding the child passenger safety seat offense will dissipate

come June 1 – and law enforcement (and courts) can move full speed ahead with prosecution of all offenses involving children under age eight not secured in a child passenger safety seat. Until then, buckle up and hang on to the wheel a few more months...

**Wow! That's an expensive parking space!**

Subsections 681.011(g)-(k) of the Transportation Code respectively outline the penalties prescribed for a first, second, third, fourth, or fifth and subsequent offense of unlawful parking in a space reserved for persons with disabilities. The 81st Regular Legislature got tough on those who unlawfully park in these spaces. The problem: both a Senate and a House bill were passed increasing the punishment, but to different amounts.

Which version, then, became effective? (Refer to the chart at the bottom of the page while reading this article.) The Code Construction Act provides that "if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails."<sup>5</sup>

**First offense.** H.B. 3095 increases the minimum fine for a first offense to \$500 and the maximum fine to \$750. S.B. 52 is silent on the punishment for a first offense; it made no amendment to Section 681.011(g).

The Code Construction Act instructs readers to give effect to each part of a law if possible. Because S.B. 52 did not change the punishment for a first offense but H.B. 3095 did, H.B. 3095 controls. Lest there not be any confusion, the new fine range for a first offense of unlawful parking in a space reserved for persons with disabilities, effective September 1, 2009, is a minimum of \$500 and a maximum of \$750.

**Second offense.** H.B. 3095 provides a range of \$550 to \$800. S.B. 52 provides a range of \$500 to \$800. Both provide for 10 hours community service. What is the appropriate minimum fine? Remember, the Code Construction Act states that in cases where two conflicting amendments cannot be reconciled so that effect may be given to both, the latest in date in enactment controls. The latest in date of enactment is defined to mean the date of the last legislative vote.<sup>6</sup> The last vote on H.B. 3095 was taken on May 29, 2009.<sup>7</sup> S.B. 52 - a bit more dramatic - was last voted on May 31, 2009, which makes S.B. 52 the latest in date of enactment.<sup>8</sup> Accordingly, the punishment when it is shown on trial that the defendant has previously been convicted once of the same offense is a minimum fine of \$500 (maximum of \$800) and 10 hours of community service.

**Third offense.** Although both the House and Senate versions agree on the fine range (\$550 - \$800), H.B. 3095 requires 20 to 30 hours community service, while S.B. 52 only requires 20. One could argue that a sentence of a fine and 20

	Prior to 9/1/09	Amendment under H.B. 3095	Amendment under S.B. 52
<b>First offense:</b>	\$250 - \$500 fine	\$500 - \$750 fine	silent
<b>Second offense:</b>	\$300 - \$600 fine	\$550 - \$800 fine & 10 hrs CS	\$500 - \$800 fine & 10 hrs CS
<b>Third offense:</b>	\$300 - 600 fine & 10 - 20 hrs CS	\$550 - \$800 fine & 20 - 30 hrs CS	\$550 - \$800 fine & 20 hrs CS
<b>Fourth offense:</b>	\$500 - \$1,000 fine & 20 - 50 hrs CS	\$800 - \$1,100 fine & 50 hrs CS	\$800 - \$1,100 fine & 30 hrs CS
<b>Fifth offense:</b>	\$1,000 fine & 50 hrs CS	\$1,250 fine & 50 hrs CS	\$1,250 fine & 50 hrs CS

CS = Community Service

hours community service would give effect to both bills, as 20 hours is an allowable amount under both versions. If one determines the bills are irreconcilable, then because S.B. 52 is latest in date of enactment, the penalty would include a flat 20 hours community service.

**Fourth offense.** Again, both the House and Senate versions agree on the fine range (\$800 - \$1,100), but H.B. 3095 requires 50 hours community service, while S.B. 52 only requires 30. According to the Texas Legislative Council's Drafting Manual, "for one act to be given effect in favor of another, the acts must be in irreconcilable conflict, meaning that it is impossible to give effect to one act without abrogating the intended effect of the other act." The House version, apparent from the text itself, intended defendants serve 50 hours. The Senate version requires 30, no more no less. The manual continues: "If it is impossible to read the acts together so that effect may be given to both, the latest enactment is to be read as an implied repeal of the earlier act to the extent of the conflict." As the two versions cannot be read together so that effect may be given to both, go with the latest in date of enactment. Thus, for a fourth conviction, the sentence is a fine of not less than \$800, not more than \$1,100, and 30 hours community service.

**Fifth offense.** Good news here – no confusion! Both H.B. 3095 and S.B. 52 increased the penalty, when it is shown on trial of the offense that the defendant has previously been convicted four or more times of the same offense, to a fine of \$1,250 (note there is no range here) and 50 hours community service.

On an ending note, this is not the first time irreconcilable (or confusing) bills have been passed by a legislature – note the need for the Legislature itself to give guidance on these situations in the Code Construction Act – and it will not be the last. It is a good idea for judges and court personnel to become familiar with all the provisions of the Code Construction Act as these provisions help courts reasonably construe statutes so as to appropriately enforce legislative intent.

<sup>1</sup> Section 311.021, Government Code.

<sup>2</sup> According to the Insurance Institute for Highway Safety, 15 other states have a maximum fine of \$25 for child safety seat offenses and only one state has a maximum fine higher than \$150. See <http://www.iihs.org/laws/ChildRestraint.aspx> for a survey of child safety seat laws in all 50 states.

<sup>3</sup> Section 311.031(b), Government Code.

<sup>4</sup> This publication can be found at <http://www.texasahead.org/lga/>.

<sup>5</sup> Section 311.025(b), Government Code.

<sup>6</sup> Section 311.025(d), Government Code.

<sup>7</sup> H.B. 3095 was passed by the House on May 8, 2009; passed by the Senate with amendments on May 26, 2009; and the House concurred in the amendments on May 29, 2009.

<sup>8</sup> S.B. 52 was passed by the Senate on March 18, 2009; passed by the House with amendments on May 27, 2009; sent to Conference Committee on May 29, 2009; and both the House and Senate adopted the Conference Committee report on May 31, 2009.

## Don't Forget Curfew Ordinances Need Review!

Section 370.002 of the Local Government Code requires that after a city adopts a juvenile curfew ordinance, the city must review and readopt the ordinance every three years. The statute requires that a city:

1. Review the ordinance's effects on the community and on problems the ordinance was intended to remedy;
2. Conduct public hearings on the need to continue the ordinance; and
3. Abolish, continue, or modify the ordinance.

A juvenile curfew ordinance expires if a city does not review and readopt it every three years. For more information on this issue, please contact the TML Legal Department at 512.231.7400 or [legal@tml.org](mailto:legal@tml.org).

- Excerpt from TML publication Legislative Update September 30, 2009, Vol. 24. Used with permission.

## REMEMBER TMCEC

TMCEC Board of Directors and the staff members hope that you will consider making a contribution to the TMCEC 501(c)(3) foundation. These funds will be used to support judicial education for municipal judges and court support personnel in Texas.

TMCEC is a 501(c)(3) non-profit organization. Contributions are tax deductible on the donor's federal income tax return. TMCEC received a "Letter of Determination" in 2006, after making application to become a 501(c)(3). If you wish to contribute, please send checks payable to the Texas Municipal Courts Education Center, 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701. Please indicate in the bottom left hand corner of the check or in a cover letter that this is a contribution to the 501(c)(3). Thank you.

## Examples of Improper Judicial Conduct

The following are examples of judicial misconduct that resulted in disciplinary action by the State Commission on Judicial Conduct in fiscal year 2009. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2009. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in descending order of the severity of the disciplinary action imposed and may involve more than one violation. The full text of any public sanction is published on the Commission website. A copy may also be requested by contacting the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2009. The reader should note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the integrity, impartiality, and independence of the judiciary and further assist the judiciary in establishing, maintaining, and enforcing the highest standards of judicial and personal conduct.

### **CANON 2A: A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.**

- The judge failed to provide a citizen reasonable access to inquest records as required by law. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Order of Additional Education of a Justice of the Peace. (09/22/08).
- The judge failed to obtain the mandatory judicial education hours during fiscal year 2008. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Admonition of a Municipal Court Judge. (05/26/09).
- The judge failed to obtain the mandatory judicial education hours during fiscal year 2008. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Order of Additional Education of a Justice of the Peace. (06/03/09).

### **CANON 2B: A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.**

- In pursuit of an ongoing vendetta against the District Attorney, the judge failed to protect a grand jury from outside influence and made gratuitous and baseless accusations against a lawyer and a judge in a request for a Court of Inquiry. [Violation of Canons 2A, 2B, 3B(5),

4A(1), and 4A(2) of the Texas Code of Judicial Conduct.] Public Reprimand of a Former District Judge. (12/18/08).

- A judge allowed his name and judicial title to be used to solicit funds on behalf of a scholarship program. [Violation of Canons 2B and 4C(2) of the Texas Code of Judicial Conduct.] Private Warning of a Justice of the Peace. (09/22/08).
- After her mother-in-law received a traffic citation, the judge wrote a letter to and telephoned another court in an attempt to resolve the case and obtain favorable treatment for her relative. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] Private Warning of a Municipal Court Judge. (12/18/08).

### **CANON 3B(2): A judge should be faithful to the law and shall maintain professional competence in it.**

- The judge entertained a tenant's ex parte complaint about the landlord's termination of water service to the property; called the landlord by telephone and ordered him to restore water service to the rental property before the eviction hearing took place; and penalized the landlord for terminating water service to the property by refusing to award the landlord past-due rent. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Admonition and Order of Additional Education of a Justice of the Peace. (12/18/08).
- Following an argument with an individual in the judge's office, the judge caused the individual to be detained in county jail on a contempt of court charge, which was later changed to a disorderly conduct charge. Shortly

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after the detention, the judge magistrated and released the individual from custody. [Violation of Canons 2A, 3B(1), and 3B(2) of the Texas Code of Judicial Conduct.] Private Order of Additional Education of a Justice of the Peace. (01/21/09).

- The judge failed to comply with the Code of Criminal Procedure when handling an attorney's timely written requests to appeal his clients' traffic cases. Instead, the judge had the clients served with *capias pro fine* warrants without notice to their attorney and without permitting the defendants the requisite period of time in which to pay their fines or file an appeal bond. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Order of Additional Education of a Justice of the Peace. (01/22/09).
- The judge failed to follow the law and maintain competence in the law when she barred an eviction suit party's non-attorney representative from the courtroom during the eviction proceeding. Further, the judge improperly denied the party's fundamental right to be heard according to law by not allowing the party's agent to assist him in the eviction proceeding. [Violation of Canons 2A, 3B(2), and 3B(8) of the Texas Code of Judicial Conduct.] Private Admonition of a Justice of the Peace. (04/06/09).
- The judge failed to follow the law and demonstrated a lack of professional competence in the law when he summoned individuals to his court to attempt to mediate a dispute between the individuals when no case was pending in his court. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Admonition and Order of Additional Education of a Municipal Judge. (04/06/09).
- The judge relinquished his judicial duties to officers in the police department and allowed them to accept pleas and collect fines and court costs from criminal defendants arrested on Class C misdemeanor or "sight" offenses and/or arrested on outstanding warrants and *capiases*. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] Private Admonition of a Municipal Court Judge. (04/28/09).

### **CANON 3B(3): A judge shall require order and decorum in proceedings before the judge.**

- The judge exceeded his authority by providing parents and the school district with a "safe haven" for the administration of corporal punishment. The judge routinely facilitated and permitted the paddling of juveniles in his courtroom thereby clothing the practice with an improper judicial blessing. This court-sanctioned paddling subjected the students and their

parents to public embarrassment, humiliation, fear and pain. [Violation of Canons 2A and 3B(3) of the Texas Code of Judicial Conduct]. Public Warning of a Justice of the Peace. (03/09/09).

### **CANON 3B(4): A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.**

- The judge allowed his acrimonious relationship with fellow judges to improperly influence his conduct and judgment, and in the process, failed to treat those with whom he interacted in an official capacity, including court personnel, in a patient, dignified and courteous manner. [Violation of Canons 2B and 3B(4) of the Texas Code of Judicial Conduct.] Public Admonition of an Appellate Justice. (12/18/08).
- The judge failed to comply with the law and demonstrated a lack of patience, dignity, and courtesy when he followed a student to her apartment complex, identified himself as a judge, requested that she appear in his court, admonished the student from the bench while wearing judicial robes even though no case was pending before him, and directed the bailiff to issue a citation to the student after becoming annoyed with the argumentative behavior of the student's father. [Violation of Canons 2A, 2B, and 3B(4) of the Texas Code of Judicial Conduct.] Public Admonition of a Justice of the Peace. (12/18/08).
- The judge chastised and directed profanity toward a constable on two separate occasions - one relating to service of process on a small claims defendant and one relating to service of an arrest warrant. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] Private Warning of a Justice of the Peace. (12/02/08).
- Because of prior dealings with a member of a local defense firm, the judge criticized an attorney from that firm who had asked for a continuance in his client's traffic case, questioning his professionalism, integrity, and decency. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] Private Admonition of a Justice of the Peace. (12/18/08)

### **CANON 3B(8): A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties**

between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control.

- The judge initiated a communication concerning a contested motion for summary judgment with an attorney who was his former law partner outside the presence of the other parties or their attorneys. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct.] Private Admonition of a District Judge. (04/16/09).

**Texas Constitution, Article V, Section 1-a(6)A. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section.**

- The judge ignored the Commission's numerous requests and orders that he respond to its inquiries, and knowingly failed to timely file campaign finance reports as required by law. [Violation of Article V, section 1-a(6)A, Texas Constitution, and Canons 2A, 4I(2), and 5(4) of the Texas Code of Judicial Conduct.] Public Warning of a District Judge. (12/18/08).

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## AMICUS CURIAE

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Started in 2001, Amicus Curiae ("Amicus") is a judicial disciplinary and education program intended to address a growing concern of complaints of judicial misconduct relating to impairment, such as drug or alcohol abuse or mental illness. Amicus offers assistance to the judge to address the underlying personal impairment causally connected to the misconduct. Although the confidential referral to Amicus by the Commission through the disciplinary process does not shield the judge from any sanction that the Commission deems appropriate, the Commission recognizes that not all impairment issues result in misconduct. In order to reach out to those judges who may be suffering in silence and who may not be the subject of a complaint as a result of their impairment, Amicus offers a self-referral component to its program, which affords judges an opportunity to seek assistance, in confidence, outside the disciplinary process. For more information about the program, including how to make a confidential referral, please contact the Amicus Program Manager at 512.463.8138.

## NEED A REFRESHER COURSE?

You can access archived webinars on the TMCEC website by going to [http://www.tmcec.com/tmcec/Programs/Webinars/Archived\\_Webinars](http://www.tmcec.com/tmcec/Programs/Webinars/Archived_Webinars). Here you can find course materials that can be downloaded, listen to the recorded version of the webinar, and see the PowerPoint presentations. The following programs can be accessed:

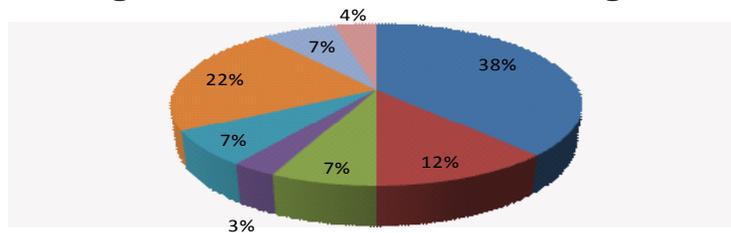
- Ethics & Technology
- Warrant Round Up
- Driver License Update
- Legislative Changes Affecting Juveniles & Minors
- Marriage Ceremonies
- Stress Management
- Red Light Cameras & Appeals
- Status Offenses
- Dismissals
- Driver Responsibility
- Crime Victims
- Juvenile Confessions
- Administrative Judge of the Judicial Region
- Fatigued & Distracted Drivers
- Problem-Solving Courts
- Hearsay Evidence
- Dual Office Holding Dilemmas
- What is a Crime
- Trial 101
- Ethics: Attorneys in Municipal Court
- Prosecuting Dilemmas in Municipal Court
- Enforcement Tools
- Jury Charges
- Blood Warrants
- Points & Surcharges
- Security & Technology Funds
- Juvenile FTA & Failure to Appear

The following webinars are planned for 2010:

- March 10, 2010, Jury Preparation, 10:00 a.m.
- April 7, 2010, Trends in Traffic Safety, 10:00 a.m.
- May 19, 2010, Judicial Appointments, 10:00 a.m.

To register for an upcoming webinar, go to [www.tmcec.com/tmcec/programs/webinars/upcoming\\_webinars](http://www.tmcec.com/tmcec/programs/webinars/upcoming_webinars). For questions about accessing webinars, contact Jameson Crain at 800.252.3718 or [crain@tmcec.com](mailto:crain@tmcec.com).

**Fig. 1 Total Number of Texas Judges\***

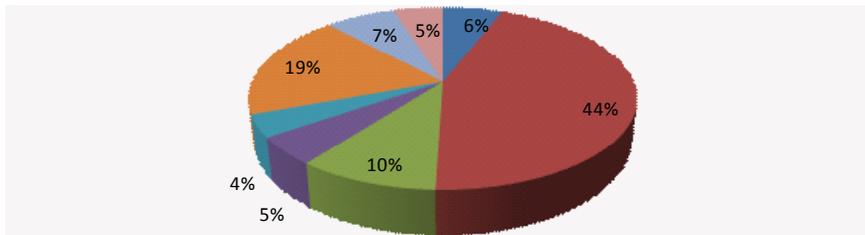


- Municipal, 1458
- District, 449
- County Court at Law/Probate, 245
- Appellate, 98
- Constitutional County, 254
- Justice of the Peace, 822
- Senior/Retired, 277
- Associate, 147

\*3,750 Total Judges

Source: Office of Court Administration (August 2008)

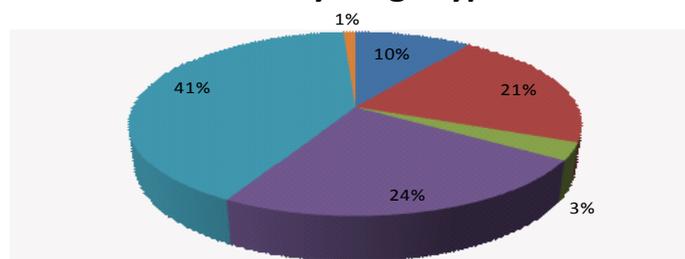
**Fig. 2 Number and Percentage of Cases filed by Judge Type\***



- Municipal, 78
- District, 538
- County Court at Law/Probate, 117
- Appellate, 44
- Constitutional County, 54
- Justice of the Peace, 229
- Senior/Retired, 88
- Associate, 56

\*1,204 Total Complaints Filed

**Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type\***



- Municipal, 7
- District, 15
- County Court at Law/Probate, 2
- Appellate, 17
- Justice of the Peace, 28
- Senior/Retired, 1

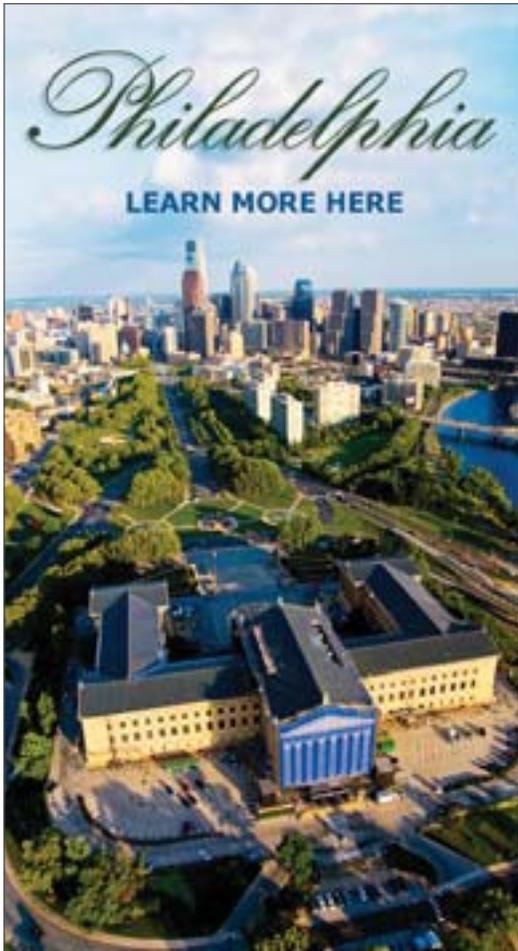
\*70 Total Disciplinary Actions

\* From the State Commission on Judicial Conduct's Fiscal Year 2009 Annual Report



# RESOURCES FOR YOUR COURT

## SAVE THE DATE: *LIFESAVERS 2010*



The National Conference on Highway Safety Priorities is offering its 2010 Lifesavers Conference in Philadelphia, Pennsylvania on April 11 - 13, 2010. For more information, go to [www.lifesaversconference.org](http://www.lifesaversconference.org). The program is filled with many interesting educational sessions, as well as exhibits from traffic safety entities.

## ANNUAL REPORT ON THE TEXAS JUDICIAL SYSTEM YEAR 2009

Each year the Office of Court Administration prepares the Annual Statistical Report for the Texas Judiciary. Shown on the next four pages are statistical information on municipal courts, showing an overall activity report, as well as a profile of the trial and appellate judges in the state. The entire report, as well as reports since 1996, may be accessed on the OCA web site at <http://www.courts.state.tx.us/pubs/annual-reports.asp>. The annual reports include court structure charts, information on jurisdiction, judicial qualifications, and salaries (non-municipal) on all levels of the Texas judiciary. Monthly activity of the municipal courts may be accessed at <http://data.courts.state.tx.us/OCA/ReportSelection.aspx>. These reports are excellent ways to compare the changes in your court's caseload with that of other municipal courts.

**Texas municipal courts are to be congratulated. In FY 2009, 99.7% of the courts reported their data to OCA!**

## CHANGE IN OCA REPORTING FORM

Effective September 9, 2010, the Official Municipal Court Monthly Report form will change. Please go to the OCA website at [www.courts.state.tx.us](http://www.courts.state.tx.us) to download the form and the instructions. The new form will collect more information on active, inactive and reactivated cases, compliance dismissals, contempt cases, drug paraphernalia cases, orders for nonsecure custody, detention hearings, transfers to juvenile court, and more.

Sections 171.1 and 171.2 of the Texas Administrative Code require submission of court activity reports each month to the Texas Judicial Council by no later than 20 days after the end of the month for which statistics are reported. The monthly report is not designed to report everything that a court does nor everything that requires the attention or time of the judge or court support personnel. Instead, the monthly report is designed to provide information required by law or needed by the judicial, legislative, and executive branches of government to make decisions regarding the jurisdiction, structure, and needs of the court system.



# MUNICIPAL COURT ACTIVITY

SOURCE: OFFICE OF COURT ADMINISTRATION, ANNUAL REPORT FOR THE TEXAS JUDICIARY 2009

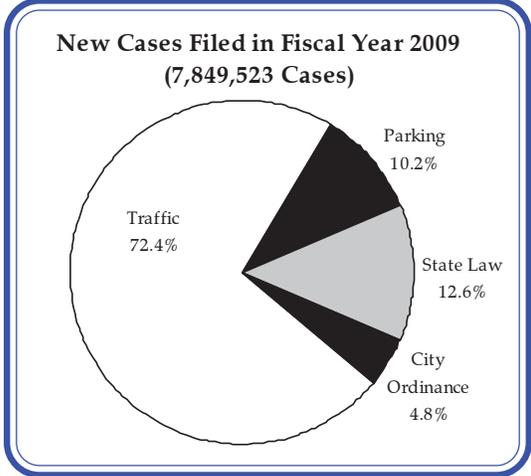
**Cases Filed** – More than 7.8 million cases were filed in the state’s municipal courts in 2009, a decrease of 2.2 percent from the number of new cases filed the previous year. Traffic and parking cases constituted 82.6 percent of new cases filed.

The ten most populous cities, representing 42.4 percent of the state’s population living in cities and towns, accounted for 49.2 percent of all cases filed in municipal courts. Of the ten most populous cities, San Antonio (population 1,351,305) had the lowest per capita filing rate (.28) and Fort Worth (population 703,073) had the highest per capita filing rate (.66). Statewide, the per capita rate of cases filed in municipal courts was .41 cases. The highest per capita filing rate, 33.9, occurred in Westlake (population 211). The second highest per capita filing rate, 10.1, occurred in Estelline (population 155). These rates were considerably higher than the rates in all other cities in the state.

**Clearance Rates** – Municipal courts disposed of 6,946,649 cases in 2009—remaining essentially level with the previous year. Because the number of dispositions remained steady while the number of new cases filed decreased, the statewide clearance rate for municipal court cases rose to 88.5 percent (compared with 86.6 percent the year before). By case type, parking cases had the highest clearance rate (98.1 percent), while state law cases had the lowest clearance rate (78.1 percent).

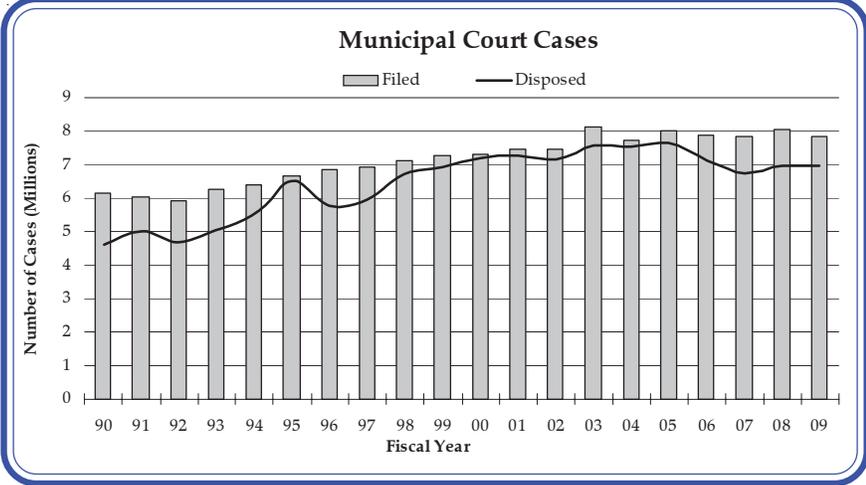
**Manner of Disposition** – In 2009, municipal courts disposed of more than 5.8 million traffic and parking cases. The largest share of these cases, 36.4 percent, were disposed of by payment of a fine (without appearing before a judge) or by a bond forfeiture. Approximately 18 percent were disposed of after a bench trial or other appearance before a judge, 16.4 percent were disposed of after completion of deferred disposition or drivers’ safety, and only 0.1 percent were disposed of by a jury trial.

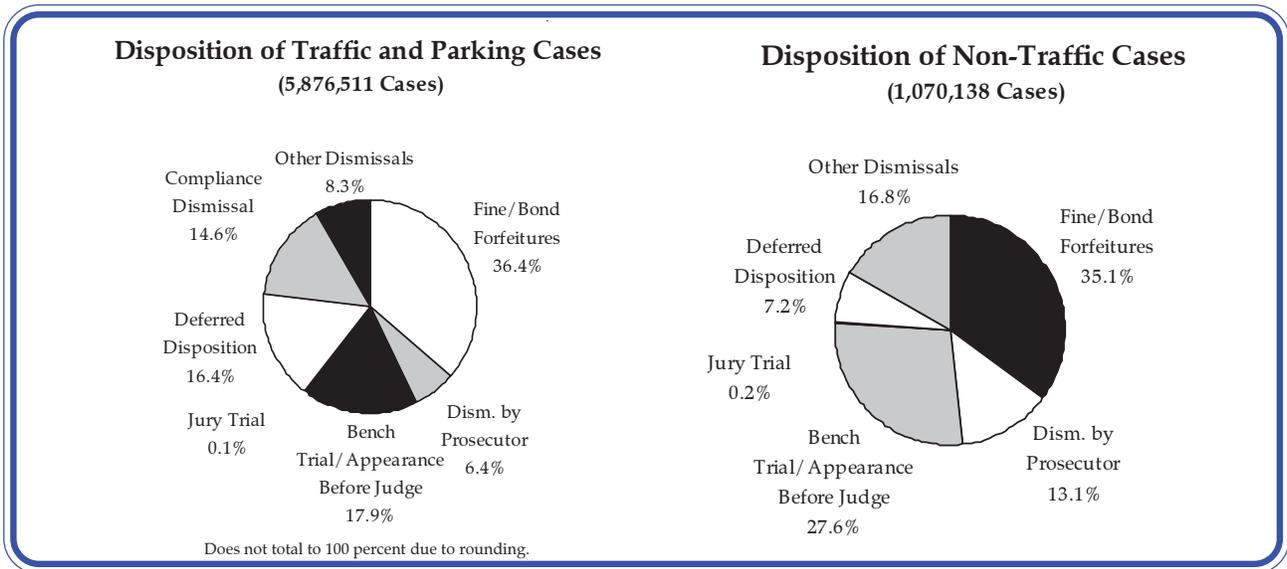
Municipal courts also disposed of more than one million state law and city ordinance cases (i.e., non-traffic cases). Approximately 35 percent of these cases were disposed of by payment of a fine or by bond forfeiture. While the jury trial rate for these cases (0.2 percent) was similar to the rate for traffic and parking cases, defendants in state law and city ordinance cases were more likely to have a bench trial or other appearance before the judge (27.6 percent) to dispose of the case.



**Filings per Capita  
Fiscal Year 2009**

Cities with Highest Filings per Capita	Filings per Capita in 5 Most Populous Cities
Westlake - 33.9	Houston - .63
Estelline - 10.1	San Antonio - .28
Montgomery - 6.3	Dallas - .30
Cuney - 5.4	Austin - .58
Patton Village - 5.3	Fort Worth - .66
<b>Statewide - .41</b>	





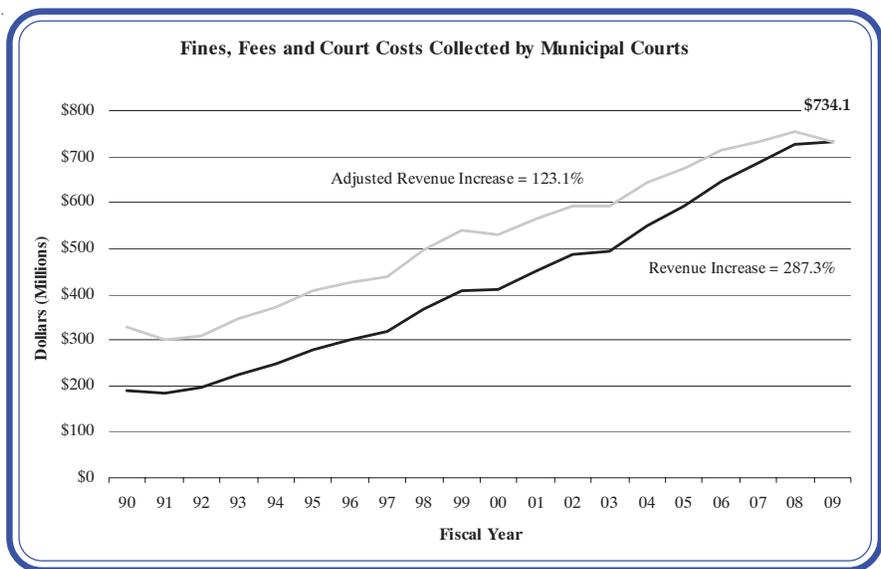
Overall, guilty findings were made in almost all (96.6 percent) of the 1,344,902 cases that were not dismissed and went to bench trial or were otherwise disposed of by an appearance before the judge.<sup>1</sup> In contrast, guilty verdicts accounted for 81.9 percent of the 5,652 cases that went to jury trial.

**Juvenile Case Activity**—Juvenile cases filed in municipal courts decreased 5.5 percent from the previous year to 304,023. Transportation Code (traffic) cases accounted for 46.5 percent of the juvenile cases filed in 2009. The number of cases filed under most of the juvenile case categories has fluctuated over the years. Since 2004, however, cases involving driving under the influence of alcohol declined an average of 7.0 percent per year.

**Magistrate Activity**—In 2009, municipal courts issued 7,256 search warrants, more than 2.7 million arrest warrants, 10,471 magistrate orders for emergency protection, and 206,105 magistrate warnings to adults. Search warrants, arrest warrants, emergency protective orders, and mental health hearings generally increased over the past decade. Magistrate activity in juvenile cases, however, generally declined. Certifications of juvenile statements declined 52.2 percent between 2000 and 2009 (from 1,777 in 2000 to 850 in 2009), and warnings administered to juveniles declined 59.1 percent (from 5,419 in 2000 to 2,218 in 2009).

**Court Collections**—The amount of fines, fees and court costs collected by municipal courts generally increased over the last 20 years. In 2009, the courts collected approximately \$734 million—an increase of 1.2 percent from the previous year. The amount collected in 2009 was 287.3 percent higher than that collected 20 years previously in 1990, or 123.1 percent higher when adjusted for inflation.<sup>2</sup>

Excluding cases dismissed prior to trial or at trial, the amount collected per disposition averaged approximately \$127.



1. Guilty and *nolo contendere* pleas are included in the "Trial by Judge" category in the Municipal Court Activity Report.  
2. Using Consumer Price Index Conversion Factors, <http://oregonstate.edu/cla/polisci/faculty-research/sahr/cv2008.pdf>.

## Activity Report for Municipal Courts

September 1, 2008 to August 31, 2009

99.7 Percent Reporting Rate 10,966 Reports Received Out of a Possible 11,004					
	Traffic		Non-Traffic		REPORTED TOTALS
	Misdemeanors		Misdemeanors		
	Non - Parking	Parking	State Law	City Ordinance	
<b>NEW CASES FILED</b>	<b>5,684,813</b>	<b>798,557</b>	<b>986,483</b>	<b>379,670</b>	<b>7,849,523</b>
<b>DISPOSITIONS:</b>					
Dispositions Prior to Trial:					
<i>Bond Forfeitures</i>	33,069	1,074	11,177	2,239	47,559
<i>Fined</i>	1,584,997	517,347	273,253	89,261	2,464,858
<i>Cases Dismissed</i>	301,912	72,809	91,499	48,836	515,056
<b>Total Dispositions Prior to Trial</b>	<b>1,919,978</b>	<b>591,230</b>	<b>375,929</b>	<b>140,336</b>	<b>3,027,473</b>
Dispositions at Trial:					
<i>Trial by Judge</i>					
Guilty	849,728	157,562	214,923	76,361	1,298,574
Not Guilty	15,493	26,673	2,419	1,743	46,328
<i>Trial by Jury</i>					
Guilty	2,810	70	1,164	584	4,628
Not Guilty	614	9	229	172	1,024
<i>Dismissed at Trial</i>	481,912	5,873	117,420	62,227	667,432
<b>Total Dispositions at Trial</b>	<b>1,350,557</b>	<b>190,187</b>	<b>336,155</b>	<b>141,087</b>	<b>2,017,986</b>
Cases Dismissed After:					
<i>Driver Safety Course</i>	443,532	---	---	---	443,532
<i>Deferred Disposition</i>	518,235	2,287	58,463	18,168	597,153
<i>Proof of Financial Responsibility</i>	422,660	---	---	---	422,660
<i>Compliance Dismissal</i>	437,845	---	---	---	437,845
<b>Total Cases Dismissed After</b>	<b>1,822,272</b>	<b>2,287</b>	<b>58,463</b>	<b>18,168</b>	<b>1,901,190</b>
<b>TOTAL DISPOSITIONS</b>	<b>5,092,807</b>	<b>783,704</b>	<b>770,547</b>	<b>299,591</b>	<b>6,946,649</b>
<b>COMMUNITY SERVICE ORDERED</b>	162,274	767	46,389	13,658	223,088
<b>CASES APPEALED</b>	10,443	136	2,036	1,231	13,846
<b>JUVENILE ACTIVITY:</b>					
Transportation Code Cases Filed					141,267
Non-Driving Alcoholic Beverage Code Cases Filed					34,745
DUI of Alcohol Cases Filed					2,852
Health & Safety Code Cases Filed					8,127
Failure to Attend School Cases Filed					20,744
Education Code Cases Filed					10,001
Violation of Local Daytime Curfew Ordinance Cases Filed					12,025
All Other Non-Traffic Fine-Only Cases Filed					74,262
Waiver of Jurisdiction of Non-Traffic Cases					4,636
Referred to Juvenile Court for Delinquent Conduct					1,243
Held in Contempt, Fined, or Denied Driving Privileges					7,436
Warnings Administered					2,218
Statements Certified					850
<b>OTHER ACTIVITY:</b>					
Parent Contributing to Nonattendance Cases Filed					7,680
Safety Responsibility and Driver's License Suspension Hearings Held					655
Search Warrants Issued					7,256
Arrest Warrants Issued					
Class C Misdemeanors					2,707,983
Felonies and Class A and B Misdemeanors					74,449
<b>Total Arrest Warrants Issued</b>					<b>2,782,432</b>
Magistrate Warnings Given					
Class A and B Misdemeanors					137,362
Felonies					68,743
<b>Total Magistrate Warnings Given</b>					<b>206,105</b>
Emergency Mental Health Hearings Held					2,310
Magistrate's Orders for Emergency Protection					10,471
<b>TOTAL REVENUE</b>					<b>\$734,057,152</b>

## Profile of Appellate and Trial Judges\*

(as of September 1, 2009)

	Supreme Court	Court of Criminal Appeals	Court of Appeals	District Courts	Criminal District Courts	County Courts at Law	Probate Courts	County Courts	Justice Courts	Municipal Courts
<b>NUMBER OF JUDGES:</b>										
Number of Judge Positions	9	9	80	436	13	230	18	254	822	1463
Number of Judges	9	9	80	434	13	229	18	253	821	1453
Number of Vacant Positions	0	0	0	2	0	1	0	1	1	10
Number of Municipalities w/ Courts	--	--	--	--	--	--	--	--	--	916
Cities with No Courts	--	--	--	--	--	--	--	--	--	275
<b>AGE OF JUDGES:</b>										
	(n = 9)	(n = 9)	(n = 80)	(n = 434)	(n = 13)	(n = 199)	(n = 16)	(n = 217)	(n = 685)	(n = 1174)
Mean	54	66	55	54	55	60	68	57	56	57
Oldest	64	76	72	76	65	85	78	81	86	87
Youngest	43	56	37	32	44	35	57	32	26	27
<b>RANGE OF AGE:</b>										
Under 25	0	0	0	0	0	0	0	0	0	0
25 through 34	0	0	0	5	0	0	0	1	10	13
35 through 44	1	0	7	51	1	22	0	12	53	147
45 through 54	5	0	25	132	5	81	0	44	155	293
55 through 64	3	7	39	197	6	71	11	98	283	405
65 through 74	0	1	9	48	1	20	4	54	150	235
Over 75	0	1	0	1	0	5	1	8	34	81
<b>GENDER OF JUDGES:</b>										
	(n = 9)	(n = 9)	(n = 80)	(n = 434)	(n = 13)	(n = 229)	(n = 18)	(n = 253)	(n = 820)	(n = 1452)
Males	8	5	47	313	9	158	13	221	545	964
Females	1	4	33	121	4	71	5	32	275	488
<b>ETHNICITY OF JUDGES:</b>										
	(n=9)	(n=9)	(n=79)	(n=403)	(n=12)	(n=205)	(n=16)	(n=236)	(n=654)	(n=1089)
African-American	2	0	2	17	3	8	0	2	25	54
American Indian or Alaska Native	0	0	0	1	0	0	0	0	1	11
Asian or Pacific Islander	0	0	1	2	0	0	0	0	0	10
Hispanic/Latino	1	0	11	69	0	45	3	23	125	164
White (Non-Hispanic)	6	9	65	310	9	149	13	211	503	841
Other	0	0	0	4	0	3	0	0	0	9
<b>LENGTH OF SERVICE:</b>										
	(n=9)	(n=9)	(n=80)	(n=434)	(n=13)	(n=229)	(n=18)	(n=253)	(n=821)	(n=1392)
Average	7 Yr 9 Mo	10 Yr 5 Mo	7 Yr 10 Mo	8 Yr 3 Mo	5 Yr 6 Mo	9 Yr 5 Mo	14 Yr 9 Mo	7 Yr 4 Mo	9 Yr 0 Mo	8 Yr 11 Mo
Longest	20 Yr 8 Mo	16 Yr 8 Mo	22 Yr 8 Mo	29 Yr 7 Mo	19 Yr 4 Mo	33 Yr 5 Mo	28 Yr 0 Mo	31 Yr 7 Mo	46 Yr 5 Mo	45 Yr 1 Mo
<b>RANGE OF SERVICE ON THIS COURT IN YEARS:</b>										
Under 1 Year	0	0	10	63	2	12	1	9	34	76
1 through 4	4	0	15	98	6	51	3	89	225	484
5 through 9	3	3	30	97	2	57	1	61	184	360
10 through 14	1	5	20	91	1	58	3	59	210	229
15 through 19	0	1	4	47	2	21	4	19	88	98
20 through 24	1	0	1	30	0	22	4	11	40	76
25 through 29	0	0	0	11	0	6	2	2	22	45
30 through 34	0	0	0	0	0	2	0	2	15	13
35 through 39	0	0	0	0	0	0	0	0	2	9
Over 40	0	0	0	0	0	0	0	0	1	1
<b>FIRST ASSUMED OFFICE BY:</b>										
	(n=9)	(n=9)	(n=80)	(n=434)	(n=13)	(n=229)	(n=18)	(n=251)	(n=821)	(n=1429)
Appointment	5 (56%)	1 (11%)	44 (55%)	156 (36%)	3 (23%)	72 (31%)	7 (39%)	47 (19%)	225 (28%)	1416 (99%)
Election	4 (44%)	8 (89%)	36 (45%)	278 (64%)	10 (77%)	157 (69%)	11 (61%)	204 (81%)	596 (72%)	13 (1%)
<b>EDUCATION:</b>										
<b>HIGH SCHOOL:</b>	(n=9)	(n=9)	(n=80)	(n=432)	(n=13)	(n=227)	(n=18)	(n=229)	(n=699)	(n=1295)
Attended	--	--	--	--	--	--	--	--	35 (5%)	19 (1%)
Graduated	--	--	--	--	--	--	--	--	651 (93%)	1151 (89%)
<b>COLLEGE:</b>										
Attended	0 (0%)	0 (0%)	1 (1%)	5 (1%)	0 (0%)	5 (2%)	0 (0%)	39 (17%)	166 (24%)	136 (11%)
Graduated	9 (100%)	9 (100%)	76 (95%)	385 (89%)	12 (92%)	184 (81%)	15 (83%)	145 (63%)	228 (33%)	810 (63%)
<b>LAW SCHOOL:</b>										
Attended	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (0%)	0 (0%)	1 (0%)	3 (0%)	2 (0%)
Graduated	9 (100%)	9 (100%)	80 (100%)	432 (100%)	13 (100%)	226 (100%)	18 (100%)	32 (14%)	65 (9%)	749 (58%)
<b>LICENSED TO PRACTICE LAW:</b>										
Number Licensed	9 (100%)	9 (100%)	80 (100%)	434 (100%)	13 (100%)	229 (100%)	18 (100%)	31 (12%)	64 (8%)	762 (52%)
Mean Year Licensed	1983	1974	1981	1981	1981	1983	1975	1979	1983	1983
<b>RANGE OF YEAR LICENSED:</b>										
Before 1955	0	0	0	0	0	1	1	0	0	5
1955 through 1959	0	1	0	0	0	1	0	1	1	7
1960 through 1964	0	0	1	4	0	3	1	1	1	19
1965 through 1969	0	1	4	27	1	12	1	5	5	57
1970 through 1974	1	2	12	62	1	21	3	5	9	77
1975 through 1979	2	3	15	96	3	40	9	3	8	120
1980 through 1984	2	2	22	90	4	40	2	6	11	109
1985 through 1989	1	0	17	59	2	60	0	3	5	96
1990 through 1994	3	0	7	61	2	31	1	3	10	126
1995 through 1999	0	0	2	27	0	18	0	4	10	102
Since 2000	0	0	0	9	0	2	0	0	4	44
<b>ORIGINALLY CAME TO THIS COURT FROM:</b>										
Attorney Private Practice	1 (11%)	2 (22%)	23 (29%)	--	--	--	--	--	--	--
Judge of Lower Court	6 (67%)	4 (44%)	14 (18%)	--	--	--	--	--	--	--
Legislative Service	0 (0%)	3 (33%)	3 (4%)	--	--	--	--	--	--	--
Other Governmental Service	2 (22%)	0 (0%)	0 (0%)	--	--	--	--	--	--	--
<b>PREVIOUS EXPERIENCE:</b>										
Prosecutor	0 (0%)	5 (56%)	13 (16%)	162 (37%)	5 (38%)	92 (40%)	3 (17%)	9 (4%)	--	--
Attorney Private Practice	9 (100%)	9 (100%)	47 (59%)	289 (67%)	12 (92%)	136 (59%)	14 (78%)	27 (11%)	--	--
Judge of Lower Court	7 (78%)	2 (22%)	15 (19%)	64 (15%)	2 (15%)	33 (14%)	3 (17%)	11 (4%)	--	--
County Commissioner	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	16 (6%)	--	--

\* Data may be incomplete, as this chart includes only information reported to OCA.

District and county-level associate judges not included in data. Data for municipal courts includes associate judges.

# 2010 GREAT TEXAS WARRANT ROUND UP

Law enforcement in cities across Texas will be conducting a statewide warrant round up for Class C offenses on March 6 - 15, 2010. The purpose behind this round up is to increase levels of compliance through voluntary means or arrest. While warrants are regularly served by each jurisdiction, this huge, unified effort across the State will help achieve this goal.

There is only one requirement to participate—each agency must be able to collect statistics that will be accumulated and released to the media at the end of the round up.

Each agency will determine its own level of involvement during the round up period and will plan its own operations. Any agency that is interested

in participating in this round up should contact one of the following people:

- Rebecca Stark at [rebecca.stark@ci.austin.tx.us](mailto:rebecca.stark@ci.austin.tx.us).
- Don McKinley at [don.mckinley@ci.austin.tx.us](mailto:don.mckinley@ci.austin.tx.us).

**As of February 25, 2010, there were 269 entities signed up to participate.**

## 2010 Great Texas Warrant Round Up – Participation Form –

- Yes, we wish to participant in the 2010 statewide warrant round up.
- Please put us on the list to be contacted for the 2011 round up.
- Please provide additional information.

Name of Court/Agency \_\_\_\_\_

Contact Person/Title \_\_\_\_\_

Email Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

I agree to send out notices on or around February 19, 2010 and participate in the actual round up (actually make arrests) on or after March 6, 2010 to the fullest extent that my entity can participate. More information will be provided upon request.

Signature \_\_\_\_\_

Note: If the contact person listed above is not also the media contact person, please list the media contact below: Thanks.

Name \_\_\_\_\_ Title \_\_\_\_\_ Department \_\_\_\_\_ Telephone # \_\_\_\_\_

**FAX AGREEMENT TO:** Rebecca Stark or Don McKinley at 512.974.4682  
**EMAIL AGREEMENT TO:** [roundup@ci.austin.tx.us](mailto:roundup@ci.austin.tx.us)

Note: The special roundup email address will be monitored regularly to keep current. The master participant list will be placed on the Austin Municipal Court's web site at [www.ci.austin.tx.us/court](http://www.ci.austin.tx.us/court). It should be updated at least weekly.

If you have any questions, please feel free to call or email:  
 Rebecca Stark 512.974.4690 [rebecca.stark@ci.austin.tx.us](mailto:rebecca.stark@ci.austin.tx.us)  
 Don McKinley 512.974.4820 [don.mckinley@ci.austin.tx.us](mailto:don.mckinley@ci.austin.tx.us)  
 Or anyone else who has done this before – all great sources of info!



## FROM THE CENTER

### CALI COMPUTER-ASSISTED LEGAL INSTRUCTION AVAILABLE NOW FROM TMCEC

The Center for Computer-Assisted Legal Instruction (CALI) is now available to clerks as an additional source of training. CALI, which was originally designed to assist law school students, advances legal education and promotes access to justice through the use of computer technology.

TMCEC has published lessons on CALI and clerks may now obtain up to four hours of training to be applied to the Municipal Court Clerk Certification Program. Only approved courses may be applied for training credit. A list of approved courses can be found at [www.tmcec.com/tmcec/Resources](http://www.tmcec.com/tmcec/Resources). Currently the following courses are approved:

- Level I Study Session
- Level II Study Session
- Anatomy of a Case
- Authorities and Duties

#### Frequently Asked Questions:

##### How do I register?

To set up a login name and password, click on "create new account" and enter the access code: TMCECTstu459. Once you have logged in, add the web address of the lesson, which can be found under the "Resources" page at [www.tmcec.com](http://www.tmcec.com). IMPORTANT: Anyone can log into CALI and

register, but only those who log in with the TMCEC access code can access the TMCEC lessons.

##### Do these hours count towards the Clerk Certification Program?

Yes, clerks can get up to four hours of certification training each year through approved CALI lessons. Once you have completed a lesson, you will be able to print your certificate as proof of completion. Only grades of 70% or higher will be accepted. Classes can not be repeated for certification hours. Remember to login using the TMCEC access code to ensure credit.

##### Do these hours expire?

Yes, these hours have the same three year expiration as all other approved trainings when applying for clerk certification. If CALI is being used for renewal hours, the lessons must be completed within the same year you are submitting the renewal application.

##### How much does it cost to sign up?

Nothing, it's free! Not only is it free, but CALI also gives you the freedom to take lessons at your own leisure and stop and start when you need to.

#### How to Access the CALI Courses the First Time:

1. Go to [www.cali.org](http://www.cali.org).
2. In the grey box on the right titled "CALI Login," click the link "Create new account."
3. On the next screen, register with your own name, email address, and password. You will log on using this information in subsequent sessions.
4. Use the authorization code TMCECTstu459 to access the TMCEC material.

## 17TH ANNUAL MUNICIPAL PROSECUTORS CONFERENCE

Texas law provides that prosecutions in a municipal court shall be conducted by the city attorney or by a deputy city attorney. Such prosecutors have an ethical and legal obligation to not only represent the State of Texas, but to see that justice is done. In light of specific dilemmas that are unique to municipal courts, ethical and educated prosecutors are essential to the successful administration of justice in our communities. 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 on procedural, substantive, and case law.

**CLE Credit** -These conferences will be submitted for CLE credit by the State Bar of Texas. We plan to provide for at least one hour of ethics at each school. The pre-conference offers an additional three hours of CLE credit. The TMCA Board adopted the \$100 fee that applies only to attorney judges and prosecutors who wish to receive CLE credit for their attendance at TMCEC programs. The fee is voluntary and is used for expenditures not allowed by the Texas Court of Criminal Appeals (membership services, salary, food, and refreshments).



If you do not wish to seek CLE credit from TMCA, you can obtain it from another provider.

**Registration Fee** - Municipal prosecutors may register for either of the prosecutors' conferences. Housing, two breakfasts, and one lunch are included with the fee. The registration fee is \$350 (\$450 with CLE) if housing is requested. Municipal prosecutors who do not need housing at the conference hotel may pay a \$200 registration fee (\$300 with CLE). Prosecutors who must cancel for any reason will be charged a \$100 cancellation fee if notice of cancellation is not received 10 working days prior to the conference. A registration fee of \$400 (\$500 with CLE), if housing is requested, will be charged for non-municipal prosecutors or attorneys.

**Austin**  
**April 18 - 20, 2010**  
Crowne Plaza  
6120 North IH-35  
Austin, TX 78752  
512.323.5466  
Register by 3/19/10

**Houston**  
**June 21 - 23, 2010**  
Omni Hotel Houston  
4 Riverway  
Houston, TX 77056  
713.871.8181  
Register by 5/28/10

## MUNICIPAL BAILIFFS & WARRANT OFFICERS CONFERENCE

Bailiffs and warrant officers are essential resources for judges and clerks in maintaining courtroom security, serving process for the court, and assisting in fine collection and enforcement. In FY 2009-2010, TMCEC is offering two conferences for municipal bailiffs and warrant officers. The courses will include segments on court security; this may allow for participants' registration fees and travel to be paid for by local court security funds. Credit of 12 TCLEOSE hours will be awarded to participants who complete all 12 conference hours. Four hours of TCLEOSE credit are offered at the pre-conference. Partial credit is not given for the pre-conference or conference participation. The registration fee is \$150.

Those attending the TMCEC Municipal Bailiffs and Warrant Officers Conference in Austin may also wish to attend the Texas Marshal Association's (TMA) 14th Annual Conference and Training. The TMA Conference will be held April 21 - 23, 2010 in Round Rock, Texas (just north of Austin) immediately following the TMCEC Conference. The training will consist of approximately 20 hours of TCLEOSE-approved training in the areas of Court Security-Mock Scenarios, Force on Force Active

Scenario Training, In Custody Death Syndrome, and Firearms Training with a competition shoot.

**Pre-Conference** - An optional four-hour pre-conference will be held prior to each of the 12-hour programs. The pre-conference topic for this year is **Legal Update: Recent Legislation and Case Law**. Credit of four TCLEOSE hours for the required Legal Update (course #3181) will be awarded to those who choose to attend the pre-conference. Registration forms will be enclosed with conference confirmation letters.

**Austin**  
**April 18 - 20, 2010**  
Crowne Plaza  
6120 North IH-35  
Austin, TX 78752  
512.323.5466  
Register by 3/19/10

**Houston**  
**June 28 - 30, 2010**  
Omni Westside  
13210 Katy Freeway  
Houston, TX 77079  
713.871.8181  
Register by 5/28/10



## MUNICIPAL TRAFFIC SAFETY INITIATIVES

-NEWS YOU CAN USE-

### 3RD ANNUAL MUNICIPAL TRAFFIC SAFETY CONFERENCE: MAY 23 - 25, 2010

Texas is known for many things: bar-b-que, longhorns, bluebonnets, being the Lone Star State, and much more, all of which give Texas a positive national reputation. Texas, however, stands out nationally in drunk driving deaths as well. Statistics show that Texas has a distinctly significant traffic safety problem: In 2008, Texas had approximately 3,382 traffic related fatalities with 1,422 (42%) of them being speed related. Also in 2008, there were 61,954 crashes that resulted in 84,508 people sustaining a serious injury. Sadly, there were no deathless days on Texas roadways that year. Motor vehicle crashes are also the leading cause of death for children of every age from 3 to 6 and 8 to 14 years old. Of the 3,382 fatalities in 2008, 1,269 (38%) of them occurred in crashes where a driver had a blood alcohol concentration (BAC) level of .08 or higher.

One way a municipality can address this serious concern is to attend the May 23-25, 2010 TMCEC Municipal Traffic Safety Initiatives three-day conference in Houston. It is geared specifically toward municipal courts and city officials to address traffic safety. Judges, clerks, and city officials are invited to attend.

Traffic laws are about public safety, not fines, not gross revenue. The enforcement of such laws is necessary to prevent injuries and save lives. Yet, Texas continues to lead the nation in traffic-related fatalities. Creating a community culture that prioritizes traffic safety requires that city council members, city managers, law enforcement, and municipal courts approach traffic safety with a unified focus.

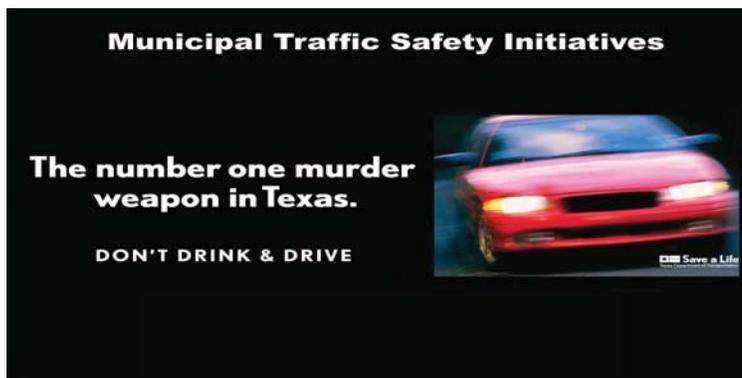
While at the conference some of the sessions you will have the opportunity to attend are: Blood Warrants, DUI, Distracted Driving, Texas Passenger Restraint Laws, Trends in Mobile Devices, Motorcycles & Related Laws, Booster Seats/Child Safety Seats, Warrant Round-Ups, Aggressive Drivers, Older Drivers, Young Drivers, Adolescent Decision Making, Judges in the Classroom, and many more.

The TMCEC Municipal Traffic Safety Initiatives Conference will be in Houston from May 23-25, 2010 at the Omni Riverway Hotel. There is a \$50 registration fee to attend, which includes accommodations and some meals. Space is limited so be sure to make your reservation today. For more information, please visit the TMCEC Municipal Traffic Safety Initiatives website. [www.tmcec.com](http://www.tmcec.com) and click on the Municipal Traffic Safety Initiatives.

There are many benefits in attending this conference. One of the primary ones is bringing together a variety of people, such as city officials with court personnel, to see how each person's role is important in addressing the seriousness of traffic safety. This is also a wonderful opportunity for you to gather educational resources on traffic safety. Let's join together and show that Texas no longer wants the title of being #1 in Drunk Driving Deaths!

See you in May!

For more information, contact Lisa Robinson, TMCEC TxDOT Grant Administrator at [robinson@tmcec.com](mailto:robinson@tmcec.com) or 800.252.3718.



## 2009 - 2010 TMCEC Academic Schedule At-A-Glance

Seminar	Date (s)	City	Hotel Information
Orientation for New Judges and Clerks	March 3, 2010	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Webinar - Jury Preparation	March 10, 2010	Webinar	www.tmcec.com
Regional Judges and Clerks Seminar	March 14 - 16, 2010	Houston	Omni Hotel Houston 4 Riverway, Houston, TX
Regional Judges and Clerks Seminar	March 22 - 24, 2010	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
Regional Clerks Seminar	March 24 - 25, 2010	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
Webinar - Trends in Traffic Safety	April 7, 2010	Webinar	www.tmcec.com
Regional Judges and Clerks Seminar	April 12 - 14, 2010	Lubbock	Holiday Inn Park Plaza 3201 South Loop, Lubbock, TX
One Day Clinic - Juvenile Records: Nondisclosure & Expunction	April 15, 2010	Austin	Omni Southpark 4140 Governor's Row, Austin, TX
Prosecutors & Bailiffs/Warrant Officers	April 18 - 20, 2010	Austin	Crowne Plaza 6120 North IH-35, Austin, TX
Regional Clerks Seminar	May 2 - 4, 2010	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., South Padre Island, TX
Orientation for New Judges and Clerks	May 5, 2010	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Regional Attorney Judges Seminar	May 9 - 11, 2010	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., South Padre Island, TX
Regional Non-Attorney Judges Seminar	May 11 - 13, 2010	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., South Padre Island, TX
Webinar - Judicial Appointments	May 19, 2010	Webinar	www.tmcec.com
Traffic Safety Conference	May 23 - 25, 2010	Houston	Omni Hotel Houston 4 Riverway, Houston, TX
One Day Clinic - Topic: TBD	June 17, 2010	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Prosecutors & Court Administrators Seminar	June 21 - 23, 2010	Houston	Omni Hotel Houston 4 Riverway, Houston, TX
Bailiffs/Warrant Officers Seminar	June 28 - 30, 2010	Houston	Omni Westside 13210 Katy Freeway, Houston, TX
One Day Clinic - Dangerous & Cruelly Treated Animals	July 14, 2010	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Regional Judges and Clerks Seminar	July 18 - 20, 2010	El Paso	Camino Real 101 S El Paso St, El Paso, TX
New Judges and Clerks Seminar	July 26 - 30, 2010	Austin	Omni Southpark 4140 Governor's Row, Austin, TX

### REMINDER: ALTERNATIVE JUDICIAL EDUCATION

Experienced municipal judges who have completed two years of TMCEC courses may opt to fulfill the 12-hour mandatory judicial education requirements for 2009 - 2010 by attending a course offered by an approved continuing legal education provider. The accredited providers are the American Academy of Judicial Education, the ABA Traffic Seminar, the Harvard Law School, the Houston Law School and Foundation, the Juvenile Law Section of the State Bar of Texas Professional Development Programs, National Council for Juvenile & Family Court Judges, Texas Center for the Judiciary, Texas Council on Family Violence, National Association of Criminal Defense Lawyers, the Texas Criminal Defense Lawyers Projects, Texas District and County Attorneys' Association, Texas Justice Courts Training Center, and the Texas Municipal Courts Association. Please check with TMCEC for the most up-to-date list of approved providers. The course must relate to the jurisdiction of the municipal courts and be at least 12 hours in length. Video, audio, and online programs are ineligible. After an initial two-year period, judges may "opt-out" only every other year. Judges are asked to complete an intent to opt out form prior to April 30, 2010. If you have questions, please contact Hope Lochridge at the Center (800.252.3718).

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
FY10 REGISTRATION FORM**

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

*Check one:*

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> New, Non-Attorney Judge or<br>New Clerk at 32-hour program (\$200) | <input type="checkbox"/> Traffic Safety Conference - Judges & Clerks (\$50) | <input type="checkbox"/> Prosecutor <b>not seeking CLE/no room</b> (\$200) |
| <input type="checkbox"/> Non-Attorney Judge (\$50)  | <input type="checkbox"/> Clerk/Court Administrator (\$50)                   | <input type="checkbox"/> Prosecutor <b>seeking CLE/no room</b> (\$300)     |
| <input type="checkbox"/> Attorney Judge <b>not seeking CLE credit</b> (\$50)                | <input type="checkbox"/> Bailiff/Warrant Officer* (\$150)                   | <input type="checkbox"/> Prosecutor <b>not seeking CLE credit</b> (\$350)  |
| <input type="checkbox"/> Attorney Judge <b>seeking CLE credit</b> (\$150)                   | <input type="checkbox"/> Assessment Clinic (\$100)                          | <input type="checkbox"/> Prosecutor <b>seeking CLE credit</b> (\$450)      |
|   | <input type="checkbox"/> Court Administrator Seminar - June (\$100)         |  |

By choosing TMCEC as your MCLE provider, attorney-judges and prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. (For more information, see the TMCEC Academic Schedule)

Name (*please print legibly*): Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_  
Names you prefer to be called (if different): \_\_\_\_\_ 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 new judges/clerks seminars, three nights at the assessment clinics, and two nights at the regional seminars. To share with another 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.  
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"/> Bailiff/Warrant Officer/Marshal* | <input type="checkbox"/> Court Clerk  | <input type="checkbox"/> Deputy Court Clerk               |
| <input type="checkbox"/> Presiding Judge     | <input type="checkbox"/> Attorney                  | <input type="checkbox"/> Non-Attorney                     | <input type="checkbox"/> Prosecutor   | <input type="checkbox"/> Mayor ( <i>ex officio</i> Judge) |
| <input type="checkbox"/> Court Administrator | <input type="checkbox"/> Associate/Alternate Judge | <input type="checkbox"/> Justice of the Peace             | <input type="checkbox"/> Other: _____ |   |

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

Judge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Municipal Court of: \_\_\_\_\_ TCLEOSE PID #: \_\_\_\_\_

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 10 working days prior to the conference. I agree that if I do not cancel 10 working days prior to the event that I am not eligible for a refund of the registration fee. I will first try to cancel by calling the TMCEC office in Austin. If I must cancel on the day before or day of the seminar due to an emergency, I will call the TMCEC registration desk at the conference site IF I have been unable to reach a staff member at the TMCEC office in Austin. 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 or more 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 work at least 30 miles from the conference site. **Payment is due with the registration form. Registration shall be confirmed only upon receipt of registration form and payment.**

\_\_\_\_\_  
*Participant Signature (May only be signed by participant)*

\_\_\_\_\_  
*Date*

**PAYMENT INFORMATION**

- Check Enclosed (*Make checks payable to TMCEC.*)  
 Credit Card (*Complete the following; \$5.00 will be added for each registration made with credit card payment.*)

Credit Card Payment:

Credit card type:	Amount to Charge:	Credit Card Number	Expiration Date
<input type="checkbox"/> MasterCard	\$ _____	Name as it appears on card ( <i>print clearly</i> ): _____	_____
<input type="checkbox"/> Visa		Authorized Signature: _____	

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard #302, Austin, TX 78701, or fax to 512.435.6118.

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**TMCEC MISSION  
STATEMENT**

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

**Change Service Requested**



# Stop and Take Notice

The Texas Municipal Courts Association Public Outreach Committee along with the Texas Municipal Courts Education Center would like to encourage you to go out in your community and address the need for traffic safety.

Please take the time to look at the TMCEC website ([www.tmcec.com](http://www.tmcec.com)) and use the materials provided on the Municipal Traffic Safety Initiatives and Driving on the Right Side of the Road webpages to help your community understand the importance of safe driving. The TMCA Public Outreach Committee CHALLENGES all municipal court personnel to speak at schools, senior centers, and civic groups to help promote the court and importance of traffic safety.

We also encourage you to sign up for the speakers' bureau, which will help locate speakers for schools and civic groups requesting this type of outreach. Please fax your information to TMCEC at 512.435.6118 or email [robinson@tmcec.com](mailto:robinson@tmcec.com)

**Add Me to the Speakers' Bureau**

Name: \_\_\_\_\_  
Court: \_\_\_\_\_  
Tel.# : \_\_\_\_\_  
Email: \_\_\_\_\_