

CASE LAW AND ATTORNEY GENERAL OPINION UPDATE TMCEC ACADEMIC YEAR 2012

By Ryan Kellus Turner

General Counsel and Director of Education, TMCEC

The following decisions and opinions were issued between the dates of October 1, 2010 and October 1, 2011.

I. Constitutional Issues

A. 1st Amendment

The 1st Amendment precludes tort liability for people who picket military funerals.

Snyder v. Phelps, 131 S. Ct. 1207 (2011)

The U.S. Supreme Court, in an 8-1 decision with the majority opinion written by Chief Justice Roberts, once

again reminds us that the protections provided by the 1st Amendment supersede even the most popular legislative enactments where such enactments infringe on even the most unpopular free speech. Justice Alito's dissenting opinion resonates with popular sentiment: the 1st Amendment should not be a license for vicious verbal assaults against a nonpublic figure whose son was killed while serving his country in Iraq.

Commentary: The State of Maryland created a tort (intentional infliction of emotional distress) stemming from

disruption of funeral processions. The "third rail shock" of such 1st Amendment case law is when any form of legislative enactment focuses on the context or content of communication. Regardless if the enactment is civil or criminal in nature, passed by a state legislature or city council, heightened standards apply when the enactment pertains to free speech in a public place relating to matters of public interest. In explaining how the Maryland law violates the 1st Amendment, the majority opinion, laden with

Case Law continued pg 8

THE STATE OF LICENSE PLATE LAWS IN TEXAS

By Katie Tefft

Program Attorney, TMCEC

Is it a crime not to display a license plate (or two) on a vehicle in Texas? Of course it is . . . isn't it? In light of recent legislation, perhaps it's not. Due to changes made by H.B. 2357, license plate laws have become quite blurred and distorted.

The State of the Plate

License plates serve a legitimate

and important law enforcement purpose. Officers use plate numbers to identify vehicles involved in traffic offenses or for which no financial responsibility has been established. Be-on-the-lookout alerts give plate numbers to locate stolen vehicles or vehicles transporting missing persons. The average person jots down a plate

License Plate Laws continued pg 5

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AROUND THE STATE

TEXAS MUNICIPAL COURTS ASSOCIATION 2012 ANNUAL CONFERENCE

FREDERICKSBURG, TEXAS

WILLKOMMEN TMCA MEMBERS!!

The 2012 TMCA Annual Meeting is scheduled for July 26-28, 2012 in the historic town of Fredericksburg, Texas. Fredericksburg has lots of summer fun activities to offer the entire family.

TMCA is working to offer more than 20 hours of CLE to attorney judges and prosecutors via live presentations, videos, workshops, discussion groups, and webinars. At the same time, we are working with clerks to offer more than 16 hours of continuing clerk certification hours during the event. Special hotel rates will be held for TMCA Annual Meeting registered members only!

For the first time, TMCA will offer you and your registered guest the opportunity to take the Concealed Handgun License Certification Course (provided sufficient interest). An additional prepaid course fee of \$100-\$150 will be required for participants.

Family fun includes National Museum of the Pacific War, Enchanted Rock, LBJ Ranch, Pioneer Museum, the Bat Tunnel, picnics, and swimming. Shopping, craftsmen, gourmet dining, art galleries, boutiques, wine tastings, music, and nightlife in downtown are all within walking distance of host hotel.

The Inn On Barons Creek, 308 S. Washington St., 78624, is the designated host hotel. This hotel has a full service spa and outdoor pool. Breakfast is included in the room rate. All rooms are suites with refrigerators and microwaves, sleeping up to four people for the same rate. TMCA registered meeting participants and guests will receive 20-25 percent spa discounts. Special room rates of \$82 per night for Wednesday and Thursday nights and \$129 per night for Friday and Saturday have been secured for Annual Meeting registered participants.

An Annual Awards Dinner and Banquet will be held on Friday night in a German Biergarten setting. The President's Welcome Reception is scheduled for Thursday night. Vendors will be on hand on Thursday and Friday.

So save the date! Let's make this TMCA Annual Conference, an Oktoberfest in July, a success. Check out the TMCA website, Facebook, and announcements at upcoming TMCEC seminars for details.

MUNICIPAL TRAFFIC SAFETY INITIATIVES AWARDS

TMCEC is again sponsoring the Municipal Traffic Safety Initiatives Awards. The deadline is Friday, December 30, 2011. As many as nine courts will be recognized, with expenses paid to attend, at the Traffic Safety Conference to be held March 19-21, 2012 in Addison at the Crown Plaza Hotel. Please see pages 34-36 of this *Recorder* for additional information.



LEGAL UPDATE

MORE LAWS PASSED BY THE 82ND LEGISLATURE

By Katie Tefft
Program Attorney, TMCEC

New Class C Misdemeanors

- H.B. 1043 created a new offense for cockfighting in Section 42.105 of the Penal Code. A cock is defined as the male of any type of domestic fowl, and cockfighting means any situation in which one cock attacks or fights with another. It is a state jail felony to cause a cock to fight with another or to profit from a cockfight. It is a Class A misdemeanor to use or allow another to use any property for cockfighting, to own or train a cock with the intent to use it in cockfighting, or to manufacture, buy, sell, barter, exchange, possess, advertise, or offer a steel spur or weapon to attach to a cock's leg to be used in fighting. Finally, it is a Class C misdemeanor to attend a cockfight as a spectator. If it is shown on the trial of the offense, however, that the person has previously been convicted of attending as a spectator, the offense is a Class A misdemeanor. The new offenses took effect September 1, 2011.
- H.B. 2495 created an offense in Section 712.048 of the Health and Safety Code for a person to collect money for the purchase of a memorial and knowingly defalcate or misappropriate the funds. The offense is punishable under the same tiered structure as in Section 32.45 of the Penal Code (Misapplication of Fiduciary Property or Property of Financial Institution), and is a Class C misdemeanor if the funds in

question are less than \$20. The new offense took effect September 1, 2011.

- H.B. 2959 created a new Class C misdemeanor, effective September 1, 2011, for the failure of a former county election chair to transfer required records to the new county election chair. The required records are outlined in Section 171.028 of the Election Code.
- S.B. 256 creates a new Class C misdemeanor for the failure of a private autopsy facility to post required notice about filing a complaint against a physician who performs autopsy services. The offense and a definition of "private autopsy facility" are found in new Chapter 671A of the Health and Safety Code, effective January 1, 2012.
- S.B. 431 created a new Class C misdemeanor for a person to fraudulently use or claim to hold a military record. Under new Section 32.54 of the Penal Code, effective September 1, 2011, it is a crime for a person to use or claim to hold a military record the person knows is fraudulent, fictitious, not assigned to that person, or revoked, if the record is used in the following manner: (1) in promotion of a business, or (2) with the intent to obtain priority in receiving services or resources from the Texas Workforce Commission; to qualify for veteran's employment preferences; to obtain a trade, professional, or occupational

license; to be promoted, compensated, or receive some other benefit in employment; to obtain a benefit, service, or donation from another person; to gain admission to a state educational program; or to gain a position in state government with authority over another person.

- S.B. 694 created several new offenses relating to metal recycling entities. Section 1956.040(a-1) of the Occupations Code was added to create a misdemeanor offense, punishable by a fine not to exceed \$10,000, if: a person acts as or represents to be a metal recycling entity without being registered or with an expired certificate of registration; a metal recycling entity fails to timely report the acquisition of copper, brass, bronze, aluminum, or other regulated metal material; or a metal recycling entity violates time of day or hour restrictions for the purchase of regulated metal materials from the general public. A municipal court that collects fine money from a conviction of one of these new offenses must remit 90 percent of the fine to the Comptroller on the quarterly report. The new offenses took effect September 1, 2011, and are enhanceable. If it is shown on the trial of the offense that the person has previously been convicted of one of these violations, the offense is a state jail felony. However, the enhancement only applies to offenses committed on or after January 1, 2012.

The bill also provides that a metal

recycling entity may not pay cash for a purchase of regulated metal if the entity does not hold a certificate of registration or if the entity has been prohibited from paying cash by the Department of Public Safety. A city may not adopt or enforce an ordinance that limits the use of cash by a metal recycling entity in a manner more restrictive than this, unless the ordinance was in already in effect on January 1, 2011.

- S.B. 767 added Chapter 21 to the Business and Commerce Code, regulating certain residential mortgage foreclosure consulting services. The bill provides a general penalty for violation of the chapter, punishable as a Class C misdemeanor, effective September 1, 2011.
- S.B. 1518 created a new Class C misdemeanor for violating a rule adopted by the Texas Historical Commission that governs the health, safety, and protection of persons and property in historic sites under the control of the commission. The bill adds Chapter 442 to the Government Code, effective June 17, 2011.

Court Administration Issues

- S.B. 86 repealed Section 702.002 of the Transportation Code, effective June 17, 2011, which provided that only home-rule municipalities could contract with their county assessor-collector or the Department of Motor Vehicles (DMV) under the Scofflaw program to deny vehicle registration renewal to defendants who failed to appear or failed to pay a fine on a traffic law violation. Thus, those cities that have wanted to use the Scofflaw program, but were not home-rule, may now enter into such contracts. Along with the passage of S.B. 1386, which authorizes courts to collect a \$20

fee from those defendants turned over to the Scofflaw program (albeit the fee must be remitted to the county or DMV), these two bills may greatly help those cities struggling with collection efforts.

Other Interesting Bills

- H.B. 962 amended the Civil Practice and Remedies Code to require the Supreme Court to adopt rules of civil procedure regarding the service of process and return of service. A person who knowingly or intentionally falsifies a return of service may be prosecuted for tampering with a governmental record under the Penal Code. The offense will apply to process served on or after January 1, 2012.
- H.B. 1451 added Chapter 802 to the Occupations Code, also known as the “Dog or Cat Breeders Act.” Under the act, a dog or cat breeder, defined as a person who possesses 11 or more adult intact female animals bred for sale and who sells at least 20 animals in a calendar year, must obtain and maintain a license from the Department of Licensing and Regulation (TDLR). The applicant is subject to a criminal background check, and once licensed, must submit to periodic inspections and maintain an annual inventory and required records on each animal. If evidence of animal cruelty or neglect is discovered during an inspection, the investigator must report the breeder to law enforcement within 24 hours.

TDLR shall adopt rules, standards, procedures, and fees for licensing by March 31, 2012; however, a dog or cat breeder is not required to obtain a license or comply with the standards adopted until September 1, 2012. The department shall create and maintain a disciplinary database for license holders who

violate any rules, standards, or procedures, and that database shall be made available to the public. For city attorneys and animal control officers, this database may be a good investigative tool for dealing with cruelly-treated animal cases. Breeders who violate a rule are subject to administrative and civil penalties.

The bill does not affect the applicability of city ordinances regulating the possession, breeding, or selling of dogs or cats, nor does it prevent cities from prohibiting or further regulating the same.

Traffic Safety and Transportation Code Issues

- H.B. 1199 created an “aggravated DWI” in Section 49.04 of the Penal Code. A first DWI offense is a Class B misdemeanor. Under H.B. 1199, if it is shown on the trial of the offense that the defendant’s blood, breath, or urine analysis showed an alcohol concentration level of 0.15 or higher, the offense is a Class A misdemeanor. Intoxication assault, generally a third degree felony, can now be enhanced to a felony of the second degree if it is shown at trial that the defendant caused a traumatic brain injury to another that results in a permanent vegetative state. These enhancements took effect September 1, 2011.
- H.B. 1523 amended Section 643.253 of the Transportation Code, which prohibits a person from engaging in or soliciting the transportation of household goods for compensation if not registered. The offense previously was a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000. H.B. 1523, effective September 1, 2011, amends the punishment to make the offense

a Class C misdemeanor (with a maximum fine of \$500) for a first offense, a Class B misdemeanor for a second offense, and a Class A misdemeanor for a third or subsequent offense.

- S.B. 364 requires the Department of Public Safety (DPS) to compile and maintain statistical information on the prosecution of offenses relating to the operation of a motor vehicle while intoxicated (i.e., DWI, DWI with child passenger, intoxication assault, or intoxication manslaughter): including, the number of arrests; those resulting in release with no charge; those resulting in guilty, no contest, or not guilty pleas; the number of convictions obtained for DWI or an offense other than that charged; and the number of dismissals. This information must be reported on a form prescribed by DPS by the law enforcement agency, prosecutor's office, or court that enforces DWI cases. DPS must then submit an annual report to the Texas Legislature showing the statistical information and those agencies, prosecutor offices, and courts that have failed to report. The bill took effect September 1, 2011; however, the first DPS report to the Legislature shall be submitted by February 15, 2013.

Note: This update supplements the bill summaries contained in the August 2011 issue of *The Recorder*, in the TMCEC Legislative Update materials distributed at the August seminars, and on the TMCEC website at www.tmcec.com/Resources/Course_Materials/2011_LegislativeUpdate.



License Plate Laws from pg 1

number as a pertinent identifier to report a crime to the police. And their utility reaches far beyond the

criminal justice realm. Businesses make big bucks on developing license plate recognition cameras and software. Toll road authorities rely on the existence of license plates in capturing photos to enforce payment of tolls. Cameras capture plate numbers of vehicles that run red lights. And people stimulate the economy by purchasing novelty or specialty plates to accessorize their vehicle. After all, one can barely commute to work without cracking a smile at some vanity plate with sayings such as “NVERLA8,” “OKY DOKY,” or “RN EM OVR.”

Perhaps the main reason Texas drivers have always put license plates on their vehicles, though, is because since 1934, Texas law has required them. Section 502.404 of the Transportation Code, recodified but essentially unchanged since 1934, provides that a person commits an offense if the person operates a passenger car or commercial motor vehicle that does not display two license plates at the front and rear of the vehicle, or operates a road tractor, motorcycle, trailer, or semitrailer that does not display a license plate attached to the rear of the vehicle, both assigned for the registration period in effect.¹ The section also makes it an offense for a person to operate a passenger car or commercial motor vehicle that does not properly display the registration insignia (i.e., the registration sticker) establishing that the license plates have been validated for the registration period in effect.² Either of these offenses is a misdemeanor punishable by a fine not to exceed \$200.³

The law seems simple enough. Nevertheless, the past two years of case law updates have given readers interesting court opinions debating the requirement that a license plate be displayed at the front and rear of the vehicle. The Austin Court of Appeals

held that Section 502.404 does not require that the front license plate be displayed on the front bumper, just that the plate be visible from the front of the vehicle.⁴ In contrast, the Amarillo Court of Appeals held that the front license plate must be displayed on the foremost area of the car.⁵ The Court of Criminal Appeals settled the disagreement in *Spence v. State*, 325 S.W.3d 646 (2010) when it agreed with the Amarillo Court of Appeals and held that the statute requires the license plate to be on the foremost area or beginning of the car, most commonly the front bumper.⁶ Judge Meyers, in a dissent joined by Judge Hervey, posited that if the front of the vehicle means the front bumper, then the rear of the vehicle should mean the back bumper; however, most often, rear plates are mounted on the vehicle's trunk and not the actual bumper. Judge Meyers opined that “[t]he only thing about this statute that is clear is that it is not well written.”⁷

The Passage of H.B. 2357

The 82nd Regular Legislature, on May 29, 2011, the last day for the House to adopt and for the Senate to concur in conference committee reports, passed H.B. 2357, a 250-page bill that was intended to reorganize Chapters 501 (titling of vehicles), 502 (registration of vehicles), 504 (license plates), and 520 (miscellaneous provisions) of the Transportation Code. H.B. 2357, set to take effect January 1, 2012, will supersede the *Spence* case as far as the required placement of license plates, but it also amends the license plate law with unintended consequences.

Separating Registration Sticker and License Plate Offenses

According to the bill's author, Rep. Joe C. Pickett (District 79, El Paso), the motor vehicle statutes in Chapters

502 and 504 had not undergone a complete reorganization since 1995. H.B. 2357 attempted to separate out the registration requirements and offenses from the license plate requirements and offenses, and located them in two different chapters of the Transportation Code: Chapters 502 and 504, respectively.

It was reported in the Legislative Update issue of *The Recorder* (August 2011)⁸ that H.B. 2357 made non-substantive changes to the offenses for no license plates or registration insignia. That is partially correct—as it relates to registration insignia laws. The bill removed all references to license plates from Section 502.404, leaving the section to only criminalize not having a properly displayed registration insignia (i.e., sticker). The penalty provision was removed, and the statute was renumbered as Section 502.473, effective January 1, 2012. Chapter 502 contains a general penalty provision (in Section 502.401 until December 31, 2011 and renumbered to Section 502.471 effective January 1, 2012), providing a fine not to exceed \$200 for a violation of the chapter.

The license plate offense was re-created in Section 504.943 with a slight substantive change. The law, as amended, addresses Judge Meyers' dissent about the ambiguity of the placement of the front plate to instead provide that a person commits an offense if the person operates a motor vehicle that does not display two license plates, or a road tractor, motorcycle, trailer, or semitrailer that does not display one plate, in compliance with Texas Department of Motor Vehicle (DMV) rules regarding the placement. As with the registration insignia offense, the penalty provision was removed. And herein lies the problem: there is no general penalty in Chapter 504—the

offense's new home—to substitute for the omission.

Unintended Consequence

Where does this leave the state of license plate laws in Texas, beginning January 1, 2012? The law, in Section 504.943, says that it is an offense to operate a vehicle without the required plates. A court may dismiss a charge against a defendant for driving a vehicle that does not display two license plates if the defendant remedies the defect before the defendant's first court appearance and pays an administrative fee not to exceed \$10.⁹ Clearly, the bill was intended to just renumber the offense. Unfortunately, it is now an offense for which there is no penalty. Is an offense without a penalty even an offense?

On October 19, 2011, Rep. Pickett requested an attorney general opinion to answer the following question: Whether it is a Class C misdemeanor not to display two license plates on a motor vehicle? The request asserts that "the portion of H.B. 2357 that separates license plates from registration did not specifically include the penalty language of the offense being a misdemeanor, punishable by a fine not to exceed \$200. A general penalty was meant to be added similar to those that appear in Chapter 502 . . . and Chapter 502 . . . but was inadvertently left out of the bill."¹⁰

The request cites the Code Construction Act,¹¹ specifically Section 311.023 of the Government Code, which provides that in construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the: (1) object sought to be attained; (2) circumstances under which the

statute was enacted; (3) legislative history; (4) common law or former statutory provisions, including laws on the same or similar subjects; (5) consequences of a particular construction; (6) administrative construction of the statute; and (7) title (caption), preamble, and emergency provision. The request, received as RQ-1014-GA, and available on the Attorney General's website,¹² addresses each of the above considerations and essentially argues that the offense should be considered a misdemeanor offense punishable by a fine. However, the Texas Court of Criminal Appeals has repeatedly held that in discerning legislative intent or purpose, they focus on the literal text of the statute in question because "it is the only thing actually adopted by the legislators, probably through compromise, and submitted to the Governor for [his] signature."¹³ In *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991), the Court of Criminal Appeals wrote that "[a]lthough Section 311.023 of the Government Code invites, but does not require, courts to consider extratextual factors when the statutes in question are not ambiguous, such an invitation should be declined."¹⁴ Under this line of reasoning, the Court of Criminal Appeals will only look to the factors described by Section 311.023 if the statute in question is ambiguous.¹⁵

At this time, it is unclear what General Abbott will decide. Most times, opinions take 180 days to issue, but this law will take effect January 1st. Even with an attorney general opinion, that is only persuasive authority for a court, and the Texas Legislature will not reconvene to make any legislative corrections until January 2013, leaving Texas municipal and justice courts with a full year to debate this debacle.

What are the Issues?

Section 504.943 clearly says it is an offense, but is it enforceable? Can an officer affect a traffic stop on a vehicle displaying no (or only one) license plate? Would a court hold that an officer has reasonable suspicion or probable cause to stop such a vehicle?

If the law is enforceable, would the officer have to arrest the driver, or could the officer issue a citation in lieu of taking the offender before a magistrate? This would hinge on whether the offense was a Class C misdemeanor.¹⁶

As a related issue, to which court should the case go? As jurisdiction depends not only on where the offense occurs, but also on the penalty associated with the offense, of which there is no statutory guidance under Section 504.943, this is hard to answer.¹⁷ The Representative argues, in the request for an opinion, “there has never been any indication [from similar laws or this law prior to amendment] that confinement in jail was intended for failing to display license plates. [Thus,] the only remaining penalty it could fall within is that of a Class C misdemeanor.” The request cites Section 12.03(b) of the Penal Code, which states that an offense designated as a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor, and Section 12.41(3) of the Penal Code, which provides that any conviction not obtained from a prosecution under the Penal Code shall be classified as a Class C misdemeanor if the offense is punishable by fine only. Should the Attorney General find these statutes persuasive for an offense in the Transportation Code?

Would a court have to impose a fine at all or could a court just enter

conviction and impose only court costs? This assumes that the case could even be filed in a court of limited jurisdiction when there is no indication that the offense is punishable by a fine only.

If the offense can be filed in a municipal or justice court and there is a conviction, what is the penalty? The last question in the Representative’s request for an opinion is whether the fine would be up to \$200, or up to \$500 as a Class C misdemeanor is defined under the Penal Code.

The Fate of the Plate

What will the Attorney General opine? Will law enforcement enforce the law against drivers without the required plates? Will prosecutors prosecute these cases? How will the courts adjudicate or even handle the filing of these cases? It will be interesting to see how events transpire after January 1st.

¹ Section 502.404(a) & (c), Transportation Code.

² Section 502.404(b), Transportation Code.

³ Section 502.404(e), Transportation Code.

⁴ *State v. Losoya*, 128 S.W.3d 413 (Tex. App.—Austin 2004).

⁵ *Spence v. State*, 296 S.W.3d 315 (Tex. App.—Amarillo 2009). Read the summary of *Spence* in the “Case Law and Attorney General Opinion Update,” *The Recorder* (December 2009), p. 9.

⁶ Read the summary of *Spence* in the “Case Law and Attorney General Opinion Update,” *The Recorder* (December 2010), pp. 13-14.

⁷ *Spence v. State*, 325 S.W.3d 646, 654 (Tex. Crim. App. 2010).

⁸ *The Recorder* (August 2011), pp. 69-70.

⁹ Section 504.943(d), Transportation Code.

¹⁰ RQ-1014-GA.

¹¹ Chapter 311, Government Code.

¹² Available at: https://www.oag.state.tx.us/opin/index_rq.shtml.

¹³ *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991).

¹⁴ *Id.* at 786.

¹⁵ See, e.g., *id.*; *Spence*, *supra*.

¹⁶ See Article 14.06, Code of Criminal Procedure.

¹⁷ Municipal and justice courts have jurisdiction over criminal cases

punishable by **fine only** or a fine and sanction not consisting of confinement or imprisonment. Articles 4.11 and 4.14, Code of Criminal Procedure. County courts have jurisdiction of **misdemeanors** over which the justice courts do not have exclusive jurisdiction and where the **fine** exceeds \$500. Article 4.07, Code of Criminal Procedure. District courts have jurisdiction over criminal cases of the grade of **felony**, all misdemeanor cases involving official misconduct, and **misdemeanors** transferred to the district court and punishable by confinement. Article 4.05, Code of Criminal Procedure. Note that in Section 504.943 of the Transportation Code, the statute in question, there is no reference to whether the offense is a misdemeanor or a felony, or whether the offense is punishable by a fine.

Compliance Dismissals

H.B. 2357 also affected the compliance dismissals for registration insignia (i.e., sticker) and license plate offenses, effective January 1, 2012.

- Section 502.404(f)—operating a vehicle without two plates—is relocated to Section 504.943(d) but remains mechanically unchanged. This assumes the offense would be filed in a court that could grant the dismissal (see the accompanying article for this issue).
- Section 502.404(g)—operating a vehicle without a properly displayed sticker—is relocated to Section 502.473(d). The mechanics of the dismissal are essentially unchanged, but the statute no longer specifies the time period by which the defendant must remedy the defect. Could the defendant then present proof of compliance on the day of trial? Fortunately, this dismissal, like the others herein discussed, is discretionary.
- Section 502.407(b)—expired registration—remains unchanged.
- Section 502.409(d) is broken into two sections. Section 502.475(c) now contains the dismissal for displaying a sticker assigned for a different period. Section 504.945(d) contains the dismissal for displaying plates assigned for a different period or that are unreadable, distorted, altered, or obscured. Both dismissals are substantively unchanged.

See the TMCEC Compliance Dismissal chart at www.tmcec.com/Resources/Charts/ for more information. All statutory references are to the Transportation Code.



qualifiers and explanations of precedent, thinly veils its scorn for the repugnant conduct of the members of the Westboro Baptist Church. Justice Breyer's concurring opinion serves as a qualifier that the opinion does not mean that the state is always powerless to provide private individuals with necessary protection. In this instance, however, the picketers complied with all lawful requirements. Although offensive, the picketers were not disorderly.

B. 4th Amendment

1. Technology

A peace officer executing an arrest warrant while the defendant was using his cell phone had the right to perform a warrantless search of the phone and read any text messages contained on the phone.

United States v. Curtis, 635 F.3d 704 (5th Cir. 2011)

Defendant was arrested along a roadside on a Harris County warrant alleging that he made a false statement to obtain credit. Relying on its earlier holding in *United States v. Finley*, 477 F.3d 250 (5th Cir. 2007), the officer could view the text messages both at the time of his roadside arrest and after processing the prisoner as a search incident to arrest.

Commentary: The defendant in this case likely thought he was initially being pulled over for a traffic violation, and had no clue that his arrest on the Harris County warrant was merely a pretext charging him with conspiracy to commit mortgage fraud. The defendant left his cell phone on the console of the car as he exited the vehicle. Shortly thereafter, two incriminating text messages were

received on his phone.

The search and seizure of a cell phone is a topic of ever-growing importance, but remains murky and piecemeal absent an opinion from the Supreme Court. In this case, the 5th Circuit Court of Appeals continues to gradually push the matter forward.

Do you have a smart phone? Does your phone "auto lock" and require a password? Is entering a password too much of a hassle and inconvenience? If you answered "yes" to each of these questions, perhaps you should reconsider if you put a premium on your expectation of privacy. Welcome to the brave new world of search and seizure in the digital age.

A person with consent to drive another person's car had no standing to challenge the placement of a GPS tracking device, and the attachment of the device did not constitute a warrantless search.

United States v. Hernandez, 647 F.3d 216 (5th Cir. 2011)

Commentary: This case is another sign of the times. Thanks to technology, we have entered a new era of 4th Amendment case law. Notably in this case, the defendant had standing to challenge the **use** of a GPS device by the government because he drove his brother's pickup with consent; however, he did not have standing to challenge the **placement** of the device because the pickup belonged to his brother. The 5th Circuit Court of Appeals rejected the argument that a search warrant was required prior to the surreptitious placement of the GPS device in part due to the nature of the device. Rather than sending a perpetual signal and providing a specific location, the "slap on" tracker used an intermittent signal which only provided locations within 50 yard radius.

2. Search Warrants

An appellate court improperly engages in hyper-technical review of a search warrant affidavit when it strictly applies rules of grammar and syntax in its analysis and bases its opinion on implications found within a warrant affidavit, rather than deferring to any reasonable inferences the reviewing magistrate could have drawn from the affidavit.

State v. McLain, 337 S.W.3d 268 (Tex. Crim. App. 2011)

The majority opinion concludes that the magistrate could infer that informant saw defendant with contraband within 72 hours of signing the search warrant affidavit in which affiant testified ("In the past 72 hours, a confidential informant advised the Affiant that [defendant] was seen in possession of a large amount of methamphetamine at his residence and business.").

Commentary: On one hand, this opinion seems fact specific and adds nothing new. A magistrate's determination of a probable cause affidavit is to be reviewed in a non-technical, real world manner. On the other hand, this case reminds us that words have different meaning depending on their sequence and grammar is technical.

In a lone dissent, Judge Johnson reminds us that just as courts are bound by the plain language of a statute passed by the Legislature, reviewing courts should be bound by what affiants actually write down and that the latter is hardly second guessing the magistrate's determination, but rather taking the affiant/peace officer to mean what he says.

Certainly, cases like this and *Jones v. State*, 338 S.W.3d 725 (Tex. App.—Houston [1st Dist.] 2011) (use of “recently” in search warrant affidavit was insufficient to justify search warrant issuance) are a reminder that peace officers should be as specific as possible in providing time references.

A blood search warrant is not presumptively invalid when the affidavit contains the date but not the time of the observations that led the officer to conclude the defendant had committed a DWI.

State v. Jordan, 342 S.W.3d 565 (Tex. Crim. App. 2011)

Commentary: As explained in the October 2010 issue of *The Recorder*, this is an important case because the Austin Court of Appeals took a diametrically opposite position to Houston’s 14th District Court of Appeals in *State v. Dugas*, 296 S.W.3d 112 (Tex. App.—Houston [14th Dist.] 2009, pet. ref’d).

Here, the Court of Criminal Appeals unanimously reversed the Austin Court of Appeals holding that evidence from a blood test was properly suppressed by a Travis County court-at-law judge under Article 18.01(c) of the Code of Criminal Procedure because the warrant affidavit did not state the time and date of the underlying events and there were no facts from which the municipal judge, in his role as a magistrate, could reasonably infer that a sufficiently short period of time had passed and that alcohol would still be in the defendant’s blood.

The Austin Court of Appeals erred in failing to consider the totality of the circumstances contained within the four corners of the affidavit in reviewing the magistrate’s basis for determining probable cause. Under the circumstances of this case, it

was a reasonable inference that the observations occurred on the same date that the offense was alleged to have occurred. Blood warrants are no different than other search warrants in that magistrates are allowed to interpret a search warrant affidavit in a non-technical, common-sense manner and are allowed to draw reasonable inferences from the facts and circumstances contained within its four corners. (In a concluding endnote Judge Womack, nevertheless, states the better practice is for affiants to specify the times of critical events described so that magistrates have more precise information with which to determine probable cause.)

More recently, a different Travis County court-at-law judge suppressed evidence resulting from a blood draw because the affidavit did not specify what the blood would be used for after being drawn from the defendant’s body. The Austin Court of Appeals reversed the trial court’s ruling explaining that it relied on a hyper-technical construction of the affidavit. The court relied on the Court of Criminal Appeals ruling in *Jordan* and also cited *Dugas*. See, *State v. Webre*, 347 S.W. 3d 381 (Tex. App.—Austin 2011).

County court-at-law judges in their capacity as magistrates do not have authority to issue blood search warrants for execution in another county.

Sanchez v. State, 2011 Tex. App. LEXIS 3824 (Tex. App.—Houston [1st Dist.] May 19, 2011)

Commentary: While district judges, in their roles as magistrates, have authority to issue search warrants for execution in any county in the state, justices of the peace and county court-at-law judges, in their role as magistrates, are restricted to their counties.

Interestingly, this case relies on federal case law for the proposition that a district judge as a magistrate has the authority to issue a search warrant statewide and *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973) for the proposition that a search warrant from a justice court can be executed anywhere in the county in which the justice court is located. What the court of appeals does not state, but it is important to note, is that the *Gilbert* case actually had to do with the authority of a municipal judge in Hedwig Village (which is located in Harris County) to issue a search warrant to be executed outside Hedwig Village but still within Harris County. Hence, municipal judges are not magistrates for their municipality, but rather for any county in which their municipality is located. Accordingly, this case can be construed, albeit indirectly, to stand for the proposition that under Article 18.01 of the Code of Criminal Procedure, municipal judges do not have authority to issue blood search warrants for execution in a county in which no portion of their city is located.

A peace officer executing a blood draw warrant in a non-medical environment does not necessarily violate the 4th Amendment.

State v. Johnston, 336 S.W.3d 649 (Tex. Crim. App. 2011)

Commentary: This case presents the very question that the Supreme Court did not address in *Schmerber v. California*, 384 U.S. 757 (1966). The blood draw was not taken by medical personnel or in a medical environment. It was taken by Dalworthington Garden police officers in a DWI investigation room located in the police station. The State really could not have asked for better facts to litigate in the case. Law enforcement went through the steps to

properly procure a search warrant for the defendant's blood. The defendant attempted to resist the drawing of her blood. The peace officer who drew the blood had 16 years of experience as an EMT. He and the other peace officer who assisted in executing the warrant were certified by a local emergency room physician as venipuncture technicians.

In *Beeman v. State*, 86 S.W.3d 613 (Tex. Crim. App. 2002), the Court of Criminal Appeals held that Chapter 724 of the Transportation Code is inapplicable when there is a warrant to draw blood; therefore, compliance with Chapter 724 is not necessary to satisfy the 4th Amendment. Accordingly, whether a blood draw is conducted pursuant to a warrant or not, the assessment of reasonableness is purely a matter of 4th Amendment law. Compliance with Section 724.017 is one way to establish reasonableness under the 4th Amendment, but is not a litmus test.

The circumstances and location where blood is drawn will be examined on a case by case basis. Judge Johnson in a concurring opinion made it clear that the Court had not held that a blood draw, done on the side of the road at the rear of a police car, is properly "taken in a sanitary place" per Section 724.017(a).

A blood warrant may be issued based upon a sworn oath in support of an affidavit being submitted by telephone or facsimile.

Hughes v. State, 334 S.W.3d 379 (Tex. App.—Amarillo 2011)

Commentary: This is an important case that is easily misconstrued. This case is about the proper administration of the oath, not about whether a search warrant can be sworn to by telephone or facsimile. The essence of the defendant's

argument was that language on the blood warrant stated that it was issued upon the personal presentation of the probable cause affidavit sworn to before the magistrate when actually no such personal appearance before the magistrate ever occurred. Rather, a peace officer swore to the truth of the probable cause affidavit before another peace officer acting as a notary public. The sworn oath in support of the affidavit was then presumably faxed to the magistrate, who determined the existence of probable cause and issued a warrant that contained the standard, albeit archaic, language that has appeared on search warrants for more than 200 years. Without fleshing out all of the mechanics of how the warrant was procured, the Amarillo Court of Appeals rejected the argument as being an unsubstantiated technical assault.

It is emphasized: this case does **not** support or authorize search warrant affidavits being sworn to over the phone. In fact, in an unpublished decision, the Tyler Court of Appeals concluded that where the oath was taken solely over the telephone and not physically in front of any officer authorized to administer oaths, the presence requirement is not met and a blood warrant is invalid. *Aylor v. State*, 2011 Tex. App. LEXIS 3274 (Tex. App.—Tyler Apr. 29, 2011).

Blood warrants are invalid where probable cause affidavits fail to provide the magistrate a substantial basis for concluding that there is probable cause that a person has committed DWI or that evidence of intoxication would be found in the person's blood.

Farhat v. State, 337 S.W.3d 302 (Tex. App.—Fort Worth 2011)

The trial court entered the following finding of fact:

At about 12:50AM on January 11, 2009, Corporal Patrick Finley of the City of Highland Village Police Department was [traveling] westbound in the 1900 block of Justin Road in Denton County, Texas when he observed a vehicle traveling at 30 MPH in a 40 MPH zone. He further observed that the vehicle was weaving from side to side and travelled in the left lane of traffic (a reasonable interpretation being that he was driving in the wrong lane, to wit: the oncoming lane) for approximately one-half a mile. The Officer stopped the vehicle, identified as a BMW with dealer plates, in a parking lot at 2180 Justin Road. Upon contacting the driver, the Officer observed two pill bottles in the console, and asked the driver, identified as Samuel David Farhat to step out of the vehicle. The driver refused to participate in roadside tests to determine intoxication. The Officer, suspecting the driver may be intoxicated, based on the erratic driving behavior, the pills in the console, and the Officer's opportunity to personally observe the driver, subsequently placed the driver under arrest. Corporal Finley further sought and obtained a search warrant for the driver's blood from a qualified magistrate.

Commentary: Failure to specify what he observed when the officer had an "opportunity to personally observe the driver" was deemed by the court of appeals to be the fatal flaw in the affidavit. This is the reason why peace officers are trained to include evidence of intoxication, such as odor of alcohol on one's breath or body, bloodshot eyes, slurred speech, unsteady balance, and a staggered gait.

This opinion is an important reminder that a magistrate's probable cause determination cannot be a mere ratification of a peace officer's conclusions.

The peace officer's repeated use of undefined acronyms did not render his blood draw warrant affidavit defective.

Hogan v. State, 329 S.W.3d 90 (Tex. App.—Fort Worth 2010)

The appellant asserted that the affidavit was defective because it described the driving path of an “IMP,” but did not explain to the magistrate what “IMP” means and did not explicitly state that appellant was driving the “IMP” or otherwise operating a motor vehicle. The officer also used “HGN,” “WAT,” and “OLS” without defining those acronyms or explaining the significance of the number of “clues” as related to the acronyms. While the affidavit could have been clearer, in according substantial deference to the magistrate’s determination, the acronyms did not prohibit the magistrate from being able to reasonably infer that appellant drove the vehicle described in the affidavit.

3. Reasonable Suspicion

The trooper unconstitutionally prolonged the suspect’s detention by asking irrelevant and unrelated questions without reasonable suspicion of criminal activity, and thus violated the 4th Amendment.

United States v. Macias, 2011 U.S. App. LEXIS 19647 (5th Cir. Sept. 27, 2011)

Macias was stopped for not wearing his seatbelt. After stopping the car, he discovered that the teenage female passenger was also not wearing her seatbelt and the vehicle had no proof of financial responsibility. Macias was asked to get out of the vehicle and was questioned for 11 minutes. The questions were unrelated to the

seatbelt violation stop. The trooper returned to his car, checked for warrants, and discovered Macias’ extensive criminal record. When he returned to Macias, he issued Macias citations and returned Macias’ driver’s license. He did not inform Macias that he was free to go and continued to hold the passenger’s identification card. He began questioning Macias again and ultimately obtained permission to search the vehicle, where drug paraphernalia and other contraband were discovered. (All of this occurred in the course of 47 minutes.) The court of appeals concluded that even if Macias’ actual consent was voluntary, such consent was not an independent act of free will. In absence of other evidence, the judgment of the trial court was reversed and an acquittal was ordered.

The defendant’s non-criminal behavior (grinning and staring) was enough to justify an investigative stop without reasonable suspicion of a particular offense.

Derichsweiler v. State, 2011 Tex. Crim. App. LEXIS 112 (Tex. Crim. App. Jan. 26, 2011)

Commentary: Strange things were afoot at 8 p.m. on the evening of December 31st, 2006 at McDonald’s in Lewisville, Texas (you know, the one adjacent to the Wal-Mart). Joe and Joanna Holden were driving through the drive-thru when an unknown man inexplicably pulled up next to them and began grinning and staring at them. This lasted for about 30 seconds to half a minute. After they placed their order, the Holdens were asked to pull out of the drive-thru lane while their food was being prepared. When they did so, they once again noticed the grinning stranger staring at them. This seemed to last for 15 to 20 seconds, after

which the man circled the restaurant and then pulled up behind, and to the left side of, the Holden’s car (not quite blocking them in). He renewed his grinning and stared at them for about the same duration, maybe a little longer. The Holdens felt threatened and intimidated by the man’s peculiar conduct. They suspected that there might be a robbery in progress or that they were themselves being sized up or stalked. Joanna insisted that Joe call 911 and report the encounter. Joe did so and reported the car as being a small gray car with license plates 971-MPM. The grinning man left the McDonald’s and drove into the parking lot of the adjacent Wal-Mart. Shortly thereafter, led by rookie Lewisville Police Officer Wardel Carraby, the police surrounded the suspect’s car; Carraby approached it and contacted the driver, whom he identified in court as Derichsweiler. When Derichsweiler rolled down the driver’s side window, the officer smelled a strong odor of alcoholic beverage coming from the vehicle, and he began a DWI investigation that culminated in Derichsweiler’s prosecution. Because of two prior DWI convictions the jury, under enhanced sentencing provisions, sentenced Derichsweiler to 47 years in prison.

The court of appeals found that the trial court erred when denying the defendant’s motion to suppress because Officer Carraby did not have reasonable suspicion when he and other officers detained Derichsweiler by “blocking in” his vehicle with their police vehicles. (Presumably, the officer should have first personally observed the behavior of the suspect to develop his own basis for stopping the vehicle or dispatch should have provided the officer with more detailed information justifying a stop.)

The Court of Criminal Appeals’ 7-2

opinion is thought-provoking. It authorizes information known only by police dispatch to be imputed to a detaining officer. The majority makes it clear that reasonable suspicion, unlike probable cause, does not have to be associated with any specific offense. Accordingly, under the totality of the circumstances, Officer Carraby was justified in stopping Derichsweiler. Presiding Judge Keller, in her concurring opinion, states that state and federal precedent requires that a peace officer have reasonable suspicion that a person (1) is, (2) has been, or (3) **soon will be** committing an offense. Judge Keller believes that Carraby was legally justified to stop Derichsweiler as he had reasonable suspicion that Derichsweiler would soon be committing an offense.

In a dissenting opinion, Judge Meyers (joined by Judge Johnson) opines that the court of appeals got it right: Officer Carraby had no specific, articulable facts from which to develop reasonable suspicion. While the stop may have been justified under a community caretaking theory, which was not asserted in the trial court, the dissenting members of the Court were not buying into the notion that a person can be stopped on the basis of “anticipatory illegal behavior” (in this case, grinning).

The dissenting opinion claims the majority has changed in the law in Texas. Yet, it says so while taking a jab at “anticipatory illegal behavior,” which seems more applicable to the concurring opinion. Rest assured, this case will be relied on by law enforcement and prosecutors. Stay tuned. This may set the stage for a more extensive discussion of the meaning of “soon will be committing an offense.” (Have you ever seen the movie *Minority Report*?)

The opinion also stresses the

important role a police dispatcher potentially plays in a peace officer executing a lawful stop. The legality of a stop very well can come down to how much information is obtained and conveyed by the dispatcher prior to the stop. Contrast this opinion with *Martinez v. State*, 2011 Tex. Crim. App. LEXIS 912 (Tex. Crim. App. June 29, 2011), where insufficient information about bicycles being stolen was relayed to the dispatcher, and there was, thus, nothing for law enforcement to corroborate.

Although Texas law provides alternative ways to establish financial responsibility, a peace officer’s use of an electronic data base that reveals that a car is uninsured does give rise to reasonable suspicion to stop the vehicle to ascertain if a criminal offense has occurred.

Crawford v. State, 2011 Tex. App. LEXIS 3609 (Tex. App.—Houston [1st Dist.] May 12, 2011)

Commentary: Local trial court prosecutors have been waiting for a published decision standing for the proposition that accessing TexasSure (the State’s insurance verification system) via a patrol car’s Mobile Data Terminal (MDT) gives rise to reasonable suspicion.

How did the court of appeals reach its decision? In *United States v. Cortez-Galaviz*, 495 F.3d 1203 (10th Cir. 2007), the federal appellate court held that the officer had reasonable cause to stop a vehicle and briefly detain its driver where the computer database report on the vehicle stated that it was uninsured. The court of appeals also cites *Foster v. State*, 326 S.W.3d 609, 612-14 (Tex. Crim. App. 2010) for the proposition that the mere fact alternate methods exist to satisfy the Transportation Code’s financial responsibility requirement does not

render the stop unreasonable where the officer relies on information obtained from a MDT. (In *Foster*, handed down in December 2010, the Court of Criminal Appeals held that, among other circumstances, lurching motion of the truck supported reasonable suspicion for stop despite plausibility of innocent explanation for truck’s erratic movements.)

Judge Meyers would have granted review of this case. The Court of Criminal Appeals’ newest member, Judge Elsa Alcalá, was a member of the panel of the 1st District Court of Appeals that issued this opinion. Accordingly, she did not participate in reviewing the PDR for this case.

Where a peace officer had reasonable suspicion that a person was violating the city’s sound ordinance, the officer was justified in stopping the person’s vehicle, where he subsequently observed a seatbelt violation for which the defendant was arrested and that culminated in the discovery of contraband.

In re A.S., 2011 Tex. App. LEXIS 2519 (Tex. App.—San Antonio Apr. 6, 2011)

Commentary: This is a good illustration of an ordinance being used in a daisy chain series of pretexts culminating in a lawful search and seizure. Notably proof of an actual violation of the City of San Antonio’s sound ordinance was not required to justify an investigatory stop.

Absent additional information and despite testifying that he knew that “gang members like to fly their colors,” the peace officer did not have reasonable suspicion merely by observing four youths with blue rags hanging from their pockets and

walking at night behind a strip mall.

Parks v. State, 330 S.W.3d 675 (Tex. App.—San Antonio 2010)

By shining a spotlight on the youths, and using an authoritative tone of voice to ask them to walk over and place their hands on the patrol vehicle, and by the youths submitting to the request, the officer engaged in more than a mere encounter and unlawfully detained the youths. Subsequently discovered incriminating evidence was deemed inadmissible.

4. Inventory Searches

The trial court properly ruled that the inventory search was unjustified and invalid.

State v. Molder, 337 S.W.3d 403 (Tex. App.—Fort Worth 2011)

While the majority opinion addresses the need to conform to standardized written policy when conducting inventory searches, the concurring opinion stresses that because of the proximity of the vehicle from the site of the arrest, there was no need for an inventory of the vehicle's contents.

The arresting officer was at a gas station visiting with a station employee. The employee received a call from defendant. The officer heard defendant threaten the employee. The officer went to the motel where defendant was staying. Defendant was arrested for assault by threat. The officer took an inventory of defendant's truck, which was parked and locked in a private lot. The officer found contraband in a cigarette box in the truck. Defendant was charged with possession of the contraband. The trial court granted his motion to suppress the evidence found in his truck. On appeal, the court of appeals

found that because the evidence was found within a closed container, and the State did not meet its burden of showing the legality of the inventory of that container the trial court did not err in granting the motion to suppress. The officer's testimony, the only evidence presented at the suppression hearing, failed to show any particular standardized criteria or routine concerning the scope of the inventory per DPS policy for closed containers.

5. Exclusionary Rule

Searches conducted in objectively reasonable reliance on federal precedent case law are not subject to the Exclusionary Rule.

Davis v. United States, 131 S. Ct. 2419 (2011)

Commentary: For proponents of the Exclusionary Rule, this is another disappointing opinion from the U.S. Supreme Court. While this case has no direct bearing on Texas' statutory Exclusionary Rule (Article 38.23 of the Code of Criminal Procedure), it is easy to imagine how it may be adapted for argumentation by Texas prosecutors.

In a 7-2 decision, the majority opinion explains that application of the Exclusionary Rule makes no sense because suppression would not deter police misconduct and would be expensive in terms of truth and safety. Justices Breyer and Ginsberg, dissenting, opine that the majority has created a new good faith exception that is incompatible with the Court's other opinion regarding retroactive application of precedent.

6. Consent to Search

After a defendant terminated his initial consent to search the premises, police officers were not legally on the business

premises at the time the officers conducted a dog sniff around the defendant's van, which was not parked in a public parking lot or on any part of the business premises open to the public.

State v. Weaver, 2011 Tex. Crim. App. LEXIS 1320 (Tex. Crim. App. Sept. 28, 2011)

In a 5-4 decision, Judge Cochran, writing for the majority, concluded that the defendant's initial consent to search the premises was terminated after he unequivocally refused to consent to any further search of his van.

Presiding Judge Keller, dissenting, writes that no 4th Amendment violation occurred because a dog sniff is not a search. Weaver did not consent to law enforcement's presence on the premises. Judge Keasler, dissenting, would remand the case for a fact determination on whether the van was parked in a public lot.

It is reasonable for police to believe that a person who answers the door of a residence in the middle of the night has authority to invite police to enter even if the person is 13 years old and it is 2 a.m.

Limon v. State, 340 S.W.3d 753 (Tex. Crim. App. 2011)

Commentary: The authority of a person to consent to police entry may be either actual or perceived and is determined on a case by case basis. The determination is made based on a preponderance of the evidence and is reviewed as a mixed question of law and fact. In absence of findings of fact, appellate courts view the evidence in the light most consistent with the court's ruling on the ultimate

question. That is exactly what happened here. Perhaps the ruling would have been different if findings of fact had been included in the record.

Judge Meyers dissenting opinion explains that nobody gives a teenager permission to allow strangers into their home at 2:00 in the morning. The police should presume that minors have no authority to consent to entry and should ask to speak to an adult. If no adults are available, then the officers need to get a warrant (and possibly call CPS).

7. Excessive Force

Eight Taser “drive stuns” (one lasting 20 seconds) to the groin of a defendant in custody for Class C warrants was excessive and unreasonable despite law enforcement suspicion that the defendant had crack cocaine in his mouth that could have proven potentially fatal if digested.

Hereford v. State, 339 S.W.3d 111 (Tex. Crim. App. 2011)

In a “drive stun” the officer removes the wire firing cartridge, places the Taser gun directly against the target’s body, and pulls the trigger to give a jolt of electricity to a concentrated area of the body.

Petition for Discretionary Review (PDR) was granted in this case because the State asserted that it presented an important issue of state or federal law that has not been, but should be, settled by the Court of Criminal Appeals. However, it is more likely to be chalked up as a documented win for critics who claim that there is inadequate attention to law enforcement’s abusive use of Tasers.

8. Check Points

Evidence was not illegally obtained where a K-9 unit was present at a checkpoint for checking drivers’ licenses and insurance.

Lujan v. State, 331 S.W.3d 768 (Tex. Crim. App. 2011)

Police officers may act upon information properly learned at a checkpoint stop even where such action may result in the arrest of a motorist for an offense unrelated to that purpose, as long as the primary purpose of the checkpoint is lawful.

In a concurring opinion, Judge Johnson agrees with the dissent that the presence of a K-9 unit undermines the legitimacy of the checkpoint, but believes that the contraband would have inevitably been discovered in the defendant’s care after he was arrested for admitting that he had no driver’s license.

Judge Meyers, in a dissenting opinion, states that the presence of the K-9 unit undermines the contention that the checkpoint was for driver’s license and insurance verification purposes and not for prohibited general law enforcement purposes.

9. Plain View Doctrine

So long as the probable cause to believe an item in plain view is contraband arises while the police are still lawfully on the premises, and their further investigation into the nature of those items does not entail an additional and unjustified search of, or presence on, the premises, the seizure of those items is permissible under the 4th Amendment.

State v. Dobbs, 323 S.W.3d 184 (Tex. Crim. App. 2010)

Commentary: This case abandons the Court of Criminal Appeals’ prior holding in *White v. State*, 729 S.W.2d 737 (Tex. Crim. App. 1987). In *White*, the Court construed the plain view doctrine to require additional probable cause to further investigate and develop the probable cause if a peace officer did not instantly recognize the item as contraband. Under prior case law, a warrantless seizure of an item is lawful under the Plain View Doctrine when three requirements are met: (1) law enforcement officers must lawfully be in a place where the item can be viewed in plain sight; (2) it must be **immediately apparent** to the officers that the item constitutes evidence, fruits, or instrumentalities of a crime; and (3) the officers must have the lawful right to access the object. Without dissent, the Court in *Dobbs*, subject to certain conditions, loosens the immediately apparent requirement.

Commentary: This opinion makes the Texas Plain View Doctrine more consistent with federal case law.

C. 5th Amendment

1. Double Jeopardy

The judge in a misdemeanor jury trial erred in determining manifest necessity for a mistrial where the defendant objected and wished to proceed to trial with fewer than six jurors. Double Jeopardy hence applied.

Ex parte Garza, 337 S.W.3d 903 (Tex. Crim. App. 2011)

The federal case law is clear. The 6th and 14th Amendments confer upon an accused in state court a constitutional right to insist on the verdict of a jury composed of at least six members. However, such cases do not speak

to whether the accused may opt to affirmatively **waive** that right, at his election, as occurred in this case. State law does not prohibit such a waiver of a full jury in county court. A trial court must be considerate of the defendant's valued right to proceed to verdict with the jury originally selected. Failure to do so is an abuse of discretion when, as in this case, the trial court does not first entertain every reasonable alternative.

Commentary: This opinion is fact driven. Nevertheless, there is no reason to doubt its applicability to municipal court proceedings. How many defendants or their attorneys will want to proceed to trial with only five jurors? The answer is undoubtedly more if they have read this opinion.

2. *Miranda* Warnings

The age of a child subject to police questioning is relevant to the “custody analysis” of *Miranda*.

J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011)

In a 5-4 decision, the U.S. Supreme Court injects a new variable—age—in determining whether a person is in custody for purposes of receiving the warning required by *Miranda v. Arizona*, 384 U.S. 436 (1966). The majority opinion, written by Justice Sotomayor, states that it is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. If a child's age is known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of *Miranda*. Seeing no reason for police officers or courts to blind themselves to that common

sense reality, the majority holds that a child's age properly informs the *Miranda* custody analysis.

The dissenting opinion, written by Justice Alito, celebrates *Miranda* for its clarity and simplicity in application and then explains how the majority opinion, while reasonable on its surface, provides no guidance for judges, prosecutors, or defense attorneys and is most likely to eventually erode *Miranda* by imposing a standard that will only muddy the water.

Commentary: This case notably involved a 13-year-old, 7th grade student. The child had been seen near a home where a digital camera was stolen. The camera was retrieved at the school. There were reports that the child had been seen with the camera on school grounds. In conjunction with investigators, a school resource officer, on more than one instance, took the child out of class for questioning regarding the burglary and stolen camera. References in the majority opinion about the legal system not treating children as merely small adults are particularly thought provoking in light of the recent attention Texas has received for issuing citations to children.

D. 6th Amendment

1. Public Trial

A prison inmate's right to a public trial was not violated when court proceedings were conducted in the prison chapel.

Lilly v. State, 337 S.W.3d 373 (Tex. App.—Eastland 2011)

The defendant, a prison inmate, was charged with assault. After being arraigned in the prison chapel he moved that subsequent proceedings be conducted publically at the county courthouse. His motion was denied.

In absence of evidence that anyone was prevented from attending his trial or that anyone was dissuaded from attempting to attend the trial because of its location, there was no violation of the 6th Amendment, Article I § 10 of the Texas Constitution, or Article 1.24 of the Code of Criminal Procedure. Conducting court proceedings in the prison chapel did violate the Establishment Clause of the 1st Amendment but was harmless error because it did not contribute to the defendant's decision to plead guilty.

Commentary: While it is unknown if any municipal court proceedings are being conducted in church chapels, it has become a time-honored tradition for municipal and justice courts to conduct criminal proceedings from behind bars (see, “Jail House Pleas: Is *Rothgery* a Tap on the Shoulder or a ‘Fly in the Ointment’ of Local Trial Court Expediency,” *The Recorder* (August 2010)). This case indirectly provides more food for thought about the legal issues surrounding the practice. In considering how this case relates to jail house pleas in Class C misdemeanors, keep the following in mind: (1) the defendant had a meaningful opportunity for assistance by legal counsel; and (2) the Texas Legislature has expressly authorized district judges to “hear a nonjury matter relating to a civil or criminal case at a correctional facility in the county in which the case is filed or prosecuted if a party to the case or the criminal defendant is confined in the correctional facility.” See, Article 24.012(e) of the Code of Criminal Procedure. (Why don't municipal and justice courts seek legislative authority that balances the interest of efficiency with 6th Amendment concerns?)

The Court of Criminal Appeals has granted PDR on both the public trial and Establishment Clause issues

presented in this case. It may provide insight to how an appellate court would analyze an appeal stemming from a “jail house plea.”

2. Assistance of Counsel

Although a court generally has no duty to appoint counsel to a non-indigent defendant, there may be circumstances in which a court may do so when the interests of justice so require.

Tex. Atty. Gen. Op. GA-884 (9/7/11)

A court may require a defendant, in an order of community supervision, to pay attorney fees according to the county’s schedule of fees established under Article 26.05 of the Code of Criminal Procedure, regardless of the county commissioners court’s contract with individual attorneys.

Per Article 26.05(g), funds paid under an order of supervision should be deposited as court costs regardless of the amounts agreed to in a contract by the commissioners court and the individual attorneys.

Commentary: Without regard to Article 26.05, which pertains to the compensation of counsel appointed to defend, the request for this opinion also cites Article 1.051 of the Code of Criminal Procedure, which allows for the appointment of counsel in any criminal proceeding if the court concludes that the interest of justice requires representation. There is no reason to doubt the authority of a municipal court or justice court to make such an appointment (see, “The Oversimplification of the Assistance of Counsel in the Adjudication of Class C Misdemeanors in Texas,” *The Recorder (January 2009)*).

This opinion, however, raises an interesting related question: under what circumstances, if any, can a non-

indigent defendant accused of a Class C misdemeanor who is appointed counsel “in the interest of justice” be assessed related costs?

3. Batson Challenges

Because the State failed to demonstrate a clear and reasonably specific, legitimate race-neutral reason for its peremptory strikes of the specified two African American venire members, the municipal court’s determination was clearly erroneous as to the two peremptory strikes.

Hassan v. State, 346 S.W.3d 234 (Tex. App.—Houston [14th Dist.] 2011)

Commentary: Yet another installment in a recent string of *Batson* challenges made in Houston’s municipal courts. See, also, *Kassem v. State*, 263 S.W.3d 377 (Tex. App.—Houston [1st Dist.] 2008); *McQueen v. State*, 329 S.W.3d 255 (Tex. App.—Houston [14th Dist.] 2010).

What is not readily apparent from this opinion, but that should be emphasized to judges and prosecutors in high volume municipal courts of record, is the challenges that come when a case is sent back from an appellate court so that a *Batson* hearing can be conducted. The passage of time, volume of cases, changes in prosecutor personnel, deficient notation, and lack of recollection potentially make conducting such a hearing very difficult. In this case, the complaint was filed more than half a decade ago (7/25/2005).

The noted trend toward sending *Batson* challenges back for evidentiary hearings in the trial court has been the subject of recent scholarship. See, “Criminal Law: The Proper Remedy for a Lack of *Batson* Findings: The Fall-Out from

Snyder v. Louisiana,” 101 J. Crim. L. & Criminology 1 (Winter 2011). One of the cases originating from the Houston Municipal Courts is mentioned in an endnote.

4. Crawford Issues

The U.S. Supreme Court held in *Crawford v. Washington*, 541 U.S. 36 (2004), that the Confrontation Clause “would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had a prior opportunity for cross-examination.”

- *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011) In a 5-4 decision, a majority of the U.S. Supreme Court held that the Confrontation Clause does not permit prosecutors to introduce a laboratory report containing a testimonial certification through in-court testimony of a scientist who did not sign the certification or perform or observe the test reported in the certification. The dissent claims that the majority’s application of *Crawford* imposes an undue burden on prosecutors and that requiring the actual analyst to testify is a “hollow formality.”
- *Wisser v. State*, 2011 Tex. App. LEXIS 3334 (Tex. App.—San Antonio May 4, 2011) - *Crawford* is inapplicable to probation revocation proceedings because they are administrative and not criminal in nature.

5. Ineffective Assistance of Counsel

It has been nearly two years since the U.S. Supreme Court ruled in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) that a lawyer representing an alien charged with a crime has an obligation to tell the client that a guilty plea carries a risk that he

will be deported. Last December it was explained that for years, most states, including Texas, have viewed deportation as a possible collateral consequence of being convicted of a crime, not as part of the penalty. *Padilla* eliminated any such distinction and the burden on defense attorneys was increased as the notion of providing effective assistance of counsel became enhanced. Once again, it is emphasized that *Padilla* does not directly pertain to judicial admonishments or defendants proceeding pro se. While the Court of Criminal Appeals has not yet granted a PDR on a *Padilla* claim it is just a matter of time. Here are some related holdings from various courts of appeals:

- *Ex parte De Los Reyes*, 2011 Tex. App. LEXIS 7166 (Tex. App.—El Paso Aug. 31, 2011) - Counsel rendered ineffective assistance by failing to adequately admonish a permanent resident about the immigration consequences of his guilty plea. *Padilla* applies retroactively in post-conviction habeas proceedings. Although the plea papers stated the possibility of deportation, the defendant, a permanent resident, was not advised by his attorney that deportation was a virtually inevitable consequence of his plea to a second theft offense.
- *Ex parte Tanklevskaya*, 2011 Tex. App. LEXIS 4034 (Tex. App.—Houston [1st Dist.] May 26, 2011) - *Padilla* applies retroactively. Trial counsel rendered ineffective assistance when he failed to specifically inform a lawful permanent resident that a guilty plea to a Class B misdemeanor would render her presumptively inadmissible and her removal upon returning to the United States was “presumptively mandatory” and “virtually certain.” Furthermore, the trial court’s statutory admonishment

did not cure any prejudice arising from counsel’s inadequate advice.

- *Ex parte Rodriguez*, 2011 Tex. App. LEXIS 3726 (Tex. App.—San Antonio May 18, 2011) - Defense counsel did not render ineffective assistance because he failed to adequately advise the defendant about the immigration consequences of his plea. The defendant failed to establish under *Padilla* that the deportation consequence for the misdemeanor assault conviction was clear.

E. 14th Amendment

1. Sufficiency of Evidence

Texas appellate courts will no longer be conducting factual sufficiency review of the evidence.

Brooks v. State, 323 S.W.3d 893 (Tex. Crim. App. 2010)

For nearly 15 years, Texas has had two standards for reviewing the sufficiency of evidence in criminal cases upon appeal. The basic, **legal sufficiency review**, rooted in the 14th Amendment, is the standard from *Jackson v. Virginia*, 443 U.S. 307 (1979). Under the *Jackson* standard, the reviewing court asks, considering all of the evidence in the light most favorable to the verdict, was a jury rationally justified in finding guilt beyond a reasonable doubt?

To provide a secondary safeguard against wrongful conviction, the Texas Court of Criminal Appeals in *Clewis v. State*, 922 S.W.2d 126 (Tex. Crim. App. 1996) adopted a **factual sufficiency review** which permits a finding that the evidence is factually insufficient if (1) it is so weak as to be clearly wrong and manifestly unjust or (2) the adverse finding is against the great weight and preponderance of the evidence. (Note, that evidence is not viewed in the light most

favorable to the verdict.)

In a 5-4 decision, the Court of Criminal Appeals held that the *Jackson* legal-sufficiency standard was indistinguishable from the *Clewis* factual-sufficiency standard, and therefore that the *Jackson v. Virginia* standard was the only standard that a reviewing court should apply in determining whether the evidence was sufficient. The Court therefore overruled all other cases to the contrary, including *Clewis*.

Commentary: Many prosecutors have claimed since its inception that *Clewis* created a muddled mess that allowed appellate courts to improperly second guess the verdict of trial courts. Many defense lawyers claimed that the *Clewis* standard was a rarely used safeguard that prevented convictions based on deficient evidence that would not have been prevented if only the *Jackson* standard was utilized. For more insight, I recommend reading two articles: Ricardo Pumarejo, Jr., “Clueless over *Clewis* or: How I Learned to Stop Worrying and Welcome *Brooks v. State*,” 23 App. Advoc. 246 (Winter 2010) or Charles McGarry, “Point of Personal Privilege: In Defense of *Clewis v. State* and the Right of the Innocent to Justice,” 23 App. Advoc. 492 (Spring 2011). (Notably, Mr. McGarry is the Former Chief Justice of the Dallas Court of Appeals who wrote the intermediate appellate courts opinion in *Clewis*.)

2. Brady Evidence

In *Brady v. Maryland*, 373 U.S. 83 (1963), the U.S. Supreme Court held that willful or inadvertent suppression by prosecutors of evidence favorable to the accused upon request violates due process where evidence, exculpatory or impeaching, is material either to guilt or punishment.

A prosecutor's office cannot be held liable for a single *Brady* violation on the theory of inadequate training.

Connick v. Thompson, 131 S. Ct. 1350 (2011)

In a 5-4 decision, Justice Thomas, writing the majority opinion, explained that the failure to train must amount to deliberate indifference to the rights of persons with whom the untrained employees come into contact. Deliberate indifference in this context requires proof that city policymakers disregarded the known or obvious consequence that a particular omission in their training program would cause employees to violate citizens' constitutional rights. Thompson did not contend that he proved a pattern of similar *Brady* violations, and four reversals by Louisiana courts for dissimilar *Brady* violations in the 10 years before the robbery trial could not have put the district attorney's office on notice of the need for specific training. Thompson mistakenly relied on a hypothesized "single-incident" liability theory, contending that the *Brady* violation in his case was the "obvious" consequence of failing to provide specific *Brady* training and that this "obviousness" showing can substitute for the pattern of violations ordinarily necessary to establish government culpability.

Justice Ginsburg, writing for the dissent, would uphold the jury's verdict for the gross, indifferent, and long-continuing violation of Thompson's fair-trial right which resulted in his 18 years of incarceration (14 years on death row). The Orleans Parish District Attorney's Office failed to turn over potentially exculpatory blood evidence. Orleans Parish District Attorney, Harry Connick, is not entitled to rely on prosecutors professional training, for Connick

himself should have been the principal insurer of that training. Connick was aware of his office's high turnover rate. He recruits attorneys who are fresh out of law school, and promotes them rapidly through the ranks. Thus, the dissenters opine, he bears responsibility for ensuring that on-the-job training takes place.

Brady applies when the prosecution unintentionally fails to disclose the audio portion of a videotape containing exculpatory statements the defendant made to police.

Pena v. State, 2011 Tex. Crim. App. LEXIS 1319 (Tex. Crim. App. Sept. 28, 2011)

Because the audio portion of the videotape was favorable evidence that was material to Pena's case and the State failed to disclose such evidence to Pena, despite two requests for the production of the audiotape and its knowledge of the existence of the audio recording, the State violated Pena's constitutional rights as expressed in *Brady*. Accordingly, Pena's conviction was based upon the wrongful withholding of exculpatory evidence and was reversed and remanded.

**II. Substantive Law
A. Culpable Mental States**

The charging instrument was defective because it failed to allege "with reasonable certainty the act or circumstance which indicates Rodriguez discharged the firearm in a reckless manner."

State v. Rodriguez, 339 S.W.3d 680 (Tex. Crim. App. 2011)

By only stating the defendant

"recklessly discharged a firearm by pulling the trigger on a firearm which contained ammunition and was operable," the State addressed how he discharged the firearm, but not how the defendant was reckless. Article 21.15 of the Code of Criminal Procedure requires language that sets out the acts relied upon to constitute recklessness.

Commentary: To drafters of penal statutes and prosecutors in Texas (which in municipal court sometimes is one and the same person: your city attorney) consider this opinion to be a public service announcement and a clear warning. Merely alleging that an act is reckless is not enough. You must also allege the circumstances that make the act reckless, even though a penal statute may not require it. As in this case, the task is further complicated when the penal statute is encumbered by what Judge Price describes as "peculiar and confusing" drafting.

The use of a cell phone by a driver, who causes a crash resulting in death, is insufficient to prove culpable mental state for criminally negligent homicide.

Montgomery v. State, 346 S.W.3d 747 (Tex. App.—Houston [14th Dist.] 2011)

At trial, the State presented evidence of defendant's use of a cell phone while driving, her unsafe lane change, and her failure to maintain a proper lookout, placing primary emphasis on cell phone usage. The court of appeals held that the evidence was not sufficient to sustain the jury's finding that defendant acted with the requisite mental state for criminally negligent homicide,

noting that using a cell phone while driving was not an illegal activity in Texas, except under very limited circumstances inapplicable to this case. The prosecution failed to present evidence that the defendant's conduct and failure to perceive the risk of her conduct (using a cell phone while driving) amounted to a gross deviation from the ordinary standard of care justifying criminal sanctions. The court of appeals opined that the case did not involve high rates of speed, racing, intoxication, or other clearly egregious conduct, but rather distracted driving and a bad lane change. The additional factor of cell phone usage did not elevate defendant's conduct to criminally negligent homicide in the absence of evidence that there was an increased risk of fatal crashes from cell phone usage and that such risk was generally known and disapproved of in the community.

Commentary: The dissent claims that the majority put an undue burden on the State and ignores that it is well known in 2011 that the use of cell phones while driving increases risk of traffic deaths. The Court of Criminal Appeals granted PDR on September 21, 2011.

B. Health and Safety Code

Lack of definition of "unprovoked" and "attack" by the Legislature did not render Section 822.005(a) (1) of the Health and Safety Code unconstitutionally vague.

Watson v. State, 337 S.W.3d 347 (Tex. App.—Eastland 2011); *Smith v. State*, 337 S.W.3d 354 (Tex. App.—Eastland 2011)

Texas Rule of Evidence 404(b) is inapplicable to the bad acts of a dog. The rule specifically relates to "a person." Moreover, the dog's prior

bad acts were admissible to show that the dog's attack in this case was unprovoked and also, to the extent that appellant knew of the dog's prior bad acts, to show that appellant acted with criminal negligence in failing to secure the dog.

Commentary: The facts of this case are heartbreaking. Seven-year-old Tanner Joshua Monk was mauled to death by a pit bull owned by the two defendants, a husband and wife. A third party gave the defendants the dog after it had killed a neighbor's dog. Tanner was a friend of the defendants' children and was killed after retrieving a toy from their home.

PDR has been granted in both of these cases by the Court of Criminal Appeals. Chapter 822 of the Health and Safety Code (Dogs that are a Danger to Persons) contain the provisions used by municipal courts to order the destruction of dangerous dogs. It is unclear, how an appellate court opinion could affect other provisions in Chapter 822. TMCEC will monitor this case. Even without a Court of Criminal Appeals opinion, many believe, that in the interest of public safety and property rights, the Legislature needs to improve Chapter 822.

C. Penal Code

The evidence was insufficient to convict the defendant for theft of property when the State alleged that the owner was Mike Morales and not Wal-Mart.

Byrd v. State, 336 S.W.3d 242 (Tex. Crim. App. 2011)

In a unanimous decision, the Court of Criminal Appeals held that the State failed to prove the defendant stole any property from Mike Morales, whom it had alleged as the owner of the

shoplifted item. Because the State failed to prove that Mike Morales had any ownership interest in the property that the defendant stole, the evidence is insufficient and the defendant is entitled to an acquittal of that specifically charged offense.

Commentary: Mike Morales was the manager at the Wal-Mart. While his name appeared on a police report, the report was not offered into evidence. This is a reminder that prosecutors need to take the time to carefully review their charging instrument in a theft case. It also cites the significant trilogy of Court of Criminal Appeals case law that created a shift in variance law: *Malik v. State*, 953 S.W.2d 234 (Tex. Crim. App. 1997) (sufficiency of the evidence should be measured by the elements of the offense as defined by the hypothetically correct jury charge for the case); *Gollihar v. State*, 46 S.W.3d 243 (Tex. Crim. App. 2001) (when there is variance between the charging instrument and the evidence at trial it is to be measured against a hypothetically correct jury charge, and a variance between the wording of a charging instrument and the trial evidence is fatal only if the variance is material and prejudices the defendant's substantial rights); and *Fuller v. State*, 73 S.W.3d 250 (Tex. Crim. App. 2002) (in determining whether a variance is material, we consider whether the charging instrument offers an accused enough notice of the charged offense to allow preparation of an adequate defense and precludes the accused from being prosecuted later for the same crime).

D. Transportation Code

1. Driver Responsibility Program Having unpaid surcharges resulting in a driver's license suspension does not preclude the granting of a occupational driver's license.

Wood v. Texas Department of Public

Safety, 331 S.W.3d 78 (Tex. App.—Fort Worth 2010)

Wood could not renew his driver’s license because he owed \$8,580 in surcharges under the Driver Responsibility Program (Sections 708.002-708.158 of the Transportation Code). He sought an occupational license as he was indigent and could not pay the surcharges. The trial court denied his request. On appeal, the court reversed and remanded.

State law contains an express list of who is ineligible for an occupational driver’s license. Indigent persons with surcharges are not on the list. The trial court erred because Section 521.244(a) of the Transportation Code requires a finding as to whether an essential need for an occupational license exists. No such finding was made.

2. Red Light Cameras

Failure to exhaust administrative remedies under Chapter 707 (authorizing use of red light cameras and the imposition of civil penalties) precludes subject matter jurisdiction in a district court to grant a declaratory judgment.

Edwards v. City of Tomball, 343 S.W.3d 213 (Tex. App.—Houston [14th Dist.] 2011)

The majority explains that, while it is generally presumed that a district court has jurisdiction to resolve all disputes, that presumption disappears if the Texas Constitution or other law conveys exclusive jurisdiction on another court or administrative agency. Under Chapter 707 of the Transportation Code, municipalities are authorized to establish an administrative process for people who contest penalties stemming from red light cameras. The

exclusive jurisdiction for appealing the administrative determination belongs to the municipal court. In this case, Edwards failed to utilize any of the procedures for contesting or appealing the imposition of the civil penalty. Thus, she could not seek relief in district court.

Justice Frost, in a concurring and dissenting opinion, explains that the district court erred in failing to rule on Edward’s invalidity claim (asserting that Tomball’s red light ordinance is not consistent with, and exceeds the authority granted by Chapter 707 and hence is unenforceable) because of governmental immunity. She explains that if a party sues a municipality and seeks a declaration that a municipal ordinance is invalid, based upon either constitutional or non-constitutional grounds, the Legislature has waived the municipality’s governmental immunity. Justice Frost does not believe that Edwards was obligated to exhaust administrative remedies because the Legislature did not authorize either an agency or a municipal court to find a red light camera ordinance to be invalid or unenforceable by means of a declaratory judgment.

Commentary: This is an opinion certainly worth reading. While it does not address it, the opinion references the messiest part of Chapter 707, specifically, Section 707.016(e): “An appeal under this section shall be determined by the court by trial de novo.” A “trial de novo” means a new trial. This begs the question, when was the original trial? (No trial has yet to occur.) Is the trial de novo criminal or civil? Would not then, either the rules of criminal or civil procedure apply? If this is an administrative matter would it not make more sense to simply allow a local trial court to conduct a “de novo review” of the hearing officer’s

determination?

The vagaries in Chapter 707 have resulted in local governments having little direction and making debatable decisions that are memorialized by ordinance. In some cities, once the case is appealed from the hearing officer, the case is re-filed as a criminal case. At least one city wanted its municipal judges to act as administrative hearing officers and saw no problem that the same judges potentially hear the appeal. Cities that cherish their red light camera programs have a vested interest in having deficiencies in Chapter 707 remedied by the Legislature.

3. Automated Traffic Control System

Section 542.2035 of the Transportation Code prohibits a municipal peace officer from using a handheld laser speed enforcement device that also obtains photos of the vehicle, its license plates, or the driver to collect evidence before initiating a traffic stop.

Tex. Atty. Gen. Op. GA-846 (2/28/11)

By enacting Section 542.2035, the Legislature has prohibited a municipality from using any radar device that records the speed of a motor vehicle and obtains one or more photographs or other recorded images of the vehicle, its license plate, or its operator.

Commentary: The only thing more disappointing than this opinion’s lackluster effort to construe other possible meanings of “automated traffic control system” in Section 542.2035 is the fact that the Legislature failed to define it in 2009 or in 2011. While other commentators mistakenly conclude that this statute is related to opposition of red light cameras,

it is aimed at prohibiting use of “speed trucks,” where a vehicle on the side of a road surreptitiously measure speed, takes pictures, and sends automated “traffic tickets” to people. This opinion, which is not binding on the judiciary (but rather a persuasive source of secondary authority) makes Section 542.2035 applicable to any radar/lidar unit capable of taking pictures, even a handheld unit. Notably, only municipalities are prohibited from using such systems.

4. Equipment Violations

There is no exception for diesel turbine engines to the requirement that all vehicles have a muffler.

Tex. Atty. Gen. Op. GA-873 (8/9/11)

A motor vehicle must be equipped with a “muffler,” which is defined in part as “a device that reduces noise.” Accordingly, in order to meet the requirement of Section 547.604 of the Transportation Code, a vehicle must be equipped with a muffler that reduces noise.

5. Traffic Investigations

Neither a sheriff nor a fire department gets to decide where to land a helicopter during the investigation of a traffic accident.

Tex. Atty. Gen. Op. GA-859 (5/5/11)

The helicopter pilot rather than a fire department or sheriff’s office has the final say on where to land a helicopter for the purpose of transporting patients from a motor vehicle accident.

III. Procedural Law

A. Magistrate Related

1. Family Violence

Double jeopardy protections do not bar a charge of assault after a

Magistrate’s Order of Emergency Protection (MOEP) is entered in the same matter.

Ex parte Necessary, 333 S.W.3d 782 (Tex. App.—Houston [1st Dist.] 2010)

Article 17.292 of the Code of Criminal Procedure reflects the Legislature’s intent that a MOEP is issued for the purpose of protecting alleged victims of family violence, and not for the purpose of imposing a criminal punishment. While the MOEP precluded the defendant from possessing a firearm, that restraint did not approach imprisonment. Any effects of Article 17.292 that reflect the traditional goals of punishment are incidental. A MOEP is civil in nature and not criminally punitive. Jeopardy never attached. Double jeopardy was not implicated.

Commentary: From grasping at straws, comes new case law: a MOEP is a civil remedy. Notably, the court of appeals reaches this conclusion by exclusively citing cases dealing with protective orders issued pursuant to Chapter 81 of the Family Code.

The term “dating relationship” is not ambiguous as to whether it applies to same-sex relationships.

Ochoa v. State, 2010 Tex. App. LEXIS 9562 (Tex. App.—Houston [1st Dist.] Dec. 2, 2010)

The court of appeals found that Section 71.0021(b) (Dating Violence) applies to a relationship between individuals. The statute does not distinguish between relationships between individuals of the same sex and relationships between individuals of the opposite sex. Because a “dating relationship” does not necessarily include sexual intercourse, there is no conflict between the Legislature’s criminalization of Deviate Sexual

Intercourse (Section 21.06, Penal Code) and its protection of persons in same-sex dating relationships from domestic violence. The definition “dating relationship” is not unconstitutionally vague in its applicability to same-sex relationships. Section 71.0021(b) provides fair notice for an ordinary person to have a reasonable opportunity to know what conduct is prohibited.

Commentary: Deviate sexual intercourse, a Class C misdemeanor, was invalidated by *Lawrence v. Texas*, 539 U.S. 558 (2003). The U.S. Supreme Court declared Section 21.06 unconstitutional as applied to private sexual conduct between consenting adults. Although the Legislature has yet to repeal Deviate Sexual Intercourse, law enforcement, prosecutors, and judges need to know that Section 21.06 is a provision which is “dead in the book.” Although this case stems from an enhanced assault charge, its holding is pertinent to the issuance of a Magistrate’s Order of Emergency Protection (MOEP) (Article. 17.292, Code of Criminal Procedure). A MOEP may be issued (and sometimes is required to be issued) following an arrest stemming from “family violence,” which by definition in Section 71.004 of the Family Code includes “dating violence,” which encompasses “dating relationship.” Accordingly, this case supports the issuance of a MOEP in same sex relationships.

2. Property Hearings

A property hearing under Chapter 47 of the Code of Criminal Procedure (Disposition of Stolen Property) is a prerequisite for district court jurisdiction of a “takings claim” where a city seizes vehicles from a vehicle storage facility resulting in the loss of fees

related to the vehicles' storage.

City of Dallas v. VSC, LLC, 347 S.W. 3d 231 (Tex. 2011)

VSC, a non-consent vehicle storage facility, sued the City of Dallas, alleging the City's seizure and subsequent disposition of vehicles from its property without notice was an unconstitutional taking that violated the business's right to just compensation, and sought declaratory judgment. A district court denied the City's plea to the jurisdiction. The City filed an interlocutory appeal. The court of appeals affirmed the trial court's denial of the City's plea to jurisdiction, and the city petitioned for review before the Supreme Court.

In a 5-4 decision, reversing the court of appeals, the Supreme Court, in an opinion by Chief Justice Jefferson held that, because VSC had actual knowledge of the City's seizure of certain vehicles, its failure to use the post-deprivation process contained in Chapter 47 precluded a takings claim in district court. Having given constitutionally sufficient notice of the seizures, the City was under no obligation to invite VSC to request a Chapter 47 property hearing.

Justice Wainwright, writing for the dissent, thoroughly explains that Chapter 47 is schizophrenic in what a magistrate may determine, whether it is the person who "has the superior right to possession," or who is the "actual owner" of the property. Because it is unspecific and lacks a comprehensive scheme, the dissent claims the only way to view Chapter 47 is as a **process** rather than a **proceeding**, applicable to a number of different judicial forums. The dissent contends that the holding creates a new rule preferring one type of civil claim over another, when no governing statute or case law has heretofore required it.

Commentary: From TMCEC's communication with courts, it is safe to say that many municipal judges would agree with the dissent's scathing critique of Chapter 47. Some of the "holes" in Chapter 47, such as issues relating to notice, are referenced in the *TMCEC Bench Book* which is cited by the dissent.

It is not every day in Texas that its Supreme Court construes a chapter in the Code of Criminal Procedure. It is important to remember that there are other provisions in the Code of Criminal Procedure that are civil in nature that pertain to municipal courts. Civil jurisdiction of municipal courts receives scant attention and is a piecemealed sandwich of confusion. This decision indirectly illuminates the role of municipal courts in civil matters (a role which is widely overlooked and misunderstood by the Legislature and most members of the Texas judiciary). This is not likely the last time the Texas Supreme Court will have to directly or indirectly address a civil matter stemming from municipal court proceedings. It is most likely the Legislature will continue to inconsistently and without proper forethought scatter other kernels of civil jurisdiction on municipal courts. Wouldn't the public and judicial system equally benefit if clarification came sooner rather than later?

3. Emergency Mental Detentions

The law does not specify who is responsible for an individual who is the subject of an emergency detention order after the person is apprehended on a warrant.

Tex. Atty. Gen. Op. GA-877 (8/12/11)
There is no provision in Chapter 573 of the Health and Safety Code that expressly requires a particular law enforcement agency to oversee a

mentally ill person once the person has been transported to a facility pursuant to a Section 573.002 emergency detention order. Because the Legislature has not enacted a statute that requires a specific law enforcement agency to oversee mentally ill persons, the Attorney General cannot opine that Chapter 573 places a duty on any particular law enforcement agency over another.

4. Juvenile Confessions

The juvenile knowingly, intelligently, and voluntarily waived his right to counsel, and his confession was not obtained in violation of Section 52.02 or other applicable provisions in the Family Code.

Martinez v. State, 337 S.W.3d 446 (Tex. App.—Eastland 2011)

No statutory violations occurred. The juvenile had not been arrested or charged when he accompanied officers to a juvenile processing office and gave his statement. The warnings administered by the magistrate were not the equivalent of "magistration" per Article 15.17 of the Code of Criminal Procedure; therefore, *Rothgery v. Gillespie County*, 554 U.S. 191 (2008) (establishing attachment of right to counsel in Texas) did not apply. When the requirements of Section 51.095 of the Family Code are followed, the written statement of a juvenile is admissible in evidence even if the juvenile is in a detention facility or in the custody of an officer when he gives the statement. The fact that appellant was not under arrest when he was first taken before a justice of the peace, acting as a magistrate, is an additional reason why his statement was admissible; even if he had been arrested, the result would be the same. The issue of custody equivalent to

arrest arises when the requirements of Section 51.095 are not followed.

B. Code of Criminal Procedure

1. Statute of Limitations

When the State errs and the defendant's prosecution is barred by the statute of limitations, the defendant is not required to preserve the issue for appeal.

Phillips v. State, 2011 Tex. Crim. App. LEXIS 825 (Tex. Crim. App. June 15, 2011)

In a 5-3 decision (Judge Meyers did not participate), the Court of Criminal Appeals held that an absolute statute-of-limitations bar is not forfeited by the failure to raise it in the trial court. Presiding Judge Keller, writing for the dissent, opines that the statute in question in this case is not an ex post facto law.

Commentary: This case led me to reconsider my understanding of case law regarding statutes of limitations in Texas. Specifically, it is important when thinking about the statute of limitations to distinguish between special issues “based on facts” that are required to be stated in the charging instrument versus “pure law” where the charge simply was not formally filed in time.

In *Phillips*, Judge Cochran, writing for the majority, explains that even if a defendant did not object and raise the statute of limitations, the claim is not waived on appeal. The statute of limitations had run three years before the State ever filed charges. The prosecution ultimately was unsuccessful in their attempt to use a change in statutory law to roll back the hands of time. In an earlier case, *Proctor v. State*, 967 S.W.2d 840

(Tex. Crim. App. 1998), the Court held that a defendant will forfeit a statute of limitations defense if it is not asserted at or before the guilt stage of trial. Thus, it is a defense that is implemented only upon request.

What *Phillips* makes clear, however, is that *Proctor* only governs statute of limitations scenarios that are “based on facts” (e.g., challenging a pleading that includes a tolling paragraph, explanatory averments, or even allegations that suffice to show that the charged offense is not, at least on the face of a charging instrument, barred by limitations), not **pure law** (challenging a charging instrument that shows on its face that prosecution is absolutely barred by the statute of limitations).

This distinction provided by this opinion is significant for municipal and justice courts. Despite case law clarifying that the complaint is the charging instrument for alleging a Class C misdemeanor, and legislation amending Article 27.14 of the Code of Criminal Procedure that mandates the filing of a complaint in the event a defendant either pleads not guilty or does not appear in court after being issued a written promise to appear, we still face lingering issues about the court's role in the event that a formal charging instrument is not filed within the statute of limitations.

What, if anything, should judges do when they know that the two year statute of limitations has run prior to the filing of a complaint? *Phillips* only assists in answering this question to the degree we know that it is not a matter that must be raised by the defendant at trial to be preserved on appeal. From a purely legal perspective, trial judges neither appear prohibited from bringing a statute of limitations bar to the attention of a pro se defendant or a

defense attorney who does not do so, nor are they required to do so.

2. Probation

Article 42.111 of the Code of Criminal Procedure authorizes a county court to grant deferred adjudication on appeal to a defendant who fails, for one reason or another, to request a driving safety course in either a justice or municipal court per Article 45.0511, but prohibits the granting of deferred adjudication on appeal to a defendant who commits a “serious traffic violation” while driving a commercial motor vehicle.

State v. Hollis, 327 S.W.3d 750 (Tex. App.—Waco 2010)

Commentary: While it contains an extensive legislative history of the driving safety course statute, this opinion is unfortunately unclear and unwieldy. While the Waco Court of Appeals makes it clear that Hollis did not commit a “serious traffic violation” while driving a commercial motor vehicle; the opinion never expressly states that Hollis did not possess a CDL (or even that she was not driving a commercial motor vehicle). The opinion makes sense only if you assume that Hollis was not a commercial driver's license holder and was not operating a commercial motor vehicle at the time she was speeding.

While various court of appeals opinions have inconsistently distinguished deferred disposition from deferred adjudication (Article 42.12), this opinion calls everything deferred adjudication. This opinion goes one step further in conflating distinct statutes. The deferral of proceedings in cases appealed to county courts (Article 42.111),

deferred disposition (Article 45.051), and driving safety courses (Article 45.0511) are each referred to as deferred adjudication. (In fact, the only thing not referred to as deferred adjudication is deferred adjudication.)

While perhaps this case can be cited for the proposition that a county court cannot grant any kind of statutory deferred to a CDL holder, the opinion reads like a Rorschach test; users are likely to end up seeing what they want to see when construing this opinion (which is why after reading this opinion, many of you are likely to wish that it had been designated as an unpublished opinion).

3. Pre-Trial Motions/Issues

a. Recusal and Disqualification

Since 2010, TMCEC has made a special effort to reemphasize the importance of recusal and disqualification laws in Texas municipal courts, while illustrating serious conflicts and deficiencies in laws relating to municipal courts. See, Ana M. Otero and Ryan Kellus Turner, Removal of Judges from Texas Cases: Distinguishing Disqualification and Recusal, *The Recorder* (July 2010). In response, the Texas Municipal Courts Association and the Texas Judicial Council collaborated with policymakers during the 82nd Regular Legislature to resolve these problems and avert the possibility of widespread gridlock in Texas municipal courts.

S.B. 480 repealed the problematic Section 29.012 of the Government Code and replaced it with a comprehensive series of procedures located in Subchapter A-1 of Chapter 29 of the Government Code. These new highly detailed rules, derived and adapted from Texas Rule of Civil Procedure 18A, are designed to accommodate all sizes of municipal courts, and strike a balance between

uniformity in application of the law and judicial efficiency. The new series of rules can be used in any kind of criminal or civil case in which a municipal court has jurisdiction. It will be awhile before we have any specific case law relating to the new subchapter. In the interim, for some semblance of guidance, it is worthwhile to know how appellate courts construe Rule 18A.

- *Kuykendall v. State*, 335 S.W.3d 429 (Tex. App.—Beaumont 2011)— A trial judge, who had previously represented the defendant on two prior convictions alleged for enhancement purposes in the pending case was not disqualified from presiding in the matter before the court because the judge did not serve as counsel for the accused in this pending case. In contrast to moving for recusal of the judge, the defendant did not need to preserve the disqualification claim to raise it on appeal.

- *Gaal v. State*, 332 S.W.3d 448 (Tex. Crim. App. 2011) - After defendant had twice violated his bond conditions and had changed his mind at a plea setting, he requested a second plea setting. At that hearing, defendant again changed his mind and decided not to plead. The State then retracted its plea offer, and the trial judge stated that the only plea bargain he would accept would be for the maximum sentence. The judge assigned to hear the recusal matter denied defendant's motion to recuse, stating that the trial judge did not have to take a plea bargain and that the trial judge's statement was not arbitrary because the case file showed that defendant had repeatedly attempted to drink and drive while he was out on bond. The Court of Criminal Appeals stated in a unanimous decision that Texas Rule of Civil Procedure

Rule 18a(f) did not preclude the court from reviewing the decision of the court of appeals. The Court found no abuse of the assigned judge's determination that, under Texas Rule of Civil Procedure Rule 18b, the trial judge was unbiased. The trial judge gave no indication as to what sentence he would or would not impose. The trial judge's comment appeared to be an expression of impatience rather than a showing of a deep-seated favoritism or antagonism.

- *In re Thompson*, 330 S.W.3d 411 (Tex. App.—Austin 2010) - This case involves the very unusual situation in which relatives of an executed capital murder defendant from Navarro County filed a request to convene a court of inquiry with a Travis County judge. The Navarro County district attorney filed a motion to recuse that particular Travis County judge, but the judge refused to consider the motion to recuse, believing that the Navarro County district attorney had no standing before the court of inquiry. Very touchy issues are involved in this case: opposition to the death penalty, actual innocence, exoneration. But it seems that there is a right way to do things and a wrong way to do things. And attacking a Navarro County conviction and death sentence in a Travis County court does not seem to be the right way. The bottom line of this decision is that, when a judge receives a motion to recuse, he or she generally has no choice but to grant the motion or refer the motion to the presiding judge of the local administrative region.

- *Ex parte Sinegar*, 324 S.W.3d 578 (Tex. Crim. App. 2010) - The requirements of Rule 18a of the Rules of Civil Procedure apply in habeas proceedings conducted at the trial level. When the defendant

has complied with Rule 18a, the trial judge is required to either recuse himself or forward the matter to the presiding judge of the administrative judicial region for a recusal hearing before another judge. (By the way, on a related side note, did you know that a municipal judge in a court of record has the authority to issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court? See, Section 30.00006, Government Code.)

b. Suppression of Evidence

In a State's appeal from a pretrial order granting a motion to suppress, per Article 44.01(a) (5) of the Code of Criminal Procedure, it is not required that the record reflect specifically what evidence is suppressed in order for an appellate court to consider the interlocutory appeal.

State v. Chupik, 343 S.W.3d 144 (Tex. Crim. App. 2011)

In this case, the trial court granted defendant's motion to suppress, and the Austin Court of Appeals held that the State's appeal presented nothing for review because there was nothing in the record to show that the ruling would result in the exclusion of any evidence at trial. Reversing the lower court's decisions, the Court of Criminal Appeals held that the record did not need to reflect the suppressed evidence; rather it was sufficient that the prosecuting attorney certified that the suppressed evidence was of substantial importance in the case. On remand, in an unpublished opinion, the Austin Court of Appeals reversed the trial court's determination.

Concurring, Judge Johnson explained the narrow scope of the

Court's ruling. Dissenting, Judge Price and Judge Meyers opined that because of the absence of reference to any concrete evidence in the record, the majority's opinion is an advisory opinion that ignores alternative reasons for the lower court's ruling.

In a motion to suppress under Section 38.23 of the Code of Criminal Procedure, the defendant has the initial burden of proof, which shifts to the State only when the defendant has produced evidence of a statutory violation.

State v. Robinson, 334 S.W.3d 776 (Tex. Crim. App. 2011)

In this 7-2 opinion, Presiding Judge Keller explains that the burden was mistakenly placed on the State after it stipulated the arrest was without a warrant resulting in the State proceeding first on the motion. After the State called its only witness, the trial court incorrectly suppressed evidence when legally the burden of proof had shifted to the defendant to establish that evidence was not legally obtained.

Judge Cochran, in a concurring opinion (joined by Judge Hervey), provides an exemplary explanation of burden shifting (it is worth reading, check it out).

Dissenting, Judge Meyers agrees that the court of appeals erred, but not that the State is entitled to relief; Judge Price states that because the State bears the burden of proof in this instance, the State statutorily did bear the burden on the motion to suppress.

c. Discovery

Under Article 39.14(a) of the Code of Criminal Procedure, a

trial court has the discretion to order the State to make copies of a DVD for the defendant as part of a discovery order.

State v. Dittman (In re Dist. Attorney's Office of the 25th Judicial Dist.), 2011 Tex. Crim. App. LEXIS 414 (Tex. Crim. App. Mar. 30, 2011)

Presiding Judge Keller, dissenting, opines that the majority is ignoring precedent where, in an unpublished opinion, the Court ruled that a trial court may not order the State to copy documents and provide those copies to a defendant, but it may order the State to produce discoverable materials and allow the defendant to copy them under the supervision of the State.

Commentary: Prosecutors are likely to hate this opinion. However, they should keep the following in mind: (1) this case only stands for the **discretion** of a trial judge to order the State to make copies (it does not provide a mandate); and (2) this opinion should be construed in light of specific facts (in this case, the content of the DVD, presumably an outcry statement, recorded at a child advocacy center).

d. Jury Selection

In municipal court, it is not a violation of Due Process to allow jurors whom the prosecutor has had on a prior panel the same day and questioned during such voir dire before the same judge when defense counsel was not present to serve on the jury without informing defense counsel of the existence of such jurors or giving defense counsel information as to what was said during such voir dire proceeding.

Ruiz-Angeles v. State, 346 S.W.3d 261 (Tex. App.—Houston [14th Dist.] 2011)

The court of appeals rejects the argument that Section 62.021 of the Government Code (providing that in counties with a population of more than 1.5 million, a prospective juror who has been removed from a jury panel must not serve on another panel until his or her name is again drawn for jury service) is applicable to municipal courts in Harris County because Article 45.027(b) of the Code of Criminal Procedure provides that individuals summoned for jury service in justice and municipal courts shall remain in attendance as jurors in **all** cases that may come up for hearing until discharged by the court.

Commentary: It is worth emphasizing that case does not address the merits of “recycling” jurors once they actually served on a jury. Furthermore, this case can be cited for the general inapplicability of Chapter 62 of the Government Code, unless expressly applicable or located in Subchapter F: Municipal Court Juries (i.e., Section 62.501).

4. Closing Arguments

The trial court erred by denying closing argument to the defendant.

Hyer v. State, 335 S.W.3d 859 (Tex. App.—Amarillo 2011)

Defense counsel was not allowed to make a closing argument during the punishment phase of defendant’s trial. When defense counsel asked to speak, the court said “no.” The State conceded that the decision was reversible error if preserved for review. The court of appeals held that the error was preserved for review and constituted violations to the

defendant’s constitutional right to the effective assistance of counsel under the United States and Texas Constitutions. Counsel’s uttering “all right” after the court said “no” could not reasonably be interpreted as intent to waive his request to make closing remarks or approve of what the trial court did.

IV. Court Costs

If a defendant challenges the clerk’s assessment of court costs, claiming insufficient evidence to show he has the resources to pay the fees, is it a “criminal law matter.”

Armstrong v. State, 340 S.W.3d 759 (Tex. Crim. App. 2011)

Although there is not a definitive statement of what constitutes a “criminal law matter,” the term encompasses, at a minimum, all legal issues arising directly out of a criminal prosecution, even if civil and criminal law matters potentially overlap. The Court of Criminal Appeals is the proper court to make such determination. The Court has held that disputes which arise over the enforcement of statutes governed by the Texas Code of Criminal Procedure, and which arise as a result of or incident to a criminal prosecution, are criminal law matters.

Commentary: Albeit, this case does not relate to a court cost collected in either a municipal or justice court, it is still an important decision because such local trial courts collect the lion’s share of court costs in Texas. Similar to *Weir v. State*, 278 S.W. 3d 364 (Tex. Crim. App. 2009) (holding that in a criminal case court costs are not punitive and thus required to be included in an oral pronouncement of judgment), this case provides one more piece to the puzzle when it comes to the law of court costs.

Another interesting juxtaposition: this year we saw the Texas Supreme Court construe the Code of Criminal Procedure in a civil law matter (see, *City of Dallas v. VSC, LLC*, 347 S.W. 3d 231 (Tex. 2011)). Here, the Texas Court of Criminal Appeals explains that, if an issue stems from the Code of Criminal Procedure, they are the proper court to determine if it is a “criminal law matter.” (Notably, cases like *Johnson v. 10th Judicial District Court of Appeals at Waco*, 280 S.W.3d 866 (Tex. Crim. App. 2008) illustrate that members of the Court are not always in agreement in applying this label.)

The judicial fund created by Section 21.006 of the Government Code can be used to offset a statutory probate court’s reduction in funding by the county commissioners’ court.

Tex. Atty. Gen. Op. GA-875 (8/9/11)

The Legislature requires that state judicial fund dollars allocated to a county’s contributions fund be used only for court-related purposes for the support of the statutory probate courts in the county. Beyond this requirement, we find no statutory restrictions on how the funds may be used. However, a county may not reduce the amount of funds provided for the support of the statutory probate courts in the county because of the availability of funds from the county’s contribution fund. A county may not use the allocated judicial funds contrary to these statutory requirements.

Commentary: Section 21.006 states, “The judicial fund is created in a separate fund in the state treasury to be administered by the comptroller. The fund shall be used only for court-related purposes for the support of the judicial branch of this state.” Is any of this money used for court-related

purposes to support municipal courts; the courts in the judicial branch of this state that generate the most money for the state treasury?

V. Local Government

A. Preemption

The State of Arizona's licensing law, aimed at curtailing the employment of undocumented aliens, is not expressly preempted by federal law.

Chamber of Commerce of the United States v. Whiting, 131 S. Ct. 1968 (2011)

The federal Immigration Reform and Control Act of 1986 (IRCA) pre-empts any state or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit, or refer for a fee for employment, unauthorized aliens.

The disputed statute in this case, the Legal Arizona Workers Act (LAWA), imposes civil sanctions upon those who employ unauthorized aliens. It does so through a combination of civil penalties and license suspensions and revocations for employers that knowingly or intentionally employ unauthorized aliens. The majority, in a 6-3 opinion, holds that LAWA is a licensing law, and is thus not expressly preempted by the IRCA. The dissent asserts that the majority reaches its result by over-expanding the meaning of a "license" and that LAWA fails to fall within exceptions provide by IRCA.

Commentary: So states are allowed, if not encouraged, to experiment with laws involving undocumented workers as long as such efforts are carefully cloistered within the broad licensing exception to the federal law? Did the majority unleash states and localities to determine

whether someone has employed an unauthorized alien (so long as they do so in conjunction with licensing sanctions)? This opinion certainly sets the stage for broad array of similar measures to be introduced by states and local governments. Anticipate municipalities wanting to get on the *Whiting* bandwagon to pass concurrent enforcement ordinances that "trace" federal law.

B. Substandard Structures

Unelected municipal agencies cannot be effective bulwarks against constitutional violations in the context of nuisance determinations involving substandard structures. Determination should not be reviewed under a substantial evidence standard but rather must be considered de novo in a trial court.

City of Dallas v. Stewart, 2011 Tex. LEXIS 517 (Tex. July, 2011)

In a 5-4 decision, Chief Justice Jefferson, writing for the majority of the Texas Supreme Court opines that the nuisance determination by members of the city-council appointed Urban Rehabilitation Standards Board (URSB), and the affirmance of that determination under a substantial evidence standard pursuant to Sections 54.039(f) and 214.0012(f) of the Local Government Code were not entitled to preclusive effect in a takings action against the City of Dallas brought by the owner of the house. Furthermore, a substantial evidence review of the nuisance determination did not sufficiently protect the owner's rights under the Texas Constitution.

Justice Guzman, dissenting, opines that the Court's decision opens the door to a host of takings challenges to agency determinations of every

sort, and in every such challenge a right to trial de novo will be claimed. It further opines that the decision invites judges at every level of the judicial system to substitute their own factual determinations for that of an agency or even a lower court. Cities are faced with complex challenges posed by a crisis level of abandoned and dangerous buildings, and one of the most important weapons provided by the Legislature to combat this problem is summary nuisance abatement. Because the Legislature defined what constitutes a nuisance and provided and set the standard of review, due process does not require de novo reviews. The URSB's finding, pursuant to legislative enactments, as affirmed by the trial court on substantial evidence review, should have precluded Stewart's takings claim. As of November 16, 2011, a motion for reconsideration is pending. Stay tuned!

Commentary: This decision very well may prove to be one of most important decisions in the history of municipal courts in Texas. Every municipal judge in a court of record (and court administrators) should read this opinion carefully and contemplate its implications. (It is a safe bet your city attorney already has.) This case, like *City of Dallas v. VSC, LLC*, 2011 347 S.W. 3d 231 (Tex. 2011) and *Armstrong v. State*, 340 S.W.3d 759 (Tex. Crim. App. 2011) fundamentally challenges many commonly held, "cut and dry" beliefs about judicial process. (It also potentially hints to possible new glide paths for municipal courts in the new century.)

The Texas Municipal League on its website reported in August that many cities have brought their substandard structure and other nuisance ordinance enforcement to a halt. They also stated that "[p]erhaps the safest course of action, which is also impractical, would be to have an

elected judge (or at the very least an appointed municipal court judge in a court of record) bless every nuisance action that could be considered a taking.”

The implications of this opinion are too numerous to fully detail here. So for now, a summary will have to suffice:

1. This case does not address the legality of having preliminary determinations made in a municipal court of record.
2. This case does not address whether a judge appointed by a city council, rather than elected by the people, would be viewed in the same negative light as an appointed city board.
3. This case epically sets the stage for debating the preceding two points.
4. This decision will more than likely put the appointment process (or lack thereof) cities use in appointing municipal judges under the microscope of critics.
5. This is an important reminder that when city council members appoint judges, they should be appointing people who put the public's interest in the rule of law above the interests of any city or its local agenda; each council member should cast their vote on behalf of the people who elected them (i.e., an indirect democracy).
6. In light of popular sentiment (even in Texas) that opposes the partisan election of judges, city attorneys should welcome challenges to the appointment of judges under Chapter 29 or 30. (The frightening thing is that this case may also highlight and enternalize in case law longstanding misperceptions

about municipal courts.)

7. Any subsequent cases challenging the legality of municipal judges conducting substandard building proceedings should hinge on judicial independence (not separation of powers); hence, municipal judges must be independent and the value of such independence should be evidently embraced in the conduct of municipal government (e.g., city managers, city attorneys, council members, and mayors). Remember, folks, the municipality hosts the municipal court (just like the county hosts the county court). The municipal court is not akin to a city commission or department, it is part of the state judicial system. See, http://www.courts.state.tx.us/oca/pdf/Court_Structure_Chart.pdf.
8. The absence of separation of powers in municipal government is already being used to challenge the propriety of municipal courts conducting such hearings based on the holding in *Stewart*. See, Page 5 of the Plaintiffs' August 24, 2011 Original Petition in *Align LP and 600 Elsbeth Street v. City of Dallas*, available online at: <http://www.scribd.com/doc/63205859/600-Elsbeth-Appeal>).
9. Though unlikely, this case could ultimately result in Chapter 30 of the Government Code being amended to require all municipal judges in courts of record (if not all municipal judges) to be elected. Alternatively, some cities that currently appoint municipal judges may opt to elect municipal judges.
10. If the Legislature wants municipal courts of record to play a role in substandard buildings and balance expediency with property rights, it

should pass legislation authorizing the Texas Supreme Court to adopt rules of procedure rather than allowing a rule of procedure to be developed at the local level in a piecemeal manner.

C. Dual Office Holding

A part-time municipal judge may not simultaneously serve as a member of a board of commissioners for a drainage district.

Tex. Atty. Gen. Op. GA-853 (4/1/11)

Texas Constitution, Article XVI, Section 40 prohibits a compensated part-time municipal court judge from simultaneously serving as a member of the Board of Commissioners of the Jefferson County Drainage District No. 7.

Commentary: The Commission on Judicial Conduct does not recognize the existence of a “part-time” municipal judge for purposes of applying the Canons of Judicial Conduct. In this opinion it was not necessary for the Attorney General to analyze if there is any such distinction because both civil offices of emoluments were compensated. Caution is advised in applying the term “part-time.” “Part-time” is connoted with the number of hours worked by **employees**. Although many municipal judges spend less than 30 hours a week on the bench, they are not employees, who under Texas law can be fired at-will by employers. Municipal judges are either elected or appointed to terms of office of two or four years. See, Section 29.004, Government Code.

D. Law Enforcement

Police officers from the City of Carrollton, a home-rule municipality, had countywide jurisdiction and thus lawfully searched a residence outside their

city limits but within the same county.

\$27,877.00 Current Money of the United States v. State, 331 S.W.3d 110 (Tex. App.—Fort Worth 2010)

Home-rule municipalities are different from general-law municipalities, because a home-rule city derives its power not from the Legislature but from Article 11, Section 5 of the Texas Constitution. Home-rule cities possess the full power of self-government and look to the Legislature not for grants of power, but only for limitations on their power. A home-rule municipality’s powers may be limited by statute, but only when the Legislature’s intention to do so appears with unmistakable clarity. The reason that Section 341.003 of the Local Government Code does not grant home-rule police countywide jurisdiction is because home-rule municipalities do not receive their grants of power from the Legislature. General-law municipalities, on the other hand, do. General-law municipalities are political subdivisions created by the State and, as such, possess those powers and privileges that the State expressly confers upon them. Chapter 341 of the Local Government Code does not show any legislative intent to restrict a home-rule municipality police force to a jurisdiction any less than that of a general-law municipality.

Commentary: It is not every day that an appellate court issues an opinion that warrants the attention of city attorneys, criminal law practitioners, and law enforcement. This is a great opinion highlighting an intersection between municipal law and criminal law.

A volunteer assistant fire marshal is not designated as a reserve law enforcement officer under Chapter 1701 of the Occupations Code.

Tex. Atty. Gen. Op. GA-853 (4/1/11)

The Legislature did not grant county commissioners courts and county fire marshals authority to commission or appoint a volunteer assistant fire marshal as a reserve law enforcement officer. The Legislature did not include the term “volunteer assistant fire marshal” in the statutory definition of a “reserve law enforcement officer.” Accordingly, a person appointed to serve as a volunteer assistant fire marshal is not, as an automatic consequence of the appointment, a reserve law enforcement officer.

E. Ordinances and Charter Provisions

A Type A general-law municipality may adopt and enforce an ordinance prohibiting the discharge of certain firearms or other weapons on property located within its original corporate limits.

Tex. Atty. Gen. Op. GA-862 (6/16/11)

Section 229.002 of the Texas Local Government Code does not prohibit a Type A general-law municipal ordinance from regulating the discharge of a firearm or other weapon in an area that is within the municipality’s original city limits.

Despite a charter provision, a county judge does not have the authority to order a municipal recall election.

Tex. Atty. Gen. Op. GA-870 (8/2/11)

Texas law does not authorize a county judge to order a municipal recall election. A city charter provision imposing a duty upon a county judge to perform an act that the county judge has no authority under Texas law to perform is inherently inconsistent with Texas law and is unenforceable.

Appellate courts have determined that similar municipal charter provisions impose upon a city council the ministerial duty, subject to compulsion by mandamus, to order the recall election.

Commentary: Certainly not the first or last time that a municipality overreached in a charter provision. City attorneys: the rationale behind this opinion could likely be used to similarly explain why it is illegal for either a city charter or an ordinance to proscribe additional authorities or duties to a municipal judge not expressly authorized by the Legislature.

TEEN COURT

Thinking of starting a teen court? TMCEC has received a grant from TxDOT to help cities plan a teen court program. Contact Hope Lochridge if you would like more information (hope@tmcec.com).

JUVENILE CASE MANAGER TRAINING

TMCEC is planning on offering the following training for juvenile case managers: 1) a pre-conference on Managing Juvenile Cases at all TMCEC regional programs; 2) four webinars on juveniles, specifically geared toward what juvenile case managers need to know-- topics TBD; dates are tentatively set for January 25, 2012, March 7, 2012, May 2, 2011, and July 25, 2011; 3) a 12-hour seminar for juvenile case managers on May 16-18, 2012 in Austin at the Omni Southpark. Please watch the TMCEC website, this bulletin, and *The Recorder* for more information on all of these events.

COLOGO CANCELLED

For the past nine years, TMCEC has co-sponsored (with the other judicial training entities) the Courts & Local Government Technology Conference, shortened often to “CoLoGo.” It was originally planned for February 1-2, 2012 in San Marcos, but it has been cancelled. If you are interested in having this conference re-instated in future grant years, please email Hope Lochridge (hope@tmcec.com).

RESOURCES FOR YOUR COURT

CHANGES IN LICENSED COURT INTERPRETER LAW

H.B. 4445 (81st Regular Legislature) took effect September 1, 2011, creating two license designations: basic and master. A “basic” designation will permit the interpreter to interpret court proceedings in justice and municipal courts that are not municipal courts of record, other than a proceeding before the court in which the judge is acting as magistrate. A “master” designation will permit the interpreter to interpret court proceedings in all courts in this state, including justice and municipal courts.

With these changes, interpreters who score at least 60% on each part of the oral examination will be issued the basic designation license. Interpreters who score at least 70% on the oral examination will be issued the master designation license and will be permitted to interpret in court proceedings in all courts in the state. All interpreters must pass the written examination with a score of at least 80%.

According to the Texas Department of Licensing and Regulation (TDLR), those licensed court interpreters who held an active court interpreter license should have been issued a replacement license with the “master” designation on or before August 31, 2011. If you did not receive your replacement license, contact TDLR at CS.Court.Interpreters@license.state.tx.us or call at 512.463.6599 or 800.803.9202 with your name, license number, and current address.

These new basic and master designations will not affect a court’s appointment of a licensed court interpreter, under Section 57.002 of the Government Code, until January 1, 2012. Any appointments made prior to January 1, 2012 need not discriminate between the basic or master designation. However, beginning January 1, 2012, a municipal court of record will have to appoint a licensed court interpreter with the master designation.

For more on H.B. 4445 and the amended laws on court interpreters, visit the Court Interpreters page of the TMCEC website at: http://www.tmcec.com/Programs/Court_Interpreters.

CRIME SOLUTIONS

CrimeSolutions.gov is an easy-to-use database of criminal justice programs, that span an array of justice topics, ranging from corrections and reentry to courts, crime and crime prevention, drugs and substance abuse, forensics and technology, juvenile justice, law enforcement, and victims and victimization. A variety of search options allows you to find information - like the best strategies for delinquency prevention - easily. Each program profile has a description of its target audience, evaluation outcomes, costs, and other important details practitioners and policy makers look for when addressing juvenile justice and delinquency prevention issues.

Most importantly, every program has been assessed by a team of researchers and subject matter experts. These experts have rigorously examined evaluation findings and related research to figure out which programs appear to be effective, which appear to be promising, and which appear to have no effects. These ratings give practitioners and policy-makers a sense of what programs are tried-and-true, and what programs may require adjustments or new approaches to get the best results.

For additional information, visit CrimeSolutions.gov and sign up for updates through the RSS feed at: <http://www.crimesolutions.gov/Rss.aspx> or <http://www.crimesolutions.gov/feed.svc/Feed/Rss?74ee4c45-0c9d-495d-91c7-c93220c43cce>.

WARRANT ROUND UP!

It will soon be that time again: time to start planning for the annual statewide Great Texas Warrant Round-Up!

On the following page is the 2012 Participation Form. If you would like to participate in the 2012 annual statewide warrant round-up, please complete the form (included on the next page) in its entirety and return it by fax to 512.974.4682 or by email to roundup@ci.austin.tx.us. Even if your entity participates every year, please complete and return a participation form. A PDF version of this form and a weekly list of participants are online at www.austintexas.gov/court, and select “Warrant Roundup 2012”. If you want the name of your entity to be included on other entities’ notices, please commit to participate no later than mid-January. The Austin Municipal Court is again handling the registration of entities who are interested in participating in 2012.

For questions, additional information, and dates of the round-up please contact Don McKinley at 512.974.4820 (don.mckinley@austintexas.gov) or Rebecca Stark at 512.974.4690 (rebecca.stark@austintexas.gov).

2012 Great Texas Warrant Round Up

– Participation Form –

- Yes, we wish to participate in the 2012 statewide warrant round up.
- Please put us on the list to be contacted for the 2013 round up.
- Please provide additional information.

Name of Court/Agency _____ County _____

Contact Person/Title _____

Email Address _____

Phone Number _____

Address _____ City _____ Zip _____

Approximate Number of Outstanding Warrants: _____

I agree to participate in the round up by actually making arrests and by sending out notices about two weeks before the round up date. We will participate to the fullest extent possible.

Signature

Note: If the contact person listed above is not also the person the media should contact about your entity's round up, please list the media contact below Thanks.

Name Title Department Phone #

FAX AGREEMENT TO: Rebecca Stark or Don McKinley at 512.974.4682

EMAIL AGREEMENT TO: roundup@austintexas.gov

If you have any questions, please feel free to call or email:

Rebecca Stark 512.974.4690 rebecca.stark@austintexas.gov

Don McKinley 512.974.4820 don.mckinley@austintexas.gov

Or anyone else who has done this before – all great sources of info!

See participant list at www.austintexas.gov/court/roundup.htm

JUDICIAL PROFILE

MAKING A DIFFERENCE: IRVING MUNICIPAL COURT

By Hong Escobar
TxDOT Grant Administrator, TMCEC



Pictured above: (from left) The Honorable Laura Anderson, Irving; The Honorable Stewart Milner, Arlington; The Honorable Rodney Adams, Irving.

Irving Municipal Court Judge Laura L. Anderson became interested in traffic safety issues after attending the Texas Municipal Court Education Center (TMCEC)'s first Traffic Safety Conference in May 2008. Judge Anderson noted that one of Irving's key strategies is to improve motorist safety, which is an integral part of the city's overall goal of delivering exceptional services and promoting a high quality of life for its residents, visitors, and businesses. Judge Anderson believes the municipal court's role in enforcing traffic safety laws is especially important because Irving has a population of over 216,000 residents, not to mention countless drivers commuting on Irving's roadways. Irving's Municipal Court collaborates with other city agencies, civic groups, and community members to raise awareness of the importance of traffic safety, with an emphasis on educating students.

Judge Anderson and the Irving Municipal Court are dedicated to promoting a high quality of life and have developed a number of initiatives to educate members of the community about traffic safety. "Traffic safety issues can be resolved

through education, engineering, and enforcement," said Judge Anderson. "As a judge, education is key. Municipal judges have a unique opportunity to talk to young persons to empower them to buckle up." Judge Anderson frequently hands out "buckle up" stickers, coloring books, and other traffic safety materials to children she sees in the courthouse. The court dedicates an entire display board in their lobby to traffic safety. Last year, seven student groups visited Irving Municipal Court, where they learned about traffic safety. To further their outreach to the youth, the Court's Presiding Judge, Judge Rodney Adams has met with the Irving School District's Superintendent to discuss how to incorporate traffic safety within the curriculum. Additionally, court clerks participate in community events, such as the Community Fest, where they also hand out traffic safety materials to attendees.

Judge Adams and Judge Anderson are proud of Irving's Teen Court program, where juvenile offenders face a master jury for traffic-related offenses, such as driving without insurance. For cases where juvenile defendants are charged with an alcohol-related offense, Judge Adams pioneered a program where the Irving Municipal Court partners with the Mothers against Drunk Driving (MADD) program. The Irving Municipal Court requires juvenile defendants charged with an alcohol-related offense to attend MADD's victim impact panels as part of their community service. The victim impact panels serve as a powerful reminder to offenders that

impaired drivers put their own life as well as the lives of everyone on the roadways at high risk. Over 100 juvenile defendants have completed the program and several have told the court that hearing these personal stories from victims has had a profound impact on their perspective on drinking and driving.

To mark Municipal Court Week during November 7-11, 2011, the Irving Municipal Court launched an awareness campaign about the dangers of texting and driving. While all distractions can endanger drivers' safety, texting is the most alarming because it involves taking one's eyes off the road, hands off the wheel, and mind off the primary task of driving.¹ Studies have shown that drivers who text while driving display slower reaction times, have difficulty staying in their lane, and are less likely to see relevant objects, visual cues, exits, red lights, and stop signs.² Moreover, a recent study by the Texas Transportation Institute determined that a driver's reaction time is doubled when distracted by reading or sending a text message.³

Young drivers appear to be especially prone to texting while driving. According to the National Highway Traffic Safety Administration, the percentage of drivers visibly manipulating hand-held devices has been significantly higher among drivers ages 16 to 24 than those of other age groups.⁴ An estimated five billion text messages are sent each day in the United States, and at least 20 percent of all drivers have admitted to texting while driving.⁵ American teens send and receive an

average of 3,300 texts per month, which is equivalent to more than six texts per hour that they are awake.⁶ Nearly one in four American teens driving age say they have texted while driving, and almost half of all teens ages 12 to 17 say they've been a passenger while a driver has texted behind the wheel.⁷ Drivers who type or read text messages contribute to at least 100,000 crashes each year, leading to thousands of preventable deaths.⁸ Alarmed by the prevalence of texting, particularly among drivers, and especially younger, less experienced drivers, the court, in collaboration with the City of Irving, will focus on educating juvenile offenders and the community about the unnecessary risks associated with texting while driving.

Irving Municipal Court's activities to celebrate Municipal Court Week included an article in the City's publication, *The Spectrum*, focusing on the dangers of texting while driving. Additionally, they televised a victim impact panel comprised of

individuals who have been affected by texting and driving on the City's television network, the Irving Community Television Network. The court also showed YouTube videos about what can happen when individuals text and drive on the video screens in the room where offenders waited for trial.

It is easy to see why the Irving Municipal Court has won the TMCEC Municipal Traffic Safety Initiatives Award three years in a row. Judge Anderson will continue her efforts by teaching a course about sexting, bullying, and online impersonation at several upcoming TMCEC municipal judges seminars.

For more information on how your municipal court can get involved in traffic safety, please contact the Texas Municipal Courts Education Center at tmcec@tmcec.com.

¹. US Department of Transportation, DISTRACTION.GOV, Retrieved on September 30, 2011, from <http://www.distraction.gov>.

[distraction.gov/stats-and-facts/](http://www.distraction.gov/stats-and-facts/)

². FocusDriven, Get the Facts – Texting, Retrieved on September 30, 2011, from <http://www.focusdriven.org/texting>

³. Texas Transportation Institute, New Study says Texting Doubles a Driver's Reaction Time, by Chris Sasser, (October 5, 2011), <http://tti.tamu.edu/2011/10/05/new-study-says-texting-doubles-a-driver%E2%80%99s-reaction-time/>

⁴. National Highway Traffic Safety Administration, Traffic Safety Facts, Research Note: Driver Electronic Use 2009, DOT HS 811 372 (September 2010), Retrieved from <http://www.nrd.nhtsa.dot.gov/Pubs/811372.pdf>

⁵. Texas Transportation Institute, New Study says Texting Doubles a Driver's Reaction Time, by Chris Sasser, (October 5, 2011), <http://tti.tamu.edu/2011/10/05/new-study-says-texting-doubles-a-driver%E2%80%99s-reaction-time/>

⁶. FocusDriven, Get the Facts – Texting, Retrieved on September 30, 2011, from <http://www.focusdriven.org/texting>

⁷. Pew Internet & American Life Project, Teens and Distracted Driving, Mary Madden and Amanda Lenhart (November 16, 2009) <http://pewinternet.org/Reports/2009/Teens-and-Distracted-Driving.aspx>

⁸. FocusDriven, Get the Facts – Texting, Retrieved on September 30, 2011, from <http://www.focusdriven.org/texting>



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) and use the materials provided to help your community understand the importance of safe driving. The TMCA Public Outreach Committee CHALLENGES each and every municipal judge and their support 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 speaker's bureau, which will help us locate speakers from areas that are requesting this type of outreach. Please fax your information to TMCEC at 512.435.6118.

Add Me to the Traffic Safety Speaker's Bureau



Name: _____

Court: _____

Tel.#: _____

Email: _____



TMCEC Municipal Traffic Safety Initiatives Traffic Safety Awards 2012

★ **Purpose:** To recognize those who work in local municipalities and have made outstanding contributions to their community in an effort to increase traffic safety. This competition is a friendly way for municipalities to increase their attention to quality of life through traffic safety activities.

★ **Eligibility:** Any municipal court in the State of Texas. Entries may be submitted on behalf of the court by the following: Judge, Court Clerk, Deputy Court Clerk, Court Manager, Court Administrator, Bailiff, Marshal, Warrant Officer, City Manager, City Councilperson, Law Enforcement Representative, or Community Member.

★ **Awards:** Award recipients will be honored at the Texas Municipal Courts Education Center (TMCEC) Traffic Safety Conference that will be held on March 19-21, 2012 at the Crowne Plaza Hotel in Addison, Texas.

Nine (9) awards will be given:

- ★ Two (2) in the high volume courts: serving a population of 150,000 or more;
- ★ Three (3) in the medium volume courts: serving populations between 30,000 and 149,999; and
- ★ Four (4) in the low volume courts: serving a population below 30,000.

Award recipients receive for two municipal court representatives, complimentary conference registration; travel to and from the 2012 Municipal Traffic Safety Initiatives Conference to include airfare or mileage that is within state guidelines, two nights' accommodations at the Crowne Plaza Hotel in Addison, and most meals and refreshments.

Honorable Mention: If there are a number of applications that are reviewed and deemed outstanding and innovative, at the discretion of TMCEC, honorable mentions may be selected. Honorable mentions will be provided complimentary conference registration to attend the Traffic Safety Conference and will be recognized at the Traffic Safety Conference.

★ **Deadline:** Entries must be postmarked no later than Friday, December 30, 2011.

★ **Presentation:** Award recipients and honorable mention winners will be honored during the Traffic Safety Conference to be held March 19-21, 2012 at the Crowne Plaza Hotel in Addison, Texas.

★ **Details:** For complete award details, submission guidelines, and application form, go to www.tmcec.com, Municipal Traffic Safety Initiative, Traffic Safety Awards 2012. www.tmcec.com/MTSI/Traffic_Safety_Awards_2012

For more information, please contact

Lisa R. Robinson, CFLE,
Traffic Safety Grant Administrator,
robinson@tmcec.com or 512.466.7383



TEXAS MUNICIPAL COURTS EDUCATION CENTER

Municipal Traffic Safety Initiatives



TMCEC Traffic Safety Award Application

Deadline: December 30, 2011 (postmarked)

Please print all information as you would like to appear on the award

Name of Person Submitting & Position: _____

Court Nominated: _____

Mailing Address: _____

City: _____ Zip Code: _____

Telephone number: (____) _____ - _____ Email address: _____

Category (please check one):

- _____ *High Volume Court: serving a population of 150,000 or more*
- _____ *Medium Volume Court: serving populations between 30,000 and 149,999*
- _____ *Low Volume Court: serving a population below 30,000*

Judge's Signature: _____

DO NOT WRITE IN THIS AREA:

Section I: Written Report: Maximum of 50 points: _____

Section II: Attachments/Samples: Maximum of 30 points: _____

Section III: Neatness, Organization of Materials
& Following Submission Guidelines: Maximum of 20 points: _____

Total Points Awarded: _____

Notes: _____



MUNICIPAL TRAFFIC SAFETY INITIATIVES CONFERENCE

In March 2012, TMCEC will be offering a three-day Municipal Traffic Safety Initiatives Conference with funding from the Texas Department of Transportation (TxDOT). Municipal judges, clerks, and city officials are invited to attend.

March 19-21, 2012 (M-T-W)

Crowne Plaza Addison

14315 Midway Road

Zip Code: 75001

972.980.8877

Register by: February 17, 2012

Enrollment is limited to 200 eligible participants. New courses will be offered, so even those who have attended in the past are encouraged to register. Please register early to guarantee your place in the program as space is limited. Participants who have already attended or plan to attend a TMCEC regional conference may also attend this program at their own expense. The registration fee is \$50 for municipal judges and clerks. Attendance at this conference fulfills the mandatory judicial education requirements for judges and attorney judges can receive free CLE credit. A limited number of city officials (mayor, council person, or city manager), if accompanied by a municipal judge or clerk, may attend and will be provided with two nights housing and conference meals and materials (\$100 registration fee). Late registrants will be allowed to attend only if space is available.

Participants should bring sufficient funds for a dinner meal each evening, for meals while traveling, and for incidental expenses. Those attending will receive two night's accommodations (in double rooms) at the Crowne Plaza Addison; however, the hotel will expect a credit card or cash deposit for telephone calls, meals charged to the room, and movies. A single room may be requested at a rate of an extra \$50 per night.

How Can You Get Most of Your Expenses Covered? Municipal Traffic Safety Initiatives Award recipients will be recognized at this conference and selected courts will receive for two municipal court representatives, complimentary conference registration, travel to and from the Traffic Safety Conference to include airfare or mileage that is within state guidelines, two night's accommodations at the beautiful Crowne Plaza Addison, and most meals and refreshments. To find out how your court can be selected to receive this honor, go to: www.tmcec.com, Municipal Traffic Safety Initiatives.

As this conference is in the planning stages, TMCEC will share the agenda with you through the various TMCEC communications as it is developed. You may also look on the TMCEC website at www.tmcec.com and click on the Municipal Traffic Safety Initiatives graphic for more information. For additional information, contact TMCEC (800.252.3718 or tmcec@tmcec.com).



This conference is funded in part by a TxDOT grant.

Interested in What Your Community Can Do?

On March 19, 2012 in Addison at the Crowne Plaza Hotel, TMCEC is hosting a seminar entitled "Curbing Impaired Driving in Your Community: Blood Draws and No-Refusal Weekends." The program is designed to let city officials, city and county attorneys, police officers, judges, and prosecutors learn about laws related to blood draws and how no-refusal weekends are making a difference in local communities combating the problem of impaired driving. There is no registration fee. There will be up to 5.5 hours of CLE requested from the State Bar of Texas. There is also no fee for CLE. Six hours of TCLEOSE credit will be offered. This is an optional pre-conference to the Municipal Traffic Safety Initiatives Conference that will be held on March 20-21, 2012. Participants do not have to be registered for the conference to attend the pre-conference. For more information, contact Katie Tefft (tefft@tmcec.com).



FROM THE CENTER

TMCEC has completed the revisions of the books listed below with changes from the last Session of the Texas Legislature. Copies of most publications may be downloaded from the TMCEC website at www.tmcec.com/Resources/Books/. Or, they may be purchased from TMCEC—prices and shipping costs are indicated on the order form on the next page. TMCEC accepts checks and credit cards for orders by mail or fax. Checks must be made payable to the Texas Municipal Courts Education Center. All publications are also sold at TMCEC conferences (cash, check, or credit card). *The Municipal Judges Book* will be revised and published in January.

2011 TMCEC BENCH BOOK

The *2011 Bench Book* incorporates updated case law as well as changes made by the 82nd Legislature—specifically, you will notice new checklists regarding recusal and disqualification, confidentiality of juvenile records, and animal hearings. It provides step-by-step procedures and scripts for courts—well supplemented with statutory and case law citations. It references the *TMCEC Forms Book*. Cost: \$25. Also available in diskette or CD-ROM (\$5.00) and can be downloaded at no charge at www.tmcec.com/Resources/Books/Bench_Book.

2011 TMCEC FORMS BOOK

The *2011 Forms Book* contains 57 new or updated forms, reflecting changes from the 82nd Legislature. New forms include a recusal or disqualification order following the new provisions set out in the Government Code, amended dispositional and expunction orders for failure to attend school cases, and necessary affidavits, warrants, and orders for handling cruelly treated animal and dangerous dog cases. Its format is a loose-leaf with tabs, designed to be placed in a notebook. It serves as a compendium to the *TMCEC Bench Book*. Cost: \$25. Also available in diskette or CD-ROM (\$5.00) and can be downloaded at no charge at www.tmcec.com/Resources/Books/Forms_Book. The diskette and online versions include the forms in both pdf and word files so that the documents are easily adapted for local use.

2011 CLASS C AND FINE-ONLY MISDEMEANORS

The *2011 Texas Class C and Fine-Only Misdemeanors* book, updated with new crimes created by the 82nd Legislature, is 128 pages of fine-only offenses under Texas state law. With updated DPS reporting codes, available as of September 2011, and with the inclusion of a traffic and penal offense index to assist readers in finding offenses within the book, this version is much cleaner and contains most every fine-only offense under all Texas codes – over 100 more offenses than previous versions. Cost: \$10.

2011 CERTIFICATION GUIDES

The clerks certification guides were designed to prepare clerks for the certification exams at Levels I and II. There are two guides, both containing 10 units each. To add in retention of the information, the content is broken up into sections, followed by questions and answers. Guides can be purchased for \$25 each. Level I is available in both a loose-leaf and a bound version. Level II is only available at this time in a loose-leaf version (email Hope Lochridge [hope@tmcec.com] if you would prefer a bound edition and we will consider printing some). The study guides are also excellent resources for new judges seeking to understand the many laws and procedures that govern their work in municipal court. The guides can also be downloaded at no charge at www.tmcec.com/Resources/Clerk_Study_Guides.

Topics included in Level I:

- An Overview of the Courts
- Authorities and Duties
- Ethics
- Procedures Before Trial
- Trial Processes
- Post-Trial Procedures
- State and City Reports
- Traffic Law
- Juveniles and Minors
- Communications and Stress Management
- Glossary

Topics included in Level II:

- Equal Justice under Law
- Ethics
- Overview of Processing Cases
- Code of Criminal Procedure and Penal Code
- Bond Forfeitures
- Juveniles and Minors
- Financial Management
- Records and Caseflow Management
- Legal Research
- Court Technology
- Glossary

**TMCEC 2012 RESOURCE MATERIALS
PRICE LIST AND ORDER FORM FOR MUNICIPAL COURTS**

Qty	Cost	Title	Extended Price
_____	41.00	<i>Texas Criminal Law and Traffic Law Manual</i> (Judicial Edition) (Code Book)	_____
_____	25.00	TMCEC 2011 Bench Book	_____
_____	25.00	TMCEC 2011 Forms Book (looseleaf)	_____
_____	5.00	CD-ROM 2009 Forms Book/Bench Book (combined)	_____
_____	25.00	<i>The Municipal Judges Book (2010) Coming Soon</i> Coming Soon	_____
_____	25.00	<i>Level I Clerks Certification Study Guide</i> (bound)	_____
_____	25.00	<i>Level I Clerks Certification Study Guide</i> (looseleaf)	_____
_____	25.00	<i>Level II Clerks Certification Study Guide</i> (looseleaf)	_____
_____	10.00	<i>Level III Clerks Certification Study Questions</i>	_____
_____	10.00	2011 <i>Texas Class C and Fine-only Misdemeanors</i>	_____
_____	10.00	<i>Quick Reference Trial Handbook</i>	_____
_____	10.00	<i>Rules of Evidence</i>	_____
_____	10.00	<i>Court Interpreters' Municipal Court Legal Glossary</i> (Spanish)	_____
_____	20.00	<i>IDEA Video</i> (DVD)	_____
_____	20.00	<i>Authority and Duties</i> (DVD)	_____
_____	20.00	<i>I Object</i> (DVD)	_____
_____	20.00	<i>Pro Se Defendants in Municipal Court</i> (DVD)	_____
_____	20.00	<i>Role of Municipal Court in City Government</i> (DVD)	_____
_____	5.00	<i>An Introduction to Municipal Courts and the Texas Judicial System</i> (Audio CD)	_____
_____	_____	Other: _____	_____
		Subtotal	_____
		Shipping charge (see below)	_____
			TOTAL _____

Name: _____
 Court: _____
 Court Address: _____
 City, State, Zip: _____
 Court Telephone Number: (____) _____
 Email Address: _____

CREDIT CARD PAYMENT INFORMATION:

MasterCard
 Visa
 Credit card number: _____
 Expiration Date: _____
 Verification # (found on back of card): _____
 Name as it appears on card (print clearly): _____

Amt to be Charged (from total above): _____

Authorized signature: _____

All orders must be prepaid. Checks payable to Texas Municipal Courts Education Center.

*Send order to:
 Texas Municipal Courts Education Center
 1609 Shoal Creek Boulevard, Suite 302
 Austin, Texas 78701
 Fax: 512.435.6118*

TMCEC Shipping Charges	
For Orders Totaling:	Please add:
\$0 - \$25	\$3.95
\$25.01 - \$50	\$5.95
\$50.01 - \$75	\$8.95
\$75.01 - \$100	\$10.95
\$100.01 - \$150	\$12.95
\$150.01 - \$200	\$14.95
\$200.01 plus	\$16.95
Standard delivery within 4-6 business days for in-stock items.	

2012 ONE-DAY CLINIC SERIES

The Texas Municipal Courts Education Center is pleased to again offer four one-day clinics in Academic Year 2012, with an interesting collection of special topic clinics. Attached is the main clinic brochure for you download, along with a registration form. We ask that you register early, as space is limited. Individual emails and registration forms specific for each clinic will be sent out approximately two months prior to the clinic as a reminder to sign up. Sign up for one or all four!

Each clinic is 5.0 hours in length, from **10 a.m. to 3 p.m.**, and includes a one-hour lunch break with lunch provided by TMCEC. Registration is only **\$20**, and includes course materials and lunch. No hotel accommodations, travel reimbursement, or meals other than lunch on the day of the clinic, will be provided. Locations are subject to change.

All clinics offer 4.0 hours of credit toward the clerk certification program, and up to 4.0 hours of MCLE credit will be submitted to the State Bar of Texas and the Texas Board of Legal Specialization for licensed attorneys. Exact hours for CLE credit will be announced closer to the date of the clinic.

Participants may register online (with credit card payment) at <http://register.tmcec.com> or can download the main one-day clinic registration here to be mailed in with payment to 1609 Shoal Creek Blvd. Suite 302, Austin, TX 78701 or faxed (with payment information) to 512.435.6118.

Records Retention and Handling Records Requests • January 18, 2012 • at the TMCEC office

This clinic will cover the Texas State Library and Archives Commission's retention schedule for municipal and justice court records, as well as address recent changes to Schedule LC. The clinic will also address the handling of records requests and distinguish what laws apply to the disclosure of criminal court case records.

The New Laws of Recusal and Disqualification in Texas Municipal Courts: What Every Judge, Clerk, and City Attorney Must Know • February 1, 2012 • at the TMCEC office

S.B. 480 repealed problematic Government Code Section 29.012 and replaced it with a comprehensive series of procedures located in Subchapter A-1 of Chapter 29 of the Government Code. These new highly detailed laws, adapted from the Texas Rule of Civil Procedure 18a, are designed to accommodate all sizes of municipal courts, and strike a balance between uniformity in application of the law and judicial efficiency. The new series of laws can be used in any kind of criminal or civil case in which a municipal court has jurisdiction.

DOT and Federal Motor Carrier Law • April 17, 2012 • at the LaPorte Municipal Court

Location of clinic: 3005 North 23rd Street, La Porte, TX 77571

Effective enforcement of Federal Motor Carrier Safety Regulations (FMCSR) requires a partnership of federal, state, and local government. Effective enforcement also requires extensive training of local police in an area of little familiarity to most municipal court personnel. With the ever-expanding number of municipalities that are authorized to enforce both the FMCSRs and vehicle weight standards, municipal courts are entering this arena in increasing numbers. Join TMCEC "on the road" for a review of relevant federal and state authority and an opportunity for judges, court personnel, and prosecutors to better understand this complicated area of traffic law.

Specialty and Problem-Solving Courts • May 30, 2012 • at the TMCEC office

Problem-solving courts focus on resolving the underlying chronic anti-social behaviors of defendants. The most common type of problem-solving court is the drug court, but many Texas cities are experimenting with specialty dockets to address certain defendants or types of cases. From truancy courts to animal courts, from homeless courts to community courts, this clinic will look at the legal authority for cities to implement these specialty or problem-solving courts. Participants will also hear from judges and clerks who work in these successful specialty courts to get ideas to take back to their cities.

2012 WEBINAR SERIES

If you have not yet joined TMCEC for a webinar on the new Online Learning Center (OLC), this is the year to do it! We are currently planning the webinar schedule for 2012, and brochures with the complete schedule will be sent out over electronic mail in January. However, for those of you who want to get a jump on some online education, we have three webinar opportunities planned for January and February:

Juvenile Case Managers and the Role of Social Work and Social Services • January 25 (Wednesday) @ 10:00 a.m.

Presented by Stacey Borasky, PhD, Assistant Professor and Chair, Social Work, St. Edwards University

The first in a four-part series, this webinar is intended for juvenile case managers and others interested in child welfare and justice issues. The session will provide juvenile case managers a preliminary overview and introduction to: (1) services to at-risk youth; (2) the importance of local programs and services, and methods by which juveniles may access those programs; and (3) detecting and preventing abuse, exploitation, and neglect of juveniles.

TMCEC Radio: Morning Coffee • February 16 (Thursday) @ 10:00 a.m.

Presented by TMCEC Staff Attorneys

Join Ryan, Mark, Cathy, and Katie as they discuss recent questions and topics submitted from constituents and take live questions from listeners. The new “TMCEC Radio: Morning Coffee” program will be run as a traditional webinar, but with a more relaxed atmosphere and interesting conversation.

Collections Toolbox • February 22 (Wednesday) @ 10:00 a.m.

Presented by Jim Lehman, Collections Program Manager, Office of Court Administration

This webinar will examine the latest technologies, products, and services available to courts to help improve collection efforts, with both efficiency and cost effectiveness.

All webinars begin at 10:00 a.m. and last approximately one hour. Gone are the days of viewing on your computer and tying up a telephone line – with the new webinar setup, you can watch and listen through just your computer. Webinars count for one hour of credit towards the clerk certification program, and select webinars will be submitted for MCLE credit from the State Bar for licensed attorneys, though the three outlined above will not qualify for MCLE credit. Webinars do not count for judicial education or TCLEOSE credit.

How do you participate?

There is no pre-registration required; simply log in to the OLC and join us on that morning. We do ask, however, that you log on at least 10 to 30 minutes prior to the start time to allow sufficient opportunity to troubleshoot any technical issues.

You must first log into the TMCEC Online Learning Center. Please follow these instructions to login:

1. Visit <http://online.tmcec.com>.
2. Once on the Online Learning Center home page, find the login box in the upper left side of the page.
3. Enter your TMCEC username and password and click Login. If you do not have your TMCEC login information, call us at 800.252.3718 and we will be happy to look that up for you.
4. Click on Upcoming Webinars listed under Course Categories in the middle of the page, and click on the title for the webinar. The link for the webinar will be active 30 minutes prior to the start time.
5. That’s all. The webinar should be automatically installed and configured on your system. You should not be asked to download or confirm anything. You will need to make sure your computer speakers are on and turned up to an audible level.

For more information on webinars, we encourage everyone to download and read the detailed instructions on how to view a webinar in the Webinar FAQ, also available as a book linked at the top of the Upcoming Webinars page in the OLC.



TMCEC’s OLC: <http://online.tmcec.com>

2011 - 2012 TMCEC Academic Schedule At-A-Glance

Seminar	Date(s)	City	Hotel Information
Regional Judges and Clerks Seminar	January 9-11, 2012 (M-T-W)	San Antonio	Omni San Antonio at the Colonnade 9821 Colonnade Blvd., San Antonio, TX
One Day Clinic- Records Retention and Handling Records Requests	January 18, 2012 (W)	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Level III Assessment Clinic	January 23-26, 2012 (M-T-W-TH)	Austin	Doubletree Hotel 6505 North IH-35, Austin, TX
Teen Court Seminar	January 30-31, 2012 (M-T)	Georgetown	TBA
One Day Clinic- Essential: New Laws and Recusal and Disqualification	February 1, 2012 (W)	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Regional Judges and Clerks Seminar	February 6-8, 2012 (M-T-W)	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
Regional Clerks Seminar	February 8-10, 2012 (W-Th-F)	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
New Judges and Clerks Orientation	February 15, 2012 (W)	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Regional Judges Seminar	February 26-28, 2012 (S-M-T)	Galveston	San Luis Resort and Spa 5222 Seawall Blvd., Galveston, TX
Regional Judges and Clerks Seminar	March 4-6, 2012 (S-M-T)	Houston	Omni Westside Hotel 13210 Katy Freeway, Houston, TX
Traffic Safety Conference	March 19-21, 2012 (M-T-W)	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
Prosecutors Seminar	March 25-27, 2012 (S-M-T)	Houston	Omni Westside Hotel 13210 Katy Freeway, Houston, TX
Teen Court Seminar	April 2-3, 2012 (M-T)	Georgetown	TBA
Regional Judges and Clerks Seminar	April 9-11, 2012 (M-T-W)	Lubbock	Overton Hotel 2322 Mac Davis Ln, Lubbock, TX
One Day Clinic- DOT and Federal Motor Carrier Law	April 17, 2012 (T)	La Porte	La Porte Municipal Court 3005 North 23rd St., La Porte, TX
Regional Clerks Seminar	April 29-May 1, 2012 (S-M-T)	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., South Padre Island, TX
Regional Attorney Judges Seminar	May 6-8, 2012 (S-M-T)	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., South Padre Island, TX
Regional Non-Attorney Judges Seminar	May 8-10, 2012 (T-W-Th)	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd., South Padre Island, TX
New Judges and Clerks Orientation	May 16, 2012 (W)	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Juvenile Case Manager Seminar	May 16-18, 2012 (W-Th-F)	Austin	Omni Southpark 4140 Governor's Row, Austin, TX
Regional Clerks Seminar	May 20-22, 2012 (S-M-T)	Galveston	San Luis Resort and Spa 5222 Seawall Blvd., Galveston, TX
One Day Clinic- Specialty and Problem Solving Courts	May 30, 2012 (W)	Austin	TMCEC 1609 Shoal Creek Blvd. Ste. 302, Austin, TX
Regional Bailiffs/Warrant Officers Seminar	June 4-6, 2012 (M-T-W)	Addison	Crowne Plaza Addison 14315 Midway Road, Addison, TX
Regional Judges and Clerks Seminar	June 11-13, 2012 (M-T-W)	El Paso	Wyndham El Paso Airport 2027 Airway Blvd., El Paso, TX
Prosecutors & Court Administrators Seminar	June 24-26, 2012 (S-M-T)	Austin	Omni Southpark 4140 Governor's Row, Austin, TX
New Judges Seminar	July 9-13, 2012 (M-T-W-Th-F)	Austin	Omni Southpark 4140 Governor's Row, Austin, TX
New Clerks Seminar	July 9-12, 2012 (M-T-W-Th)	Austin	Omni Southpark 4140 Governor's Row, Austin, TX

www.tmcec.com

Register Online: register.tmcec.com

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY12 REGISTRATION FORM:**

Regional Judges & Clerks, Assessment Clinic, Court Administrators, and Traffic Safety Conferences

Conference Date: _____ Conference Site: _____

Check one:

- Non-Attorney Judge (\$50)
- Attorney Judge **not-seeking CLE credit** (\$50)
- Attorney Judge **seeking** CLE credit (\$150)
- Clerk/Court Administrator (\$50)

- Traffic Safety Conference - Judges & Clerks (\$50)
- Assessment Clinic (\$100)
- Court Administrator Seminar - June (\$100)
- Clinics (\$20) - no housing

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. The CLE fee will be deposited into the grantee's private fund account is to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

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 - Note: \$50 a night single room fee

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a **double occupancy room at all regional judges and clerks seminars, the level III assessment clinic, the court administrators conference, and the traffic safety conference**. To share with a specific seminar participant, you must indicate that person's name on this form.

I request a private, single-occupancy room (\$50 per night : ____ # of nights x \$50 = \$ _____)

I request a room shared with a seminar participant. Room will have 2 double beds. TMCEC will assign roommate **or** you may request roommate by entering seminar participant's name here: _____

I request a private double-occupancy room, but I'll be sharing with a non-participating guest. I will pay additional cost (\$50 per night : ____ # of nights x \$50 = \$ _____). I will require: 1 king bed 2 double beds

I do not need a room at the seminar.

Hotel Arrival Date (this **must** be filled out in order to reserve a room): _____ Smoker Non-Smoker

Municipal Court of: _____ Email Address: _____
 Court Mailing Address: _____ City: _____ Zip: _____
 Office Telephone #: _____ Court #: _____ Fax: _____
 Primary City Served: _____ Other Cities Served: _____

STATUS (*Check all that apply*):

<input type="checkbox"/> Full Time	<input type="checkbox"/> Part Time	<input type="checkbox"/> Attorney	<input type="checkbox"/> Non-Attorney	<input type="checkbox"/> Juvenile Case Manager	<input type="checkbox"/> Other _____
<input type="checkbox"/> Presiding Judge	<input type="checkbox"/> Court Administrator	<input type="checkbox"/> Court Clerk/Deputy Clerk	<input type="checkbox"/> Justice of the Peace	<input type="checkbox"/> Mayor (<i>ex officio</i> Judge)	
<input type="checkbox"/> Associate/Alternate Judge					

I certify that I am currently serving as a municipal judge 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 at least 10 business days prior to the conference. I agree that if I do **not** cancel at least 10 business 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: Payment **will not** be processed until all pertinent information on this form is complete.

Amount Enclosed: \$ _____ **Registration/CLE Fee + \$** _____ **Housing Fee = \$** _____

Check Enclosed (*Make checks payable to TMCEC.*)

Credit Card

Credit Card Payment:

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

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

TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY12 REGISTRATION FORM:
New Judges & New Clerks, Bailiffs & Warrant Officers, and Prosecutors Conferences

Conference Date: _____ Conference Site: _____

Check one:

- New, Non-Attorney Judge Program (\$200)
- New Clerk Program (\$200)
- Bailiff/Warrant Officer* (\$150)
- Non-municipal prosecutor seeking CLE credit (\$500)

- Prosecutor not seeking CLE/no room (\$200)
- Prosecutor seeking CLE/no room (\$300)
- Prosecutor not seeking CLE/with room (\$350)
- Prosecutor seeking CLE/with room (\$450)

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. The CLE fee will be deposited into the grantee's private fund account is to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

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 the following seminars:** four nights at the new judges seminars, three nights at the new clerks seminars, two nights at bailiffs/warrant officers seminar, and two nights at the prosecutors conference (if selected). To share with another seminar participant, you must indicate that person's name on this form.

- I need a private, single-occupancy room.
- I need a room shared with a seminar participant. [Please indicate roommate by entering seminar participant's name: _____ (Room will have 2 double beds.)]
- I need a private double-occupancy room, but I'll be sharing with a non-participating 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.

Hotel Arrival Date (this **must** be filled out in order to reserve a room): _____ Smoker Non-Smoker

Municipal Court of: _____ Email Address: _____
 Court Mailing Address: _____ City: _____ Zip: _____
 Office Telephone #: _____ Court #: _____ Fax: _____
 Primary City Served: _____ Other Cities Served: _____

STATUS (*Check all that apply*):

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

***Bailiffs/Warrant Officers:** Municipal judge's signature required to attend Bailiffs/Warrant Officers' program.

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 at least 10 business days prior to the conference. I agree that if I do **not** cancel at least 10 business 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: Payment **will not** be processed until all pertinent information on this form is complete.

- Check Enclosed (*Make checks payable to TMCEC.*)
 - Credit Card
- Credit Card Payment:

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

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

TMCEC MISSION STATEMENT

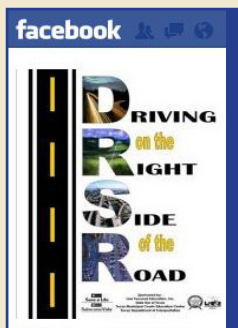
To provide high quality judicial education, technical assistance, and the necessary resource material to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

Change Service Requested

***The Recorder* is available online at www.tmcec.com. This print version is paid for and mailed to you by TMCA as a membership benefit. Thank you for being a member of TMCA. For more information: www.txtmca.com.**

The Municipal Traffic Safety Initiatives and Driving on the Right Side of the Road programs each have new Facebook pages. Be sure to "like" them to stay up to date.

Traffic safety articles, presentations, resources, pictures, DRSR teaching materials, and more will be placed on these Facebook pages.



Driving on the Right Side of the Road - TMCEC <https://www.facebook.com/pages/TMCEC-Municipal-Traffic-Safety-Initiatives/157436101014951#!/pages/Driving-on-the-Right-Side-of-the-Road-Tmcec/228425057206371>



TMCEC - Municipal Traffic Safety Initiatives
<https://www.facebook.com/#!/pages/TMCEC-Municipal-Traffic-Safety-Initiatives/157436101014951>