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Civil Jurisdiction in Municipal Court: Evolving or Mutating?

By Cathy Riedel, Program Director, TMCEC

Among the many issues bobbing to the surface in the wake of the *City of Dallas v. Stewart*[1] decision is the attention placed on the evolving role of municipal courts, not only with the expansion of its jurisdiction into civil law, but now, purportedly, its authority to act as an administrative body appointed by the city. Bonnie Goldstein and Scott Houston detail the statutory procedures for abating nuisances in their article "Q&A: Substandard Building Abatement After *City of Dallas v. Stewart*" (see page 3), artfully untangling the procedures of nuisance abatements. This article looks beyond the *Stewart* ruling and attempts to identify some of the issues that will arise as judges, city attorneys, and court personnel grapple with new dockets and responsibilities that are inherent in implementing this amorphous area of law.

Reportedly, some cities have already appointed the municipal judge to serve as the administrative hearing officer in cases involving junked vehicles and substandard building cases. These new roles raise many questions: What are the implications of a municipal judge acting in a capacity other than judge? Does the judge still have contempt powers? Are there ethical concerns or legal concerns? How did we get here?

Code enforcement cases are notoriously confusing. There are civil penalties and abatement procedures, such as civil action under Section 54.012 of the Local Government Code, "quasi-judicial"

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A Statutory Look at Driver's License Suspensions for Certain Drug Offenses

By Katie Tefft, Program Attorney, TMCEC

It is not uncommon for municipal judges to question whether or when they have the authority to suspend a defendant's driver's license. The suspension of a person's privilege to drive[1] is statutorily part of the judgment for minor alcohol offenses,[2] and courts shall suspend a minor's license if they fail to abide by orders to attend an alcohol or tobacco awareness class or complete alcohol or tobacco-related community service.[3] In addition to court-ordered suspensions,[4] Chapter 521 of the Transportation Code provides several circumstances in which a person's driver's license shall be suspended upon certain findings by the Department of Public Safety (DPS)[5] or automatically upon conviction of certain offenses.[6]

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AROUND THE STATE

2012 ANNUAL CONFERENCE TEXAS MUNICIPAL COURTS ASSOCIATION

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, and discussion groups.

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

Family fun includes the National Museum of the Pacific War, Enchanted Rock, and 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 the host hotel.

The Inn On Barons Creek, 308 S. Washington St., 78624, is the designated host hotel. [830.990.9202 or www.innonbaronscreek.com] 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.

Watch the TMCA website for more information: www.txmca.com

Register today!

TEEN COURT MOCK TRIAL COMPETITION

On Saturday March 24, 2012, eleven Texas Teen Courts competed in Mock Trials at the Wesleyan Law School in Fort Worth, Texas. Participating courts included: Collin County, Fort Worth, Georgetown, Wichita County, Burleson, Hurst-Euless-Bedfor, Plano, Coppell, Longview, Odessa, and Lewisville/Flower Mound. Local judges, law students, and attorneys presided over the cases. During the trials the students played the role of defendants /witnesses, as well as a defense or prosecuting attorneys. These actors were evaluated on their courtroom skills and demeanor. Awards were at the end of the event. Lewisville/Flower Mound took first place, Longview second, and a third award called the "Juror's Choice" award went to Fort Worth.

Over 150 youth, law students, judges, and volunteers participated in the event. There were 20 participating teams, each team consisting of two attorneys, the defendant and witness, and jurors, used to sentence the defendant for the citation.

In 2007, the Wesleyan Law School was approached by the Lewisville/Flower Mound Teen Court along with other teen courts in the area. The law school agreed to host the event and very generously utilized law students to assist. This annual competition is a unique opportunity for the law students to work with the youth in the teen courts. Students share their knowledge and experience and coach youth in-between rounds.

Q&A: Substandard Building Abatement After City of *Dallas v. Stewart*

By Scott Houston, General Counsel, Texas Municipal League
and
Bonnie Lee Goldstein, Attorney at Law, Dallas

What statutory authority does a city have to abate a substandard structure?

Municipal authority to abate substandard structures comes from several statutory provisions. Essentially, the authority to define and abate a substandard structure stems from Chapter 214 of the Local Government Code, and the process by which it is carried out (with some exceptions) comes from a combined application of Chapters 214 and 54 of the Local Government Code. Historically, cities have used one of three methods for the substandard building abatement process:

1. Adopt an ordinance under Chapter 214 relating to the condition of structures in the city, and provide for notice and a public hearing, generally before the city council, an appointed building and standards commission, or the city's municipal court acting in a civil capacity (the council, commission, or municipal court, pursuant to Subchapter C of Chapter 54, acts as the administrative municipal body to carry out the required procedures);

2. Bring a civil action under Chapter 54 in district court, county court, or the city's municipal court of record to make a judicial determination that a structure is substandard; or

3. Provide for an alternative enforcement process under Section 54.044 by creating an administrative adjudication hearing, under which an administrative penalty may be imposed for the enforcement of a substandard structure ordinance.

How did the Texas Supreme Court's first opinion in *City of Dallas v. Stewart* affect the abatement process?

In *City of Dallas v. Stewart,* the Texas Supreme Court held that an appointed city board's determination that a building is a public nuisance should not be given deference by a court, but should be reviewed de novo ("from the beginning" or "as if the first determination never happened").[1] The opinion meant that the administrative determination by city officials (for example, a building and standards commission, a city council, and perhaps even a judge in a municipal court of record) that a building is substandard was no longer entitled to deference by a court.

The lawsuit started when Stewart's house fell into disrepair, had been inhabited by vagrants, and suffered from numerous code violations. The city building standards board determined that the house was an urban nuisance and ordered its demolition. Before the demolition, the owner appealed the board's decision to district court. The appeal did not stay the demolition, and the house was demolished.

After the demolition, the owner added a takings claim to her suit. The trial court judge affirmed the board's decision to demolish. However, a jury decided that the home was not a public nuisance and that the demolition resulted in a "taking" by the city of the property, and awarded the owner damages. The city appealed the issue of whether the board's decision that the house was a public nuisance precluded a finding of a taking.

Chapter 214 of the Local Government Code defines a building as a nuisance if it is "dilapidated, substandard, or unfit for human habitation" based upon minimum standards that a city adopts in its ordinance. Chapter 214 does not identify a particular administrative municipal body that makes the nuisance determination, but it does authorize the use of a municipal court acting in a civil capacity. Chapter 54 of the Local Government Code authorizes a city to create a board to determine violations of public safety ordinances like those in Chapter 214. Pursuant to Chapter 214, a property owner is entitled to notice and a hearing as to whether a structure constitutes a public nuisance based upon violation of the city's adopted minimum standards, a decision relating to whether it can be repaired or must be demolished, and a limited appeal of a decision to a trial court. That statutory appeal is based on deference to the board's decision under what is known as the "substantial evidence" standard of review. However, the Court concluded that the statutory appeal and its substantial evidence standard do not comply with the Texas Constitution's takings clause.

The takings clause, found in Article I, Section 17, of the Texas Constitution, provides that the government may not take a person's property without

just compensation. The twist in the *Stewart* case is that, in addition to holding that an appointed board's decision is not entitled to deference, the Court also added the requirement that the nuisance determination be made by a judge rather than an appointed administrative body. In other words, the Court held that a city board's decision that a piece of property is a "nuisance" should not be given deference, but can be reviewed de novo by a court in a manner similar to eminent domain cases. The opinion stated:

> Because we believe that unelected municipal agencies cannot be effective bulwarks against constitutional violations, we hold that the URSB's [Dallas Urban Rehabilitation Standards Board] nuisance determination, and the trial court's affirmance of that determination under a substantial evidence standard, were not entitled to preclusive effect in Stewart's takings case, and the trial court correctly considered the issue de novo.

The City of Dallas sought a rehearing of the case, and the Texas Municipal League provided amicus support in that effort. In addition, numerous cities and the International Municipal Lawyers Association filed briefs in support of the city.

Did the Texas Supreme Court's second, "substituted" opinion make things any better?

Perhaps. In response to the motion by the City of Dallas for a rehearing (a request that the court reconsider its first opinion), the Texas Supreme Court withdrew its original opinion (meaning that it is no longer legal authority) and substituted a new opinion.[2] The Court held essentially the same thing in its second opinion:

> Today we hold that a system that permits constitutional issues of this importance to be decided by an administrative board, whose decisions are essentially conclusive, does not correctly balance the need to abate nuisances against the rights accorded to property owners under our constitution. In the context of a property owner's appeal of an administrative nuisance determination, independent court review is a constitutional necessity.
>
> Because we believe that unelected municipal agencies cannot be effective bulwarks against constitutional violations, we hold that the URSB's nuisance determination, and the trial court's affirmance of that determination under a substantial evidence standard, were not entitled to preclusive effect in Stewart's takings case, and the trial court correctly considered the issue de novo.[3]

The Court attempted to soften the blow of the case by stating that "property owners rarely invoke the right to appeal."[4] It further stated that "de novo review is required only when a nuisance determination is appealed. Thus, the City need not institute court proceedings to abate every nuisance. Rather, the City must defend appeals of nuisance determinations and takings claims asserted in court by property owners who lost before the agency."[5] Those things may be true, but they are probably of little comfort to cities that could now incur liability for takings damages when they demolish a substandard building.

The potentially good news in the second opinion is that the Court recognized that Section 214.0012(a) provides a "narrow thirty-day window for seeking review."[6] This may mean that a city could continue to use the city council or building and standards commission abatement process and simply wait until the time for appeal has passed before demolishing a structure. However, not all city attorneys are in agreement that such is the case. The questions and answers below explain the processes a city can use in some detail, with analysis of the impact of the *Stewart* case where appropriate.

What procedures must a city follow when using the administrative abatement authority in Chapters 214 and 54?

If a city decides to use its city council, building and standards commission, or municipal court of record to abate substandard structures administratively, it is required to adopt an ordinance requiring the vacation, securing, and demolition of dilapidated structures.[7] The ordinance must establish minimum standards for the continued use and occupancy of buildings, provide for the giving of proper notice of a substandard building, and provide for a public hearing.[8] (Building codes are often used for the minimum standards required by Chapter 214.)

The procedures to use Chapter 214 are as follows:

1. Identify Substandard Structures Based upon Minimum Standards

Following the adoption of the ordinance, the initial step to demolish a substandard structure is to identify the structure as substandard. A city official (most commonly the building official or code enforcement official) prepares a report stating the structural deficiencies and makes a recommendation as to whether the structure can be repaired or should be demolished.

The report is submitted to the municipal body designated in the ordinance to conduct a hearing for the purpose of determining whether the

structure complies with the minimum standards in the ordinance. (The administrative "municipal body" is usually the city council, a building and standards commission created under Section 54.033 or— in a few cities—the city's municipal court of record acting as a civil court.)

2. Notice of Public Hearing

After the structure has been identified as substandard, the city official who made the determination should issue a notice of public hearing to every known owner, lienholder, or mortgagee of the structure.[9] The notice should contain the following information:

a. name and address of the owner of the affected property;

b. an identification, which is not required to be a legal description (unless the notice is also going to the lienholders and mortgagees), of the structure and the property upon which it is located;

c. a statement that the official has found the structure to be substandard with a brief and concise description of the conditions found to render the structure substandard;

d. a statement of the action recommended to be taken, as determined by the official;

e. a statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work; and

f. the date, time, place, and brief description of the public hearing.

The notice should also be filed with the county in order to provide notice to, and be binding upon, subsequent grantees, lienholders, or other transferees who acquire an interest in the property after the filing.[10]

3. Public Hearing

Once the notice of public hearing has been mailed and all Open Meetings Act posting requirements have been satisfied, the public hearing is held. Prior to opening the public hearing, the municipal body should hear the report detailing the structural deficiencies and recommending that the structure be repaired or demolished. The lienholders, mortgagees, or owners of the property are given an opportunity to be heard and to address the nuisance issues as they relate to the minimum standards, including the scope of the work and financial capability of repairing the structure. The municipal body should then open the public hearing to those who wish to speak on behalf of or against the recommended action. The burden is on the owner, lienholder, or mortgagee to demonstrate the scope of the work required to comply with the ordinance and the time it will take to perform the work.[11]

4. Determination

After the public hearing, if the structure is found to be in violation of the standards in the ordinance, the municipal body may order the owner, lienholder, or mortgagee to, within 30 days:

a. secure the structure from unauthorized entry[12] (If the city secures the structure prior to a hearing, notice and similar procedures are still required.); or

b. repair, remove, or demolish the structure, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days.[13]

The body may also order that the occupants be relocated within a reasonable time.[14] If the municipal body allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the body must establish specific time schedules for the commencement and completion of the work and must require that the building be secured to prevent unauthorized entry while the work is being performed.[15]

Within 10 days after the date that the order to vacate, secure, repair, or demolish the structure is issued, the city must:

a. file a copy of the order in the office of the city secretary; and

b. publish in a newspaper of general circulation in the city a notice containing: (a) the street address or legal description of the property; (b) the date of the hearing; (c) a brief statement indicating the results of the order; and (d) instructions stating where a complete copy of the order may be obtained.[16]

Also, after the hearing, the city must promptly send by certified mail, return receipt requested, signature confirmation through United States Postal Service, or personal delivery, a copy of the order to the owner and to any lienholder or mortgagee of the structure, as determined through the use of the city's best efforts. For purposes of this provision, the city has used its best, reasonable, or diligent efforts if it has searched the county real property and assumed name records, appraisal district records, records of the secretary of state, and the city's tax and utility records.[17] If the notice is mailed, and if the United States Postal Service returns the notice as "refused" or "unclaimed," the notice is deemed delivered.[18]

5. Appeal

Chapter 214 provides that any owner, lienholder, or mortgagee of record of a structure for which an order is issued by the municipal body may, within 30 days after the order is mailed to them, appeal the order by filing a verified petition in district court stating that the decision is illegal, either in whole or in part, and specifying the grounds for the illegality.[19]

The district court may issue a writ of certiorari (a legal term for a request for the record of the municipal body) directing the city to review the order and return certified or sworn copies of the papers within a period of time, which must be longer than 10 days.[20] Upon making the return of the writ, the city is required to concisely set forth verified facts supporting the decision that do not appear in the returned papers.[21] Chapter 214 provides that the district court, upon review of the record under the substantial evidence rule, may either reverse or affirm, in whole or in part, or modify the municipal body's decision.[22] If the decision is affirmed or not substantially reversed but only modified, the district court must award the city all attorney's fees and other costs and expenses incurred by it.[23]

The issue in the *Stewart* case was "whether, in Stewart's takings claim, the [building and standards commission]'s nuisance determination is *res judicata*. That is, should it have been a dispositive affirmative defense to her claim?"[24] "Res Judicata" is a doctrine that precludes a subsequent claim on a matter that has already been adjudicated, and loosely translates to "a matter already judged." In plain—and perhaps oversimplified—English, the Court concluded that the appeal from a nuisance determination using the substantial evidence rule "does not sufficiently protect a person's rights under [the Takings Clause in] Article I, Section 17 of the Texas Constitution."[25] The substantial evidence rule prohibits a court from substituting its judgment for the judgment of the municipal body on the weight of the evidence. Under that standard, a court would uphold the municipal body's decision if enough evidence suggests the body's determination was within the bounds of reasonableness (for example, if substantial evidence supports the body's determination). The Court held that the standard does not protect a property owner's constitutional rights and that the only way to do so is to allow a judge—by implication, one who is elected—to review the body's decision de novo:

> Accountability is especially weak with regard to municipal-level agencies such as the [building and standard's commission]….,
>
> ***
>
> Our precedents make clear that nuisance determinations must ultimately be made by a court, not an administrative body, when the property owner contests the administrative finding.[26]

It appears that, pursuant to the *Stewart* opinion and another opinion (*Patel v. City of Everman*[27]) issued on the same day, an appeal from the decision of the municipal body—including a takings claim as Stewart made—must be raised by a property owner within 30 days of certain city actions.[28] (The appeal petition "must be filed by an owner, lienholder, or mortgagee within 30 calendar days after the respective dates a copy of the final decision of the municipality is personally delivered to them, mailed to them by first class mail with certified return receipt requested, or delivered to them by the United States Postal Service using signature confirmation service, or such decision shall become final as to each of them upon the expiration of each such 30-calendar-day period.") In *Patel*, the Court, citing *Stewart*, stated:

> We recently held that a party asserting a taking based on an allegedly improper administrative nuisance determination must appeal that determination and assert his takings claim in that proceeding. We noted that "[a]lthough agencies have no power to preempt a court's constitutional construction, a party asserting a taking must first exhaust its administrative remedies and comply with jurisdictional prerequisites for suit." We also held that "a litigant must avail [himself] of statutory remedies that may moot [his] takings claim, rather than directly institute a separate proceeding asserting such a claim" (citing *City of Dallas v. VSC*, 347 S.W.3d 321 (Tex. 2011)).[29]

Most city attorneys will read the Court's opinions in *Stewart* and *Patel* to collectively mean that a property owner or other aggrieved person must appeal from an administrative decision to demolish a structure within 30 days, and must include in that appeal the takings challenge. The failure to do so should bar a later takings claim. But until an actual challenge occurs, the topic will be hotly-debated.

6. City Action and Liens

The city may vacate, secure, remove, or demolish the structure or relocate the occupants at its own expense if the structure is not vacated, secured, repaired, removed, demolished, or the occupants are not relocated within the allotted time.[30] However, the city may not repair the structure.[31] To initiate a proceeding to secure, vacate, remove, or demolish the structure or relocate the occupants, the city must

first make diligent efforts to discover each mortgagee and lienholder having an interest in the structure or the property upon which it is located. To save time and expense, the lienholders, mortgagees, and other interested parties should be notified at the time of the initial hearing.[32]

All expenses incurred by the city in vacating, securing, removing, or demolishing the structure or relocating the occupants may be assessed and a lien placed on the property upon which the structure is located, *unless the structure is a homestead*.[33] The lien arises and attaches to the property when it is filed with the county clerk.[34] It constitutes a "privileged lien" inferior only to tax liens, if mortgagees and lienholders were previously notified as to the result of the city's "diligent effort" to identify these parties.[35] The lien is extinguished if the property owner or another party having an interest in the legal title to the property reimburses the city for the expenses incurred.[36] In relation to *Stewart*, note that damages awarded under a takings challenge may not be assessed as a lien.

What procedures must a city follow when using the judicial abatement authority in Chapter 54 to bring an action in district or county court?

Rather than hold an administrative hearing under Chapter 214, many cities opt for an alternative provided by Chapter 54. Under Section 54.012, a city may bring a civil action for the enforcement of its ordinances "relating to dangerously damaged or deteriorated structures or improvements."

The jurisdiction and venue of a suit brought pursuant to Section 54.012 are in the district court or the county court at law of the county in which the city bringing the civil action is located.[37] The Chapter 54 proceeding is the clearest way to comply with *Stewart's* holding that "unelected municipal agencies cannot be effective bulwarks against constitutional violations" because it is brought in district or county court, which are presided over by an elected judge.[38] Of course, the process—like any civil lawsuit—can be lengthy and expensive, and requires the services of an attorney.

1. Procedure

The procedure for filing a civil suit for enforcement of an ordinance is fairly straightforward. The only allegations required to be pleaded in such a civil action are:

a. the identification of the real property involved in the violation;

b. the relationship of the defendant to the real property or activity involved in the violation;

c. a citation to the applicable ordinance;

d. a description of the violation; and

e. a statement that Subchapter B of Chapter 54, which contains the provisions concerning civil suits brought by municipalities for the enforcement of ordinances, applies to the violated ordinance.[39]

Therefore, in order to properly file a suit for enforcement of the city's ordinances, the city need only file an original petition that: includes the above-mentioned elements; requests that the property owner be served and made to appear before the court; and requests that upon final hearing of the matter, a mandatory injunction be issued compelling the property owner to comply with the city's ordinances or allowing the city to conduct the appropriate abatement.

Civil suits of this nature can last for months, even years, before a trial. However, a city can seek a "preferential setting" for the suit if it submits to the court a verified motion that includes facts that demonstrate that the delay in deciding the matter will unreasonably endanger persons or property.[40] If the city prevails in the civil action brought for enforcement of its ordinances, it may be entitled to injunctive relief and civil penalties.[41]

2. Burden to Establish Entitlement to Injunctive Relief

In order to establish its right to injunctive relief in a suit brought for enforcement of an ordinance, a city must show the court that there is a "substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant."[42] If the city makes that showing, it may obtain against the owner, or owner's representative with control over the premises, an injunction that:

a. prohibits specific conduct that violates the concerned ordinance; and

b. requires specific conduct that is necessary for compliance with the ordinance.[43]

Thus, if the city prevails in a civil action against the property owner for enforcement of the ordinances, the city may be entitled to an injunction that not only requires the property to comply, but may also allow the city to conduct the necessary abatement proceedings.[44]

3. Civil Penalty

The city may recover a civil penalty, not to exceed $1,000 per day, for a violation of the ordinance, if it proves that the property owner was:

a. actually notified of the provisions of the city's ordinances; and

b. after he received notice of

the ordinance provisions, he committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.[45]

Prior to initiating suit, to invoke the full protection of the law, notice should be sent to the property owner specifically outlining the violations, including the ordinance provisions, with a set number of days for compliance. While civil penalties may be assessed against the property owner, he is not subject to personal attachment or imprisonment for failure to pay such penalties.[46] However, if the penalties are reduced to judgment, the city may attach a lien to the property if it is otherwise unable to recover on the judgment.

What is the authority for a municipal court of record to make a judicial determination that a structure is substandard?

Section 30.00005 of the Government Code grants additional authority to municipal courts of record relative to health and safety and nuisance abatement ordinances. Specifically, a city may, by ordinance, provide that its municipal court of record has civil jurisdiction for purposes of enforcing municipal ordinances enacted under Chapter 214 of the Local Government Code.

The civil authority of municipal courts, found in Section 54.015 of the Local Government Code, is an unclear area of law, and only those cities with judges and city attorneys who are intimately familiar with the area should use them for civil purposes. As stated previously, a municipal court of record can arguably act in a civil capacity to be the municipal body that makes administrative determinations about whether a structure is substandard. To take advantage of the municipal court of record in the administrative process, a city should designate the municipal court of record as the municipal body under Chapter 214 (as opposed to the city council or building and standards commission).[47]

In addition, Section 30.00005 provides that a municipal court of record has concurrent jurisdiction with a district court or county court at law under Subchapter B of Chapter 54 within the corporate city limits and the city's extraterritorial jurisdiction for purposes of enforcing health and safety and nuisance abatement ordinances. That means that a city could file a Chapter 54 judicial abatement proceeding in a municipal court of record as it could in a district or county court. The *Stewart* problem with filing in a municipal court of record is that judges in that court are generally not elected. Thus, the decision of the court may not—by itself—satisfy the Texas Supreme Court's edict.

Are there any other lingering issues to be aware of in the substandard structure abatement process?

In 1999, a panel of the 5th Circuit Court of Appeals ruled in *Freeman v. City of Dallas* that a city must obtain a warrant from a judge or magistrate before a substandard structure may be demolished.[48] As a result, many cities opted for a Chapter 54 judicial proceeding rather than seeking relief under Chapter 214, due to the additional warrant requirement.

In a later opinion issued *en banc* (by all of the court's judges rather than a panel), the 5th Circuit held that the original panel erred, and that the U.S. Constitution does not require a warrant.[49] The court, as a threshold determination, acknowledged that the demolition of a structure constituted a "seizure" of property under the 4th Amendment. However, the 4th Amendment does not state that there shall be no seizure without a warrant. Rather, it provides only that there shall be no "unreasonable" searches or seizures. To determine the reasonableness of the seizure, the court examined the procedures under state law and the City of Dallas' ordinances. The court determined that the process, along with the defined standards in the municipal code for finding that a structure is a nuisance, offered greater protection against unreasonable actions than an application for a warrant before a judge (which is usually done without notice to the landowner or the opportunity to participate).[50] Thus, substandard building abatement does not appear to pose a 4th Amendment problem.

What is the bottom line regarding *Stewart's* effect on the substandard building abatement process?

The bottom line is that it appears that the only way to be certain to "head off" a takings claim after *Stewart* is to seek a decision from a court in which the judge is elected (for example, a county or district court). That means the judicial abatement process under Chapter 54 is the safest, albeit most expensive and time-consuming, route.

Of course, the *Stewart* opinion may be right that "property owners rarely invoke the right to appeal." And, if the court's opinion in the case—read in conjunction with the *Patel* opinion—truly means that an appeal from the decision of an administrative municipal body (for example, the city council, a building and standards commission, or a municipal court acting in a civil capacity) must be raised by a property owner within 30 days of certain city actions, it may not be as big of a problem as some thought.

Only time will tell. Each city should consult with its city attorney prior to taking action on a substandard building.

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[1] *City of Dallas v. Stewart*, No. 09-0257 (Tex. July 1, 2011), available at www.supreme.courts.state.tx.us/historical/2011/jul/090257.htm.
[2] *City of Dallas v. Stewart*, No-09-0257, 2012 WL 247966 (Tex. Jan. 27, 2012). Also available at www.supreme.courts.state.tx.us/historical/2012/jan/090257_rh.pdf.
[3] *Id.* at *1.
[4] *Id.* at *13.
[5] *Id.*
[6] *Id.*
[7] Section 214.001, Local Government Code.
[8] *Id.*
[9] *See*, Section 214.001(d) & (e), Local Government Code.
[10] Section 214.001(e), Local Government Code.
[11] Section 214.001(l), Local Government Code.
[12] Section 214.0011, Local Government Code.
[13] Section 214.001(h), Local Government Code.
[14] *Id.*
[15] Section 214.001(i), Local Government Code.
[16] Section 214.001(f), Local Government Code.
[17] Section 214.001(q), Local Government Code.
[18] Section 214.001(r), Local Government Code.
[19] Section 214.0012(a), Local Government Code.
[20] Section 214.0012(b) & (c), Local Government Code.
[21] Section 214.0012(c) & (d), Local Government Code.
[22] Section 214.0012(f), Local Government Code.
[23] Section 214.0012(h), Local Government Code.
[24] *Stewart*, rehearing at *9.
[25] *Id.* at *2.
[26] *Id.* at *8.
[27] *Patel v. City of Everman*, No. 09-0506, 2012 WL 247983 (Jan. 27, 2012) available at www.supreme.courts.state.tx.us/historical/2012/jan/090506.pdf.
[28] *Stewart*, rehearing at *2.
[29] *Id.* (footnotes and citations omitted).
[30] Section 214.001(m), Local Government Code.
[31] *Id.*
[32] Section 214.001(e), Local Government Code.
[33] Section 214.001(n), Local Government Code (emphasis added).
[34] *Id.*
[35] Section 214.001(o), Local Government Code.
[36] Section 214.001(n), Local Government Code.
[37] Section 54.013, Local Government Code.
[38] *Stewart*, rehearing at *13.
[39] Section 54.015, Local Government Code.
[40] Section 54.014, Local Government Code.
[41] *See, generally,* Sections 54.016-54.017, Local Government Code.
[42] Section 54.016, Local Government Code.
[43] *Id.*
[44] Section 54.018, Local Government Code (city may bring action to compel the repair or demolition of a structure or to obtain approval to remove the structure and recover removal costs).
[45] Section 54.017, Local Government Code.
[46] Section 54.019, Local Government Code.
[47] Section 214.001(p), Local Government Code (referencing a "civil municipal court" rather than a court of record).
[48] *Freeman v. City of Dallas,* 186 F.3d 601 (5th Cir. 1999), *rehearing en banc granted*, 200 F.3d 884 (5th Cir. 2000), *on rehearing,* 242 F.3d 642 (5th Cir. 2001), *cert. denied,* 122 S.Ct. 47 (2001).
[49] *Freeman*, 242 F.3d at 644.
[50] *Id.* at 653.

19th Annual TMCEC Prosecutors Conference
June 24 – 26, 2012
Omni Southpark
Austin, Texas

TMCEC is offering its second prosecutors seminar for FY 12 on June 24 – 26, 2012 in Austin at the Omni Southpark. An agenda and registration brochure is available at http://www.tmcec.com/Programs/Prosecutors/. This seminar is the only such course in Texas specifically designed to assist prosecuting attorneys in obtaining and maintaining competence in the prosecution of cases governed by Chapter 45 of the Code of Criminal Procedure. Registration and housing fees vary upon the number of nights of housing, the court where you practice, and whether you are requesting that CLE credit be reported to the State Bar of Texas. The registration fee includes two breakfasts, lunch, and course materials.

Participants in February rated the program a 4.61 on a five point scale--faculty received a 4.76 rating. Topics to be included the News Laws of Recusal and Disqualification, Legislative Recap, Case Law & Attorney General Update, Advocacy – Voir Dire, Open Records Requests, the Stewart Case, Education Code & School Offenses, Ethics: Identifying Bias, Sovereign Defendants, and Juveniles Now Adults. The program offers up to 15.75 CLE with up to 4.75 ethics.

Comments from previous participants included:

- Fabulous conference; staff is always so eager and helpful.
- It was excellent. All of the topics were great and the Omni facilities were great. Time well spent for me.
- Excellent location and seminar overall.

Court Jurisdiction continued from pg 1

enforcement actions under Section 54.032 of the Local Government Code, and alternative procedures under Section 54.044 of the Local Government Code. There are also criminal statutes and ordinances that allow for substantial fines. The civil and criminal procedures are not interchangeable, but a review of the legislative history on these statutes illustrates that the distinction between criminal and civil sanctions is not always clear and occasionally confused.

Jurisdiction: Municipal Courts Hear Criminal Cases

Municipal courts are criminal courts with jurisdiction over fine-only misdemeanors. They have exclusive jurisdiction over fine-only offenses that arise under city ordinances occurring within the territorial limits of the city, and concurrent jurisdiction with justice courts for all other fine-only offenses that occur within the city's territorial limits.[2]

Since its passage in 1965, Article 4.14 of the Code of Criminal Procedure has contained only one relatively clear exception to the court's criminal jurisdiction: the court does have authority over bond forfeiture cases in its jurisdiction. That single grant of civil jurisdiction remained the only exception until 1987. Now, as the *Stewart* case circulates, it draws attention not only to the increased civil jurisdiction granted to municipal courts, but also to the changing fundamental role of municipal courts.

Expanded Civil Authority

The Uniform Municipal Courts of Record Act[3] was passed in 1999. In defining a court of record's jurisdiction in Section 30.00005 of the Government Code, the Legislature included subsection (d) which provided, that the governing body of a municipality may provide by ordinance that the court has civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214 of the Local Government Code (substandard buildings), or Subchapter E, Chapter 683 of the Transportation Code (junked vehicles). Further, the court has concurrent jurisdiction with a district or county court under Subchapter B, Chapter 54 of the Local Government Code, within the municipality's territorial limits and city-owned property in its extraterritorial jurisdiction, to enforce health and safety and nuisance abatement ordinances.

Did the Legislature realize that this amendment was a game changer?

Legislative Alchemy?

The powers of the municipal court evolved dramatically, yet inconspicuously in 2001. H.B. 1833 amended both the Local Government Code and the Transportation Code to allow a municipality by ordinance to adopt, as an "alternative to quasi-judicial enforcement of health and safety ordinances, a procedure for an administrative adjudication hearing under which an administrative penalty may be imposed for violation of those ordinances." Section 683.0765 of the Transportation Code, involving the enforcement of junked vehicle ordinances, and Section 54.044 of the Local Government Code, involving the civil enforcement of dangerous building ordinances, were added by H.B. 1833. Section 54.044 also allowed for the city to establish the procedures, timeline, appointment of the hearing officer, and the amount and disposition of administrative penalties, costs, and fees, and granted a municipal court the authority to enforce a hearing officer's order to compel the attendance of a witness or the production of a document to this administrative hearing.

Did the Legislature wittingly give the municipal court authority to compel the attendance of a witness at the behest of the code enforcement officer or city manager?

Under this change in the law, the municipal court is also named the appellate body for a person who is found by a hearing officer to have violated the ordinance in question. The appeal is made by the filing of a petition in municipal court before the 31st day after the date of the hearing officer's determination.[4]

One might think that the enactment of a law permitting such a dramatic departure from the court's historical jurisdiction would have created a stir. Yet, judging from the paucity of annotations and commentary, the changes did not appear to have drawn much attention.

What was the Legislature thinking when it fundamentally transformed the traditional role of the municipal court? The House Research Organization bill analysis for H.B. 1833 states that the municipal court could enforce the order of a hearing officer to compel the attendance of a witness or the production of a document. A person charged with violating an ordinance who failed to appear at the hearing would be considered to have admitted guilt for the violation. A person found to have violated an ordinance could appeal the determination by filing a petition in municipal court within 30 days.[5]

The analysis notes the views of supporters of the bill, stating:

> Administrative hearing for owners of structures violating health and safety codes, including cases of imminent danger, and removal of junked vehicles would give municipalities civil remedies they do not have now, including fines, to deal with these problems. Cities would not have

> to resort to criminal prosecution in city courts, which are ill-suited for addressing negligence and eradicating public nuisances and hazards. Code violation would be decriminalized similar to parking tickets.[6]

Did the Legislature intend to decriminalize these health and safety code violations with the passage of this bill?

Alternative Adjudication Process for Record Courts Only?

Neither of these administrative adjudication alternatives restrict the utilization of the procedures to municipal courts of record; however, because Article 4.14 of the Code of Criminal Procedure, and Section 29.003 of the Government Code, do not mention this added authority in their delineation of court jurisdiction, and Section 30.00005 of the Government Code, pertaining to record courts, does specifically provide for the authority, the generally-accepted interpretation is that the alternative adjudication procedures apply only to courts of record.

More Appellate Jurisdiction

There are other statutes that give municipal courts appellate civil jurisdiction. The municipal court is the appellate body for the administrative adjudication of some parking or stopping ordinance violations.[7] The statute is silent as to whether this authority is granted to all municipal courts or just record courts.[8]

In 2007, S.B. 1119 added Chapter 707 to the Transportation Code, authorizing the photographic traffic signal enforcement system, i.e., red light cameras. The law gave municipal court the exclusive appellate jurisdiction over the civil determination by a hearing officer for incidents occurring within the city's territorial limits.[9]

Issues Raised by Expanded Civil Jurisdiction

Is it constitutional for the Legislature to grant to a municipality's legislative body the authority to designate the functions of the municipal court?

Municipal courts are legislatively-created courts, as opposed to constitutional courts named in the State Constitution of 1876. In 1891, the Constitution was amended to allow the Legislature to establish other courts as it deems necessary and to prescribe the jurisdiction and organization thereof. Municipal courts were created by the Municipal Courts Act of 1899. Significantly, although these courts exist in the context of city government, municipal courts are state trial courts and are governed by the same rules of practice as are other state courts.[10]

Article II, Section 1 of the Texas Constitution reads,

> The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Three questions linger: Has the Legislature, by virtue of giving the city's legislative branch the authority to transform the court into an administrative body, directly or indirectly subjected the court to the control or supervision of the legislative body without having that power conferred upon it by the Constitution? Did the Legislature exercise the proper authority when assigning the municipal court the authority to compel the appearance of a witness in an administrative hearing under Section 54.044 of the Local Government Code? Does the judge have the authority to enforce the hearing officer's order by contempt? These questions and more are being pondered by judges and city attorneys in cities seeking to modify their code enforcement procedures. Arguably, the Legislature has delegated authority to the city government to regulate the function of the judicial branch of government.

Clearly, the role of municipal courts is expanding. The trend is so pervasive that the duties of the court have even transgressed into those of another branch of government. For, in addition to utilizing the alternative adjudication provisions outlined above, some municipalities are appointing their municipal judge to serve as the administrative hearing officer in cases such as civil parking violations, red light camera violations, and nuisance violations.

Ethical Concerns?

Even if the Legislature intends to decriminalize code enforcement cases and adopt an efficient civil procedure in the interest of health, safety, and economy, the fact remains that these same acts can also be filed as criminal offenses and the jurisdiction for these cases lies in the municipal court. This poses potential ethical problems.

Consider, for example, junked vehicles. Section 683.073 of the Transportation Code, provides that a person commits an offense if the person maintains a junked vehicle that qualifies as a public nuisance. The offense is punishable by a fine not to exceed $200. Thus, the jurisdiction for an offense within the

city limits is concurrent between the justice court and the municipal court. If the city has passed an ordinance tweaking the definition of a junked vehicle, making it more inclusive, as allowed by Section 683.0711 of the Transportation Code, then the municipal court has exclusive jurisdiction of the offense.

This would make it possible for a municipal judge to be in the position of having heard the appeal from an administrative hearing officer on a junked vehicle abatement and then later be in the position of adjudicating the criminal case based on the same facts. In some cities, the municipal judge may have even been the administrative hearing officer.

A judge must recuse himself or herself in any proceeding in which the judge has personal knowledge of disputed evidentiary facts concerning the proceeding.[11] Larger cities, with several judges, may be able to avoid the conflict posed by Rule 18B of the Texas Rules of Civil Procedure; however, smaller record courts will unavoidably find themself in the position of having heard the civil enforcement case, then be unable to hear the criminal case.

Conclusion

Clearly, the Legislature has the authority to grant and expand the jurisdiction of municipal courts. The authority of cities is not as clear. There are many arguments supporting the efficiency and practicality of expanding the civil jurisdiction of municipal courts. The city judge and the city attorney do have an advantage on their county counterparts when it comes to the knowledge and expertise in dealing with city ordinances. However, given the trend to expand the roles of municipal courts, even to the point of assuming the role of administrative hearing officers, judges and city attorneys should give pause and consider possible ramifications.

While it may be convenient to bestow administrative functions on a municipal court, it may pose legal and ethical problems.

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[1] No. 09-0257 (Tex. July 1, 2011)
[2] Article 4.14, Code of Criminal Procedure
[3] Section 30.00001, Government Code, et. seq.
[4] Section 54.044(k), Local Government Code.
[5] Section 54.044(c), Local Government Code.
[6] http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=77R&Bill=HB1833.
[7] Section 682.011, Transportation Code.
[8] Harkening back to the discussion by the Supreme Court in *Stewart,* it is interesting to note that the statutes giving municipal courts appellate jurisdiction do not address whether the appeal is a trial de novo.
[9] Section 707.016, Transportation Code and Section 29.003(g), Government Code. Again, there is no mention as to whether this expanded jurisdiction applies only to record courts.
[10] See, generally, *Ex parte Quintanilla*, 207 S.W.2d 377 (Tex. Crim. App. 1947).
[11] Rule 18b of the Texas Rules of Civil Procedure. See, generally, *Seal v. State*, 332 S.W.3d 448 (Tex.Crim. App. 2011).

JUDICIAL DESK REFERENCE: SOME SIGNS AND SYMPTOMS OF DEPRESSION AND SUBSTANCE ABUSE:

- Consistent feelings of sadness or hopelessness
- Lack of interest in people, things, or activities previously enjoyed
- Increased fatigue or toss of energy, restlessness, or irritability
- Noticeable change in appetite, weight, or sleep patterns
- Isolation from family, friends, colleagues
- Feelings and expressions of guilt or worthlessness
- Diminished ability to remember, think ciearty, concentrate, or make decisions
- Thoughts or expressions of death or suicide
- Using alcohol or drugs to bolster performance
- Using substances on the job, during the day, before appointments, meetings, deposition or court appearances
- Failing to show for appointments, meetings, depositions, court appearances; failing to return phone calls
- Declining quality and quantity of work product
- Avoiding law partners, staff, colleagues, clients, friends and family
- Drinking/using substances alone. Making excuses for, or lying about, frequency or amount
- Moral, ethical, and behavioral transgressions

What to do?
- Call TLAP at 800.343.8527, 512.427.1453 or on the TLAP Judges' Line: 800.219.6574
- Identity of caller can remain **confidential**

Why do it?
- Provide **help**, not discipline
- Fulfill your **ethical obligation** to report

What happens?
- TLAP staff or volunteer lawyers and judges can contact impaired lawyer, offer help, and educate on available services
- Receive coaching and education about practical, immediate, and long-term solutions and options

TLAP Services:
- Crisis counseling, coaching, and referral
- Referrals to resources (counselors, therapists, psychologists, psychiatrists) in relevant geographical areas
- Recommendations for out-patient and in-patient treatment programs
- Match lawyer/judge with local peer volunteers and/or support groups
- Referrals for limited financial assistance for lawyers without assets/insurance

Driver's License Suspensions from pg 1

Drug Offenses and Driver License Suspensions

Subchapter P of Chapter 521, provides for automatic suspension of a driver's license on final conviction for certain drug offenses. The DPS website also states−in more layman terms−that offenders convicted of a drug offense or controlled substances offense will receive a driver's license suspension. Municipal courts do not have jurisdiction over most drug offenses, but, as Class C misdemeanors, municipal courts do see many drug paraphernalia cases.[7]

Does this automatic suspension of a driver's license apply to a drug paraphernalia conviction? If so, how would this work? And if not, why not?

Section 521.372 of the Transportation Code provides:

(a) A person's driver's license is automatically suspended on final conviction of:
  (1) an offense under the Controlled Substances Act;
  (2) a drug offense; or
  (3) a felony under Chapter 481, Health and Safety Code, that is not a drug offense.

(b) [DPS] may not issue a driver's license to a person convicted of an offense specified in Subsection (a) who, on the date of the conviction, did not hold a driver's license.

(c) Except as provided by Section 521.374(b) [which provides that a license may not be reinstated until the defendant completes a drug educational program], the period of suspension under this section is the 180 days after the date of a final conviction, and the period of license denial is the 180 days after the date the person applies to [DPS] for reinstatement or issuance of a driver's license.

Subsection (a) provides that DPS will automatically[8] suspend a person's driver's license on final conviction[9] of an offense under the Controlled Substances Act, a drug offense, or a felony offense under the Texas Controlled Substances Act that is not a drug offense. This seems fairly self-explanatory, but one must go further and look at the statutory definitions of Controlled Substances Act and drug offense to answer whether this suspension would apply to a drug paraphernalia offense. Section 521.371 provides these definitions.

What is the Controlled Substances Act?

For purposes of Subchapter P of Chapter 521, "Controlled Substances Act" means the *federal* Controlled Substances Act.[10] If a defendant is convicted of a federal Controlled Substances Act offense, the automatic suspension will apply. The federal act, under Section 863 of Title 21 of the United States Code (titled "Drug Paraphernalia"), provides that it is unlawful for any person to (1) sell or offer for sale drug paraphernalia, (2) use the mails or other facility of interstate commerce to transport drug paraphernalia, or (3) import or export drug paraphernalia.[11] Compare this to the *Texas* Controlled Substances Act, under Chapter 481 of the Health and Safety Code−or at least the relevant section that falls into the municipal court jurisdiction−which makes it a Class C misdemeanor to use or possess with intent to use drug paraphernalia.[12] Texas law is stricter than the federal law, notably in the case of the drug paraphernalia law, which requires more than mere use or possession with intent to use. Put another way, an offense under the Texas Controlled Substances Act is not necessarily an offense under the federal Controlled Substances Act. The drug paraphernalia law is no exception; use or possession with intent to use paraphernalia is an offense under Texas law, but not an offense under federal law. Therefore, as Section 521.372 provides for automatic driver's license suspension upon conviction of a *federal* Controlled Substances Act offense, a Class C misdemeanor drug paraphernalia conviction under the Texas Controlled Substances Act would not trigger the suspension.

What Constitutes a Drug Offense?

It is no stretch to categorize possession with intent to use drug paraphernalia as a "drug offense." However, Section 521.371(3) provides that "drug offense has the meaning assigned under 23 U.S.C. Section 159(c) and includes an offense under Section 49.04 [DWI], 49.07 [Intoxication Assault], or 49.08 [Intoxication Manslaughter], Penal Code, that is committed as a result of the introduction into the body of any substance the possession of which is prohibited under the Controlled Substances Act." Again, one must consult federal law. Section 159 of Title 23 of the United States Code defines drug offense as any criminal offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer (or the conspiracy or attempt to do any of the aforementioned) of any substance the possession of which is prohibited under the Controlled Substances Act, or the operation of a motor vehicle under the influence of such a substance.[13]

Municipal courts only have jurisdiction of the use of or possession with intent to use drug paraphernalia. The paraphernalia itself is not a substance; therefore, the Class C misdemeanor drug paraphernalia offense would not

qualify as a "drug offense" under the federal definition. Because the automatic license conviction applies to drug offenses as defined under federal law, a conviction for drug paraphernalia in a Texas municipal court would not warrant the license suspension.

A Misdemeanor is Not a Felony Offense

The third category of offenses for which a conviction results in automatic suspension is a felony under the Texas Controlled Substances Act that is not a drug offense.[14] As municipal courts only have jurisdiction over fine-only and Class C misdemeanors, a felony under the Texas Controlled Substances Act would never be filed in a municipal court.

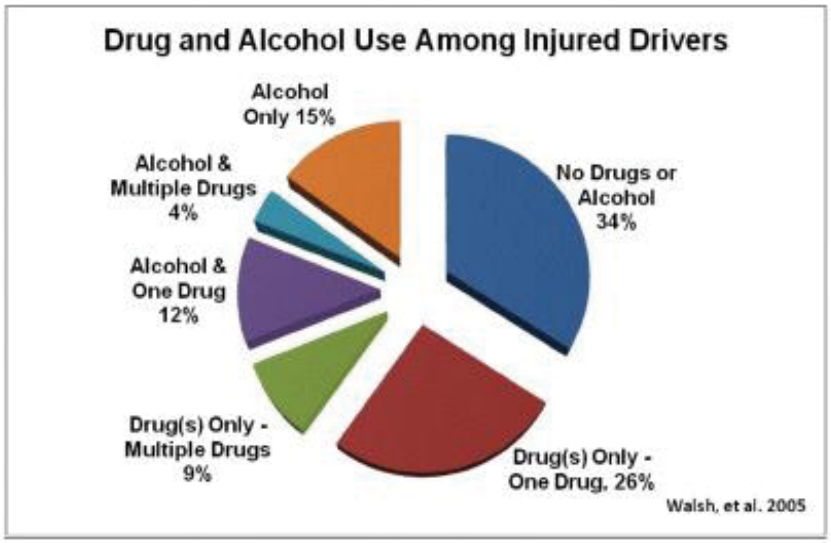
No Municipal Court Involvement

The use or possession with intent to use drug paraphernalia is a misdemeanor offense under the Texas Controlled Substances Act, and is neither an offense under the federal Controlled Substances Act nor a drug offense under federal law. Therefore, municipal courts should have no reason to be concerned with Subchapter P of Chapter 521 of the Transportation Code imposing an automatic administrative suspension of a person's driver's license on conviction of certain drug offenses. A Class C misdemeanor drug paraphernalia offense is not one of the certain drug offenses.

DPS does not have the authority to administratively suspend a person's driver's license upon a conviction for this misdemeanor offense, which makes sense considering that municipal courts do not currently report convictions for Class C drug paraphernalia offenses to DPS. Likewise, nowhere in Texas law does a court have the authority to order a license suspension for a person convicted of this offense.

Why So Much Federal Involvement?

Much of the confusion about Subchapter P stems from the heavy ties to federal law. Section 159(a) of Title 23 of the United States Code, titled "Revocation or Suspension of Drivers' Licenses of Individuals Convicted of Drug Offenses" *(sound familiar?)*, prescribes that the federal government shall withhold 10 percent of relevant state apportionments to states that do not require at least a six month suspension of a person's driver's license upon conviction of the federal Controlled Substances Law or any drug offense. Thus, Section 521.372 requires exactly what federal law requires−with the addition of felony non-drug offenses under the Texas Controlled Substances Act−without risking any federal funding.



Drugged Driving

This is not to suggest that this suspension only exists because of money. Drugged driving is quickly becoming a serious problem. Though impaired driving is most often associated with drunk driving, a national survey done in 2005 showed that drugs were present more than seven times more frequently among weekend nighttime drivers than was alcohol at or above the legal limit.[15] Studies of seriously injured drivers reveal more drivers with drugs in their system than alcohol (see chart).[16] And according to the National Highway Traffic Safety Administration, while the number of drivers killed in motor vehicle crashes has declined since 2005, the number of drivers positive for drugs has increased by five percent.[17]

Recently, the Governors' Highway Safety Association adopted a new policy on drugged driving urging states to amend statutes to, among other things, provide separate sanctions for alcohol and drug-impaired driving and provide training to law enforcement and prosecutors to help in successful identification and prosecution of drug-impaired drivers.[18] Given this federal urge, it would not be surprising if Texas law followed suit to provide distinct laws on drugged driving and extend license suspensions to those convicted (or possibly put on some form of probation) for drugged driving. For prosecutors and law enforcement, any crack-down could also affect the unfortunate practice of dropping misdemeanor marijuana charges down to paraphernalia cases. However, for now, a statutory look at

Section 521.372 of the Transportation Code reveals that convictions for misdemeanor drug paraphernalia offenses do not result in an automatic driver's license suspension.

[1] A driver's license is a privilege−not a right−and is one subject to regulation by the Department of Public Safety and the state's police power. *See*, *e.g.*, *Tex. Dept. of Pub. Safety v. Schaejbe*, 687 S.W.2d 727 (Tex. 1985); *Gillaspie v. Dept. of Pub. Safety*, 259 S.W.2d 177 (Tex. 1953).

[2] The court, as part of the judgment against a minor (under 21 years of age) for certain alcohol offenses (i.e., purchase of alcohol by minor, attempt to purchase by a minor, minor in consumption, minor in possession, or misrepresentation of age), shall order DPS to suspend the minor's driver's license (or deny issuance of a license to the minor) for 30 days if a first conviction, 60 days if a second conviction, and 180 days if a third or subsequent conviction. Section 106.071(d)(2), Alcoholic Beverage Code.

[3] Section 106.115(d)(1), Alcoholic Beverage Code and Section 161.254(a), Health and Safety Code.

[4] *See*, *also*, Section 521.3451, Transportation Code (regarding court-ordered indefinite suspension for juvenile contempt).

[5] Section 521.292, Transportation Code.

[6] Sections 521.341 (criminally negligent homicide, manslaughter, evading arrest/detention, or intoxication assault, if using a motor vehicle; DWI or DWI with child passenger; intoxication manslaughter; felony traffic offense; fake ID offenses), 521.342 (certain non-fine-only offenses committed by person under 21 years of age), 521.3465 (fictitious plates, registration insignia, or inspection stickers−questionable given the changes to the license plate and registration sticker laws), 521.349 (theft of motor fuel), 521.350 (racing on the highway), 521.351 (purchasing or furnishing alcohol to minors), and 521.372 (certain drug offenses), Transportation Code.

[7] Section 481.125(a), Health and Safety Code.

[8] The suspension is automatic, the terms are not within the court's discretion, and the suspension is not conditioned on the defendant's surrender of the license. *See*, *Tex. Dept. of Pub. Safety v. Preble*, 398 S.W.2d 785 (Tex. Civ. App.−Houston 1966); *Gaddy v. Tex. Dept. of Pub. Safety*, 380 S.W.2d 783 (Tex. Civ. App.−Eastland 1964). Furthermore, because the suspension is a collateral consequence of conviction and not punishment, the trial court is not required to admonish the defendant about the suspension. *Grant v. State*, 989 S.W.2d 428 (Tex. App.−Houston [14th Dist.] 1999). *See*, *also*, *Tex. Dept. of Pub. Safety v. Richardson*, 384 S.W.2d 128 (Tex. 1964) (Supreme Court not concerned with criminal penalties because a driver's license is not suspended as additional punishment); *Davidson v. State*, 313 S.W.2d 883 (Tex. Crim. App. 1958) (the revocation of a driver's license is not intended as punishment but is designed solely for the protection of the public in the use of the highways); *Ex parte Arnold*, 916 S.W.2d 640 (Tex. App.−Austin 1996).

[9] *See*, *Jones v. State*, 77 S.W.3d 819 (Tex. Crim. App. 2002), for a thorough discussion of when a conviction is considered final. In *Jones*, the Court held that the conviction was final, even though the defendant still had time left to appeal, because "only when there is evidence that the defendant actually perfected an appeal is the conviction deemed to be lacking finality." 77 S.W.3d at 824.

[10] Section 521.371(1), Transportation Code. The federal Controlled Substances Act is codified in Title 21 of the United States Code, Section 801 et seq.

[11] 21 U.S.C. § 863(a).

[12] Section 481.125(a), Health and Safety Code. A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of [Chapter 481] or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of [Chapter 481]. Drug paraphernalia is defined in Section 481.002(17), Health and Safety Code.

[13] 23 U.S.C. § 159(c)(2).

[14] For a good breakdown of offenses under the Texas Controlled Substances Act by category and penalty, see the *Penal Code Offenses by Punishment Range* publication by the Texas Attorney General's Office, available online at https://www.oag.state.tx.us/criminal/publications_cj.shtml.

[15] Richard Compton and Amy Berning, *Results of the 2007 National Survey of Alcohol and Drug Use By Drivers*. NHTSA Traffic Safety Facts (July 2009) DOT HS 811 175.

[16] J. Michael Walsh et al., *Drug and Alcohol Use Among Drivers Admitted to a Level-1 Trauma Center.* Accident Analysis and Prevention, Volume 37, Issue 5 (September 2005). Pages 894-901.

[17] *Drug Involvement of Fatally Injured Drivers*. NHTSA Traffic Safety Facts (Nov 2010) DOT HS 811 415 available at http://www-nrd.nhtsa.dot.gov/Pubs/811415.pdf.

[18] *See*, Hon. Peggy Fulton Hora, *Drugged Driving: On Everybody's Radar*. Highway to Justice (Spring 2012) from The American Bar Association and the National Highway Traffic Safety Administration.

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Rounding the Corners: Criminal Application of the Four-Corners Rule

By Mark Goodner, Program Attorney & Deputy Counsel, TMCEC

In its 82nd Regular Legislative Session, Texas witnessed the passage of H.B. 976, relating to the issuance of arrest warrants, allowing a person to make oath before a magistrate electronically. This change demands a closer look at the four-corners rule. The four-corners rule is a term frequently bandied about legal circles. It has been embraced and applied as a standard in the criminal courts, but what does it mean and what is the extent of its applicability in probable cause analysis for search and arrest warrants? Must an affidavit be provided before all writs for search or seizure are issued, or have new capabilities regarding electronic appearance before a magistrate chipped away at the requirement of a written affidavit, affecting the utility of the four-corners rule?

The Four-Corners Rule

The origins of the four-corners rule can be traced back to the practice, in ancient times, of limiting all written contracts to a single sheet of parchment regardless of length.[1] The purpose of limiting the instrument to one page was to prevent the insertion of fraudulent materials into a fully signed agreement—as the contract only had four corners, their location depending on the length of the sheet.[2] So, the four corners refer to the face of a written instrument and, although we have moved beyond single sheets of parchment, it is a term that is still widely used today.

The four-corners rule itself has different implications depending on the context of its use. On the one hand, it can be used to *expand* focus, as it supports the principle that a document's meaning should be gathered from the entire document (everything within its four corners) and not from isolated parts.[3] This use is more common in the realm of contract law—ensuring that every clause is given meaning in the context of the whole.[4]

In criminal law, the effect of implementing the four-corners rule more often *limits* the focus, supporting the principle that no extraneous evidence should be used to interpret a document.[5] This is seen, for instance, when a magistrate reviews a complaint to ensure that the requirements of probable cause are present within the four corners of the document.

Search Warrant Affidavits

The four-corners rule requiring that probable cause be found within the four corners of an affidavit is arguably strongest in the realm of search warrants. The Court of Criminal Appeals first used the "four corners" phrase in *Nicol v. State* in 1971,[6] but the origins of the requirement can be traced back to 1928 in *McClennan v. State*.[7] In *McClennan,* a magistrate's examination of witnesses under oath that established probable cause in the eyes of the magistrate could not be considered by the Court because it did not amount to a written and sworn complaint.[8] *Hall v. State* reaffirmed the rule, and it has, over the years, become generally accepted.[9] The legal sufficiency of an affidavit in support of a search warrant must be reviewed by considering only the "four corners" of the affidavit itself.[10] The rule ensures adequate review of a magistrate's determination of probable cause, as the review is based on an objective and reliable record of the information taken under advisement by the magistrate as opposed to the review merely relying on the unreliable memories of witnesses.[11] Initially, the rule was based on the legislative intent evident in the statutory requirement of a complaint "made in writing and on oath" that was required in prior versions of the Code of Criminal Procedure.[12] While the language of the code has changed, Article 18.01(b) still anticipates "a sworn affidavit setting forth substantial facts establishing probable cause" to be filed with every search warrant request. In essence, magistrates should find probable cause within the four corners of the affidavit, and on review the State may not support a warrant's issuance by relying on information not present within the affidavit itself.

Arrest Warrant Affidavits

While the issuance of a *search* warrant involves strict adherence to the four-corners rule, the same rule is not as applicable to the issuance of

arrest warrants. For one, the statutory basis for embracing the four-corners rule with regard to arrest warrants is less clear. The Code of Criminal Procedure makes no mention of a written affidavit in Article 15.03 with respect to the issuance of an arrest warrant. It states, rather, that a magistrate may issue a warrant "when any person may make oath before the magistrate that another has committed some offense against the laws of the State."[13] The subsequent articles 15.04 and 15.05, however, both deal with a sworn complaint[14] related to the issuance of a warrant which charges the commission of an offense. Article 15.04 of the Code of Criminal Procedure defines a complaint as the affidavit made before a magistrate (or district or county attorney) that charges the commission of an offense. Article 15.05 of the Code of Criminal Procedure outlines the requisites of the complaint, and although it does not mention a requirement that the affidavit be in writing (other than it must be signed in writing by the affiant), an affidavit is generally defined as a written document.[15] While Chapter 15 does not explicitly require a complaint to be filed in order to issue the arrest warrant, it has been interpreted that a complaint is indeed required. If a complaint is required, then it follows that all of the requisites be present within the four corners of the affidavit itself, binding magistrates, judges, and courts to the four-corners rule.

Regardless of the confusion and gray area in Chapter 15 related to complaints and arrest warrants, the Court of Criminal Appeals has traditionally applied the four-corners rule to arrest warrants as it has to search warrants.[16]

A Shift on the Horizon

H.B. 976, passed in the 82nd Regular Legislative Session may dramatically shift conventional thinking about the requirement of a written affidavit and the applicability of the four-corners rule. H.B. 976 amended Article 15.03 of the Code of Criminal Procedure, authorizing the use of technology to more quickly obtain an arrest warrant or summons by enabling a person to appear before and communicate with a magistrate through an electronic broadcast system. The bill requires that a recording of the appearance be preserved until the defendant is either acquitted of the offense or all appeals relating to the offense have been exhausted. While the language of this amendment was clear and concise, the implications of requesting a warrant or summons by electronic broadcast raised questions. What is unclear is whether this electronic appearance supplants the need for an affidavit. If not, and the appearance merely supplements the affidavit, it stands to reason that any challenged arrest warrant issued after an electronic appearance supplementing the affidavit would be overturned on review as it would necessarily violate the four-corners rule (as the supplemental electronic appearance and any information exchanged during that time would reside beyond the four corners of the written affidavit).

In order to give meaning and utility to the change, the electronic appearance must be something more than a mere presence or a transmission of the affidavit. The electronic transmission of an affidavit was already put into the statute in 2009. The new provisions in Article 15.03 of the Code of Criminal Procedure specifically state that the electronic appearance is to work specifically in conjunction with a person making oath before the magistrate that another has committed some offense against the laws of the State. This new avenue of making oath differs from the historical route in which a person makes oath through the traditional affidavit. Now, there is a new option of making oath electronically before the magistrate, and, presumably, this appearance is to be made to supplement the affidavit or, perhaps more likely, without any written oath at all. This interpretation is bolstered by the requirement that any electronic appearance and request must be recorded and preserved until the case reaches disposition. Without the four corners of the affidavit to explore, there must be some reliable evidence to review in order to determine the sufficiency of the probable cause.

So how does the four-corners rule apply if there is no written instrument? While an affidavit can be read as we look for probable cause within the four corners of the page, a recording has no corners and cannot be read. Applying the four-corners rule to a recording will require magistrates and reviewing courts to listen and watch for probable cause.

This change in the law will require the Texas judiciary to work in uncharted territory. Appellate courts have not yet had an opportunity to explore these issues. Magistrates should anticipate requests from officers seeking to utilize this new technology and criminal defense attorneys scrutinizing its use.

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[1] *Black's Law Dictionary,* 682 (Bryan A. Garner ed., 8th ed., West 2004).

[2] *Id.*

[3] *Id.*

[4] Mere assertion that contract language means one thing to a party, where it is otherwise clear, unequivocal, and understandable when read in connection with the whole contract, is not in and of itself enough to raise a triable issue of fact. *Bethlehem Steel v. Turner Const. Co*., 141 N.E.2d 590 (N.Y. 1957).

[5] *Id.*

[6] *Nicol v.* State, 470 S.W.2d 893 (Tex. Crim. App. 1971). This recognition of the standard was preceded by Judge Onion citing it in a concurring opinion in *Gaston v. State*, 440 S.W.2d 297, 303 (Tex. Crim.

App. 1969).

[7] *McClennan v. State*, 3 S.W.2d 447 (Tex. Crim. App. 1928).

[8] *Id.* at 448.

[9] *Hall v. State*, 394 S.W.2d 659 (Tex. Crim. App. 1965).

[10] *See*, *Doescher v. State*, 578 S.W.2d 385, 387 (Tex. Crim. App. 1978); *see, generally,* McGinley, The "Four Corners" Requirement: A Constitutional Prerequisite to Search Warrant Validity 31 Okla. L. Rev. 289 (1978).

[11] 40 Dix & Schmolesky, *Texas Practice: Criminal Practice & Procedure*, Sec. 9.19 (3d ed. 2011).

[12] *Id.*

[13] Article 15.03(a), Code of Criminal Procedure.

[14] It is important to distinguish this Chapter 15 complaint, which is an affidavit alleging the commission of an offense related to an arrest warrant, from the Chapter 45 complaint that is the charging instrument for a Class C misdemeanor.

[15] An affidavit is a voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths. *Black's Law Dictionary*, 62 (Bryan A. Garner ed., 8th ed., West 2004.)

[16] *See, Evans v. State*, where the court, supporting the rule, cited Article I, Section 9 of the Texas Constitution, as well as many prior decisions that dealt only with search warrants. 530 S.W.2d 932, 936 (Tex. Crim. App. 1975). Although the Court has applied the four-corners rule to arrest warrant analysis, case law does not reveal careful consideration, but rather that the step was taken summarily. *See*, 40 Dix & Schmolesky, *Texas Practice: Criminal Practice & Procedure*, Sec. 11.14 (3d ed. 2011).

"Passing the Paddle" Part I: The Emergence of Local Trial Courts in the Texas Juvenile Justice System and the Criminalization of Misconduct by Children

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

Something significant happened in Texas, and remarkably few people are aware it occurred. In a little over two decades, beginning in the 1990s, a paradigm shift occurred in the Lone Star State. The misdeeds of children–acts that in the near recent past resulted in trips to the principal's office, corporal punishment, or extra laps under the supervision of a middle school or high school coach–now result in criminal prosecution, criminal records, and the imposition of punitive fines and court costs being imposed against children ages 10 through 16.

In comparison to cases in juvenile court, cases in municipal and justice court lack any comparable intake process and there is no requirement of prosecutor review.[1] Furthermore, while an indigent child accused of possessing drug paraphernalia in juvenile court is entitled to appointment of counsel at every stage of the proceedings,[2] the same indigent child accused of the same offense in either a municipal or justice court has no similar assurance of an appointed attorney.[3] Such inequities are compounded by the fact that an indigent child in a municipal or justice court can be fined upon a finding of guilt, whereas a juvenile court has neither the authority to impose a fine nor the authority to enter a judgment finding the child guilty of a crime.

Despite being a system created by the Texas Legislature, most Texas policy makers and their constituents remain unaware that Texas now has two separate, unequal systems of justice for children: one civil and one criminal, even for children who have committed the same illegal act.[4] For the last two legislative sessions, the discrepancies between the two systems have been the source of a variety of legislative proposals. While some proposals have aimed to increase parity between the two systems, others have sought to either modify or repeal policies and procedures that criminalize the misconduct of children. While the policy of criminalizing the misconduct of children has yet to be widely debated by Texas legislators, there is ample reason to believe that such a debate is inevitable.

How did this occur?

It is the byproduct of a convergence of four distinct trends and events.

1. The Legislature

First, it is important to know that Texas has a distinct history of being erratic in terms of its adjudication of children and fine-only misdemeanors. In fact, during three legislative sessions between 1987 and 1991, the Legislature changed the law governing children and fine-only misdemeanors three times. Prior to 1987, no court had jurisdiction of alleged first or second fine-only misdemeanors. In 1987, the law was changed to allow criminal courts to have jurisdiction but allowed the transfer of third offenses to juvenile court when the child had two previous offenses. In 1989, with the exception of traffic and certain alcohol offenses, criminal jurisdiction of such cases was repealed in favor of civil jurisdiction in juvenile court. However, in order for the juvenile court to have jurisdiction, the State had to allege and prove the commission of three or more fine-only offenses (excluding public intoxication). In 1991, the Legislature regressed to a scheme similar to the one enacted in 1987.[5]

2. Juvenile Justice Triage and the Preemption of Juvenile Super Predators

Texas, like other states in the late 1980s and early 1990s, adopted a "get tough" approach to adjudicating the illegal acts of children.[6] Such an approach seemed justified in light of dire forecasts of escalating numbers of "juvenile super predators" terrorizing our communities.[7] In a preemptive effort to make space in juvenile court dockets for the impending swarm of juvenile super predators, Texas, like other states, resorted to what can best be described as judicial triage.[8] In the process, the vast majority of cases involving the more common misdeeds of children (*e.g.,* Minor in Possession of Alcohol, Minor in Possession of Tobacco, Failure to Attend School, curfew violations) were swept from the dockets of juvenile courts and onto the criminal dockets of municipal and justice courts. In retrospect, this was a bad decision because the much-hyped

juvenile super predators proved to be a myth: the bumper crop of youthful miscreants never materialized.[9] Nevertheless, ironically, as a consequence of such legislation, by 1999 the legal apparatus that now annually labels more than 160,000 children in municipal and justice courts as criminals was armed and fully operational.

3. Chapter 37 of the Education Code and Emergence of School-Based Policing

In 1995, prompted by concerns for school safety, discipline, and the desire to maintain law and order, Chapter 37 of the Education Code was enacted. Consequently, law enforcement emerged as a prominent new component in Texas public schools. Similarly, municipal and justice courts were expressly given jurisdiction to hear and determine criminal cases involving statutes and rules adopted by school districts relating to the protection of school buildings and grounds.[10] Chapter 37 has been widely criticized. Despite the legislative intent of zero tolerance for misconduct and returning school discipline to the local level, school attorneys claim that that with the passage of Chapter 37, "local control flew out the window."[11] According to a non-partisan research institute and various legal non-profits, Chapter 37 is the reason children are being accused of criminal offenses, such as Disruption of Class, when the alleged disruption is sometimes nothing more than chewing gum in the class or slamming lockers in the hallway.[12] These critics persuasively argue that the over-infusion of law enforcement in public school, the misapplication of the crime control model, and zeal for zero tolerance has had absurd results. What is undisputable is that since Chapter 37 became part of the Education Code, large independent school districts have their own police departments. Similarly, schools in the most sparsely populated municipalities have school resource officers. These members of law enforcement, like all Texas peace officers, are legally authorized to use all lawful means to detect, prevent, and deter illegal conduct. While this may encompass search and seizure, it can also result in the issuance of a citation (a.k.a. arrest and release) to a child who is not old enough to drive to school, let alone promise to appear in court pursuant to the terms of their release.

4. Convergence Following Columbine

The tipping point was the Columbine High School massacre. On April 20, 1999, twelve children and one teacher were murdered. Twenty-four others were injured. The Columbine High School massacre left an indelible mark on the psyche of the American people. Fear fanned the flames. Decision makers responded in kind. Zero tolerance policies, which had already taken hold in many parts of the nation, including Texas, became an institutional norm. Fear of violence, coupled with the popular sentiment among many school lawyers that schools should minimize their civil liability by letting law enforcement and the courts "do their job," culminated in the wholesale outsourcing of school discipline. Municipal and justice courts became the new vice principal's office. Thus, the descriptive term—"passing the paddle"—was born.

Editor's Note: This is the first part of a two-part series. Part I features a hypothesis, which explains retrospectively how municipal and justice courts became the primary venue for adjudicating the misconduct of children in Texas. Part II takes a closer look at the judiciary's role in the public policy debate concerning ticketing and ticketing at schools, and sets the stage for discussion of related legislative proposals.

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[1] In cases involving children in municipal and justice courts, there is no provision comparable to Section 53.102 of the Family Code, which requires the prosecuting attorney of a juvenile court to promptly review the circumstances and allegations of legal sufficiency and the desirability of prosecution.

[2] Section 51.10, Family Code.

[3] Ryan Kellus Turner, "The Oversimplification of the Assistance of Counsel in the Adjudication of Class C Misdemeanors" *The Recorder*, Vol. 18, No. 3 (January 2009).

[4] With a few exceptions, Texas law generally authorizes a peace officer who encounters a child committing a Class C misdemeanor to treat it either (1) as a crime governed by the Code of Criminal Procedure, or (2) as conduct indicating a need for supervision (CINS). *See,* Section 51.03, Family Code.

[5] Robert O. Dawson, *Texas Juvenile Law* (7th Edition) Texas Juvenile Probation Commission (2008) at 46.

[6] Will Harrell and Terry Schuster, "Meeting the Needs of TDCJ's Youthful Offender" Office of the Independent Ombudsman of the Texas Youth Commission (May 27, 2008) at 2.

[7] John J. DiIulio, "The Coming of the Super-Predators" *The Weekly Standard* (November 27, 1995) at 23-28. "Due in part to the increase in crime and arrest trends, in part to the media obsession with juvenile violence, and in part to validation of the concept by a few high profile academics (*e.g.*, John DiLulio of Princeton University and James Fox of Northeastern University), the phrase *juvenile super predator* entered the public consciousness. Juvenile super predators were characterized as ruthless sociopaths, youth with no moral conscience who see crime as a rite of passage, who are unconcerned about the consequences of their actions, and who are undeterred by the sanctions that could be leveled against them by the juvenile justice system. Some even argued that this new breed of offender had different DNA than their predecessors, changes caused by the alcohol and other drug abuse of their young, unmarried mothers. The argument went that violent juvenile crime was increasing and would continue to increase because this small group of juvenile super predators commits more vicious crimes with higher frequency than delinquents of past generations. The supporters of this argument concluded that the rehabilitative approach of the juvenile justice system was wasted on these youth because their

Passing the Paddle continued pg 28

Understanding Risk Perception: Why Dangerous Driving Choices Can Feel Safe

By David Ropeik
Keynote Speaker at the 2012 Municipal Traffic Safety Initiatives Conference

Why do people drive drunk? Why do they speed? Why do they operate a motor vehicle, and text on the cell phone, at the same time? This all seems inordinately dumb. Is it that simple?

Would that it were so for law enforcement, because that would suggest that by making people smarter and better informed, they could be discouraged from doing such dangerously irrational things. The problem is, it's not that simple. All the things we do that involve risk are the result of mostly subconscious subjective judgments that are based not just on the facts, but on a whole range of emotional factors that make some things feel scary and some things feel safe, and which lead us to fear some things more than we need to, and some things−like the dangerous ways we operate motor vehicles− less than we should.

The study of the psychology of risk perception by a number of different scientific disciplines has a lot to tell us about the risky ways people behave on the roads. Neuroscientists have discovered, for example, that the human brain is hard-wired to assess potential danger with feelings and instinct first, and careful objective thoughtful reasoning second. And then, after that initial response, when our brain is using both the facts and our feelings to decide, the wiring and chemistry of the brain insure that feelings will matter at least as much as the facts, and usually more. In other words, our brain is built to feel first and think second, and to feel more and think less. The belief that we can be perfectly rational beings is a myth. The truth is closer to something satirist Ambrose Bierce said in "The Devil's Dictionary" nearly 100 years ago: the brain is only the organ with which we think we think.

Psychologists studying how we make judgments and decisions, trying to understand why those decisions sometimes seem to irrationally fly in the face of the facts, have found that we use a lot of subconscious mental shortcuts to turn the few facts we have at any given moment into the judgments we are called on to make moment-by-moment, day-by-day. For example, the way a situation is framed shapes how we think about it. Suppose, for instance, that you are the mayor of a city of one million people and there is an infectious disease going around your city that is killing people. There have been cases all over town, but most of the cases are in one neighborhood of 5,000 people. With a fixed amount of money, you can either (A) save 1,000 people in the neighborhood most affected− that's 20%− or (B) save 2,000 people out of the whole city of a million− that's 0.2%. Which do you choose, A or B?

Now watch how the framing effect works. Let me re-frame the question. You can (a) save 1,000 people or (b) save 2,000 people. Now what do you choose? See how framing the question with or without those percentages makes it feel different? That is one of those mental shortcuts− what the academics call heuristics and biases−that help us make judgments and decisions. We use the way a situation is framed to help us think it through. It is easier that way. Faster. Quicker. It literally saves energy in the brain.

Here is another one that bears more directly on why we drive dangerously. Subconsciously our choices are influenced by something called "optimism bias." We think "it won't happen to me." That allows us to take risks, which we have to do just to live life. But it also leads us to think that extra drink at the bar or party will not affect us, or "I won't be the one caught speeding." Optimism bias is part of the psychology that contributes to much dangerous operation of motor vehicles.

So does the psychological feeling of being in control. When we feel like we are in control we are less afraid, and with the steering wheel in our hand and the gas and brake pedals at our feet, we have the feeling of controlling the car or truck. Compare how you feel when you are driving, for example, to how you feel when you are in the passenger seat. You know that "Front Seat Driver" syndrome where you're telling the driver how to drive? That comes directly from the nervousness of *not* being in control.

Here's another psychological factor that leads to drunk driving, and

speeding, and DWP ("Driving While Phoning"): Risk versus Benefit. The more you perceive a benefit from some choice or activity, the more your brain plays down any associated risk. The cell phone rings while you are driving. You want to know who it is. Or you know it's your boss, or a spouse, or a friend calling about tonight's plans. You want to answer it, because you get a benefit from being connected. You have to give up that benefit if you show control and do not answer the phone…and you *want* that benefit. So your brain plays down the risk, and you talk on your cell phone while you drive.

How about the benefit of "just one more beer" or "just one more glass of wine" at the bar or the party before you drive home? "Hey, I'm a good driver," you say to yourself. (That's optimism bias.) "I'll drive carefully." (That's the false sense of being in control.) All so you can enjoy the benefit of either the drink or the socializing…and play down the real risk you are about to take.

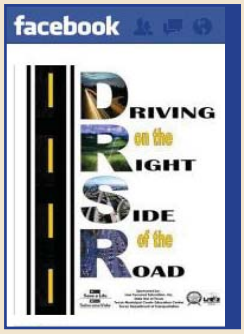
Legislation and law enforcement cannot change the underlying psychology of how all humans think, and *feel*, about risk. This stuff is built in. But there are ways to use what we know about risk perception psychology to encourage people to make different choices. "No Refusal" drunk-driving campaigns force people to realize that if they are caught, they can't get out of having their blood alcohol levels tested. That means they can't be as optimistic and pretend "It won't happen to me!" Communication campaigns about drunk driving could highlight the false sense of control motorists have. Campaigns about talking on your cell phone, or texting while driving, might highlight the risk versus benefit psychological factor by comparing the benefit of the conversation to the benefit of NOT BECOMING A FATALITY!

Will those strategies and tactics and communication approaches cure all the problems of dangerous driving? Of course not. Might they reduce things some? Yes. In the end, all risk management programs try to influence how people behave. You can do that more effectively if you understand WHY they behave that way in the first place, and use that understanding to design rules and regulations and programs and communications that speak to people's underlying psychology in ways that will encourage them to make healthier choices.

David Ropeik is a consultant in risk perception and risk management, an instructor at Harvard University, and author of "How Risky Is It, Really? Why Our Fears Don't Always Match the Facts."

The Municipal Traffic Safety Initiatives and Driving on the Right Side of the Road programs each now 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

The Jacqui Saburido Story

At the recent TMCEC Municipal Traffic Safety Initiatives Conference, held in Addison in March, several of the 2012 Municipal Traffic Safety Initiatives Award recipients have used the Jacqui Saburido story in their traffic safety community outreach efforts. The Houston Municipal Court, for example, uses the hard-hitting story to teach teens about the real-life consequences of driving while impaired. We hope that you will consider using it in your court's public outreach program in 2012.

The Story

On September 19, 1999, beautiful 20-year-old Jacqui caught a ride home from a birthday party in Austin. On a dark road, a drunk driver veered over the yellow line. Two passengers died on impact; two were rescued by paramedics from the fire–engulfed car. Jacqui suffered third degree burns over 60 percent of her body. Since 1999, she has undergone more than 120 surgical procedures to restore her vision and use of her hands.

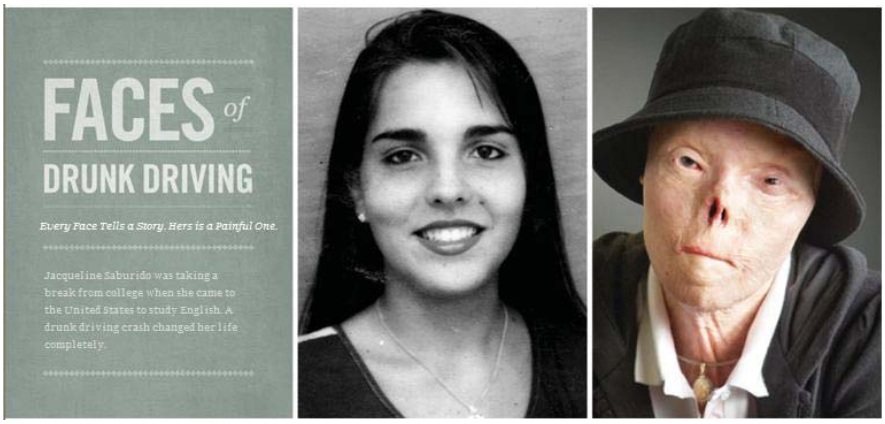
The driver of the other vehicle, Reginald Stephey, was convicted in June, 2001 on two counts of intoxicated manslaughter. He served his completed sentence and was released from the Texas Department of Corrections in June, 2008. He has been interviewed in an anti-drunk driving video and said that the damage he did is "a pain that will never go away."

Jacqui now lives in Caracas, Venezuela with her family and continues to make public appearances to discourage impaired driving, as she continues to work toward her rehabilitation. She has allowed graphic post-accident photographs of herself to be used in media and educational campaigns to illustrate what drunk driving can do to individuals. She has twice appeared on the Oprah Windfrey Show, as well as in health-related documentaries. She can be contacted through her Facebook page (http://www.facebook.com/jacquisagar) and communicates often through posts on her blog (http://helpjacqui.com). Supporters, however, should not expect a personal reply, as she cannot possibly respond to the outpouring of support that she receives.

The Lesson

Teens so often believe that it won't happen to them. Jacqui's story brings home what can and does happen when irresponsible decisions are made. The Texas Department of Transportation has put together a kit of materials, entitled "Before and After." The materials include a 12-minute award–winning DVD "Consequences" which tells both Jacqui's and Reggie's stories of how their lives were changed forever; a 7-minute "Aftermath" DVD with interviews of Reggie and Jacqui five years after the crash; a classroom poster with before and after pictures; a discussion guide; bookmarks; and a newspaper supplement with graphic details. Although the photos are disturbing, they are effective tools for reaching middle and high school students. "These materials really grab kids' attention," says Presiding Judge Barbara Hartle of the Houston Municipal Court. "We have incorporated them into our life skills course taught by juvenile case managers in our local schools. We hope to curb the high statistics of drunk driving and more importantly, save a life." The materials are also being used in courts in Universal City and Lakeway. Courts may order the kit of materials at no charge from TxDOT at www.FacesofDrunkDriving.com or write JACQUI Project, 8701 Wall Street, #900, Austin, Texas 78754 [512.912.7940]

Jacqui's message is powerful: Don't drink and drive, ever. And never give up.



For More Information:

- http://helpjacqui.com
- http://www.facesofdrunkdriving.com
- http://www.tmcec.com/MTSI/Resources_and_Materials

2012 Traffic Safety Conference and Awards

The Municipal Traffic Safety Initiatives (MTSI) Annual Conference was held March 19-21, 2012 in Addison at the Crowne Plaza Hotel. There were 152 participants that included municipal judges, clerks, city officials, bailiffs, police officers, and TxDOT traffic safety staff. There were many benefits in attending this conference; however, one of the main benefits was bringing together a variety of people, including city officials, to see how each person's role is important in addressing the seriousness of traffic safety. There were multiple traffic safety exhibits, including the Texas Agri-Life Extension DWI simulator and the New Braunfels Police Department DWI Simulator.

The following traffic safety courses were provided:

- Why Safe Driving is Important in Our Community
- Understanding Risk Perception: Why Dangerous Driving Choices Can Feel Safe
- Traffic Safety and Transportation–Related Case Law Update
- DRSR: Featuring the Tex and Dot Show
- Drug Impaired Driving
- Driver's License Laws
- Courts, Communities, and Classrooms: Educating the Public about the Law
- Laws for Minor Drivers
- Intoxicated Driving
- Travels Through the Transportation Code
- Model Outreach Panel
- Alive at 25
- Role of Magistration in DWI
- Blood Search Warrants
- Insurance Laws and Offenses
- Unmasking CDL Masking Laws
- Speeding and Speed Limits
- Pedestrian and Bicycle Laws
- Technologies to Enhance Traffic Safety
- Federal Motor Carrier Act Offenses
- Passenger Restraint Laws and Debates
- Motorcycle Laws
- Data-Driven Approaches to Crime and Traffic Safety and
- Distracted Driving: A Panel Discussion on Federal, State, and Local Response

The audio recordings, course materials, and powerpoint presentations are available on the TMCEC website at http://www.tmcec.com/Resources/Course_Materials/. An article on risk perception by keynote speaker David Ropeik is found on page 21 of this issue of *The Recorder*.

At the Conference, the 2012 Traffic Safety Award recipients were honored. The Texas Municipal Court Association (TMCA) Board President, Judge Donna Starkey from the Alvin Municipal Court, presented the awards to the recipients along with a video awards presentation. Applicants were judged on the basis of what their court is doing in terms of public outreach in their community to increase traffic safety while decreasing traffic crashes, traffic fatalities, juvenile DUI, child safety seat offenses, red light running, and other traffic-related offenses. Twenty-one courts received awards: three in the high volume courts, serving a population of 150,000 or more; eight in the medium volume courts, serving populations between 30,000 and 149,999; and 10 in the low volume courts, serving a population below 30,000.

Low Volume:
- Alice
- Alvin
- Forest Hill
- Hallsville
- Harker Heights
- Hickory Creek
- Lakeway
- Royse City
- Universal City
- Windcrest

Medium:
- Bryan
- Burleson
- College Station
- Conroe
- Frisco
- Haltom City
- La Porte
- San Marcos

High:
- El Paso
- Houston
- Irving

The award recipients hosted two breakout sessions at the Traffic Safety Conference so other courts could learn about the award recipient's traffic safety initiatives and ways they can incorporate traffic safety outreach in their own court.

More information on each court, conference photos, and the video award presentation can be found on the MTSI website at www.tmcec.com/mtsi and the MTSI facebook page https://www.facebook.com/pages/TMCEC-Municipal-Traffic-Safety-Initiatives/157436101014951.

The Conference was funded by a grant from the Texas Department of Transportation and the Texas Court of Criminal Appeals. In addition, the following companies or agencies hosted exhibits:

- Brazos Technology
- Driver Training Associates, Inc.
- Driving on the Right Side of the Road (TxDOT funded)
- Linebarger Goggan Blair & Sampson, L.L.P
- McCreary, Veselka, Bragg & Allen, P.C.
- Municipal Traffic Safety Initiatives (TxDOT funded)
- Selectron
- Smart Start
- Texas Agri-Life Extension, Passenger Safety
- Texas Municipal Courts Association
- Texas Municipal Police Association
- Traffic Payment.com

Register for the Fourth Statewide Traffic Safety Conference

"Saving Lives: Nothing's More Important"

June 4 - 6, 2012
Crowne Plaza, Riverwalk Hotel
111 E. Pecan St.
San Antonio, TX 78205
(888) 623-2800

Conference details and registration are available online at http://tti.tamu.edu/conferences/traffic-safety12/.

The Traffic Safety Conference will provide a program of plenary and breakout sessions addressing a broad range of topics of interest to conference attendees with diverse backgrounds, specialties and experience. Among the educational, enforcement, engineering and public health-related traffic safety sessions being planned are those focusing on:

- Distracted driving, including reducing the impact of in-vehicle electronic devices
- Alcohol impaired driving (e.g., increasing "no refusal" operations, wrong way driving, etc.)
- Changing speed limits in Texas
- Occupant protection for young & old
- Motorcycle safety
- Young drivers
- Communicating traffic safety information to the media and public
- Pedestrian & bicycle safety on Texas roads
- Local, state & federal policy, funding and safety initiatives that affect traffic safety in Texas

The speakers will include David Strickland, Administrator, NHTSA, and John Barton, Deputy Exec. Dir., TxDOT. State Senator Steve Ogden, a long time champion of roadway safety, has agreed to give the keynote address at the Conference Luncheon.

Save a Life™
TEXAS DEPARTMENT OF TRANSPORTATION

Monthly Court Activity Report: Why Changes Were Made and How the Changes Were Developed

By Angela Garcia, Judicial Information Manager, OCA
and
Mary J. Cowherd, Deputy Director, OCA

On September 1, 2011, changes to the Texas Judicial Council Monthly Court Activity Reports for justice and municipal courts went into effect. A number of changes were made to more accurately reflect the current workload of the courts. Although the form expanded to four pages to keep the type from getting too small to read, the majority of the information on the reports remains the same. In addition, the municipal court form did not change as much as the justice court form did, since municipal courts had been reporting additional juvenile case information for more than a decade. Below is a high-level summary of the changes that were made to the reporting forms.

Major Changes

In summary, the changes to the reporting forms:

- Capture the civil and administrative case activity handled by municipal courts, including parking, dangerous dog, red light camera, and substandard building cases.

- Capture information, such as *All Other Transportation Code Compliance Dismissals* and *Show Cause Hearings Held*, that courts had expressed concern there was no place to report on the old form.

- Collect information on cases in which jail time credit was given, amounts were waived for indigency, or community service was completed to satisfy court costs, fees, and fines. This information provides a more comprehensive picture of how court costs, fees, and fines are satisfied in justice and municipal courts.

- Make the justice and municipal court reports consistent wherever possible since much of their work is identical. In addition, municipal courts had been reporting information on juvenile/minor case types since 1999, but this information had never been added to the justice court form.

- Make the justice and municipal court reports more consistent with the district and county-level court reports and with national court activity reporting standards.

  - On the previous report, guilty or nolo contendere pleas entered before a judge were counted under the *Conviction—Trial by Judge* category. On the new report, these pleas get counted separately so that actual trial activity can be distinguished.

  - The number of *Pending Cases* was added to the criminal and civil/administrative sections of the report to provide information on the number of cases in which a judgment has not yet been entered. The number of pending cases is a standard item in court case activity reporting and has been tracked in appellate and district courts since 1929 and in county-level courts since 1974.

  - In September 2010, pending cases were further broken down into *active* and *inactive* cases on the reports for district and county-level courts to distinguish cases in which a judgment had not been entered but that are outside the court's control. The same concept was applied to the new justice and municipal court reports.

Pending, Active, and Inactive Cases

The change that has generated the greatest confusion and controversy is the addition of information on a court's pending caseload. Much of the misunderstanding comes from the differences in terminology used by municipal courts and district and county-level courts. Municipal courts have traditionally viewed a case as "active" and "pending" until all the court costs, fees, fines, or other obligations in a case have been satisfied in full.

For purposes of the court activity reports, a case is counted as "disposed of" when *a final judgment is entered (adjudicated)*. It does not matter whether the defendant has fully satisfied his or her obligations due to a conviction. (This has always been the rule on the monthly reports; this is not a change from previous practice.)

Therefore, a case is counted as "pending" if a final judgment has not been entered.

Over the years, OCA has received comments from judges who believe that simply providing a count of pending cases does not accurately reflect their actual caseload, as many of the cases cannot be moved to adjudication for reasons beyond their control. As a result, the "active" and "inactive" pending designations were added to the reports. The "active" and "inactive" designations are also recommended by the Court Statistics Project (CSP), which is a collaborative effort of the Conference of State Court Administrators and the National Center for State Courts. The CSP's *State Court Guide to Statistical Reporting*[1] promotes the collection of standardized data from all courts in the country to enable courts to report cases in a comparable and meaningful way. The *Guide* was used as a resource tool in the review of the old monthly reports and the development of the recommended changes to them.

For purposes of the monthly report, an "active" case is one in which a judgment has not been entered that the court can move to adjudication and entry of final judgment. An "inactive" case is one in which a judgment has not been entered and the court is not able to proceed to adjudication.

The most common example of an inactive criminal case is one in which the defendant has absconded and a warrant has been issued for the defendant's arrest. It also includes cases in which a case without a judgment has been reported to OmniBase, the Scofflaw program, or referred to a vendor or private attorney for collection due to failure to appear, as well as some other types of cases.

This information provides much better information about what portion of the court's unadjudicated caseload the judge is actually able to work on. Also, for courts that track time from filing to adjudication or disposition, it gives them better information to measure the age of their pending caseload accurately, determine meaningful case-processing times, and manage court resources. [*Note*: the aging clock stops ticking when a case is in an "inactive" status and does not resume ticking until the case is "reactivated."]

How the Recommendations for Change were Developed

From its inception in 1929, one of the primary duties given to the Texas Judicial Council, the policymaking body for the judiciary,[2] was to gather judicial statistics from judges and other government officials.[3] The Judicial Council decides what statistics should be collected,[4] as does the Legislature and the Supreme Court. The Office of Court Administration (OCA) assists the Judicial Council in the collection of those statistics.

The Judicial Council is the only entity that collects comprehensive statistics on the operation of the Texas courts. Statistics collected from the Official Monthly Reports are compiled and published in the *Annual Statistical Report for the Texas Judiciary* (*Annual Report*) and are available in more detail to the public on OCA's website.[5] The statistics are used extensively by other courts, city councils, auditors, the media, state and local agencies, the legislature, and other decision-making bodies in making decisions affecting the judiciary and the criminal justice system. The information is used for budgeting, staff and other resource planning, assessing court performance, analyzing trends, developing grant proposals, among many other things.

The last systematic review of the justice and municipal case activity reports was conducted in 1985. Acting on a request from the Judicial Council Committee on Data Management to review the data elements reported by the trial courts in order to improve the accuracy and usefulness of the data, OCA began coordinating workgroups of judges and clerks in 2004 to conduct an extensive review of the data elements. Since the number of data elements was so extensive, OCA decided to create a workgroup for each level of trial court (i.e., district, county, and municipal/justice), and further divided the workgroups for the district and county-level courts into subgroups.

The review of the information collected on the municipal and justice court monthly reports began in 2008, when OCA assembled a workgroup comprised of municipal judges, justices of the peace, clerks, court administrators, the general counsel of the Municipal Courts Education Center, and the general counsel of the Justice Court Training Center. The workgroup reviewed every item on the reports and developed recommendations for change.

The workgroup's proposed recommendations were presented to the Judicial Council Committee on Judicial Data Management, which included municipal judges and justices of the peace. After the Committee completed its consideration of the proposed changes, the Committee's recommendations were forwarded to the full Judicial Council for consideration. At its meeting on August 28, 2009, the Judicial Council considered the proposed changes. It also approved a motion to give notice of its intention to adopt proposed amendments to the Judicial Council's reporting rules by filing notice with the Secretary of State for publication in the *Texas Register*

and to provide a 30-day period for comments. It also approved a motion to post the proposed changes to the monthly reports and instructions for the municipal and justice courts on the Judicial Council website for comment.

On September 9, 2009, notification was sent to all the presiding judges and clerks of the municipal courts and justices of the peace in the State of the: 1) publication of the proposed amendments to the reporting rules in the *Texas Register*, as well as the posting of the proposed rule amendments on the Judicial Council's website; and 2) posting of the proposed reporting forms and instructions on the Judicial Council website. Comments regarding the proposed amendments to the reporting rules or the proposed reporting forms and instruction were due on or before October 18, 2009.

No comments were received regarding the proposed rule amendments, and only two comments were received regarding the proposed reporting forms and instructions. One comment was from a municipal judge and the other was from a justice of the peace. At its meeting on December 11, 2009, the Judicial Council considered both comments (a representative for the justice of peace who submitted one of the comments elaborated upon it at the meeting) but approved, without amendment, the reporting forms and instructions that were posted on the Judicial Council website. The new reporting rules were to take effect September 1, 2011.

To assist the municipal courts in implementing the changes, OCA has provided extensive training to clerks and judges over the past two years at regional seminars, meetings, and webinars,[6] and has answered thousands of questions by phone or email from clerks, judges, information technology personnel, and case management software providers. In addition, in March 2010, OCA hosted a meeting with case management software providers and courts' local information technology personnel to go over the changes to the monthly reports and to answer their questions so that they would be better able to make the necessary programming changes to their respective case management systems. Further, OCA recently updated the monthly reporting instructions and the frequently asked questions document on its website (http://www.courts.state.tx.us/oca/required.asp# changes2011) to incorporate answers to the most frequently asked questions and feedback received from the courts.

OCA will continue to answer questions, and provide training at seminars sponsored by TMCEC, about the changes to the monthly report. If you have any questions, contact OCA Judicial Information staff at reportingsection@txcourts.gov or 512.463.1625.

[1] Available at http://www.courtstatistics.org/.
[2] Currently, the Judicial Council is composed of 22 judicial, legislative, and citizen members (see, http://www.courts.state.tx.us/tjc/tjchome.asp for further information on the Judicial Council).
[3] Section 71.035(a), Government Code.
[4] Section 71.035(b), Government Code.
[5] See, http://www.courts.state.tx.us/oca/judinfo.asp.
[6] To view these archived webinars, go to the TMCEC website at www.tmcec.com and log on to the OLC.

Passing the Paddle continued from pg 20

natures were largely unchangeable. Deficiencies of earlier generations were attributed to factors that could be changed with appropriate interventions; but this new breed of juvenile super predator was so disturbed that change was unlikely. As a result, rehabilitation would be ineffectual. Protecting the public from these vicious juvenile criminals became the primary concern of juvenile justice policymakers." *Juvenile Violent Offenders - The Concept of The Juvenile Super Predator*.

[8] Patricia Torbert and Linda Szymanski, "State Legislative Reponses to Violent Crime: 1996-1997 Update" *Juvenile Justice Bulletin*, OJJDP (November 1998).

[9] Robin Templeton, "Superscapegoating: Teen Super Predators Hype Set the Stage for Draconian Legislation" *FAIR* (January/February, 1998).

[10] Section 37.104, Education Code.

[11] Jim Walsh, Frank Kemerer, and Laurie Maniotis, *The Texas Educator's Guide to School Law (6th Edition)*, University of Texas Press (2005) at 306.

[12] Miriam Rozen, "Counsel Assist with Report that Alters Education Code" *Texas Lawyer* (June 11, 2007).

Last TMCEC Programs of FY 12

Regional Judges & Clerks
El Paso
June 11-13, 2012

New Judges
Austin
July 9-13, 2012

New Clerks
Austin
July 9-12, 2012

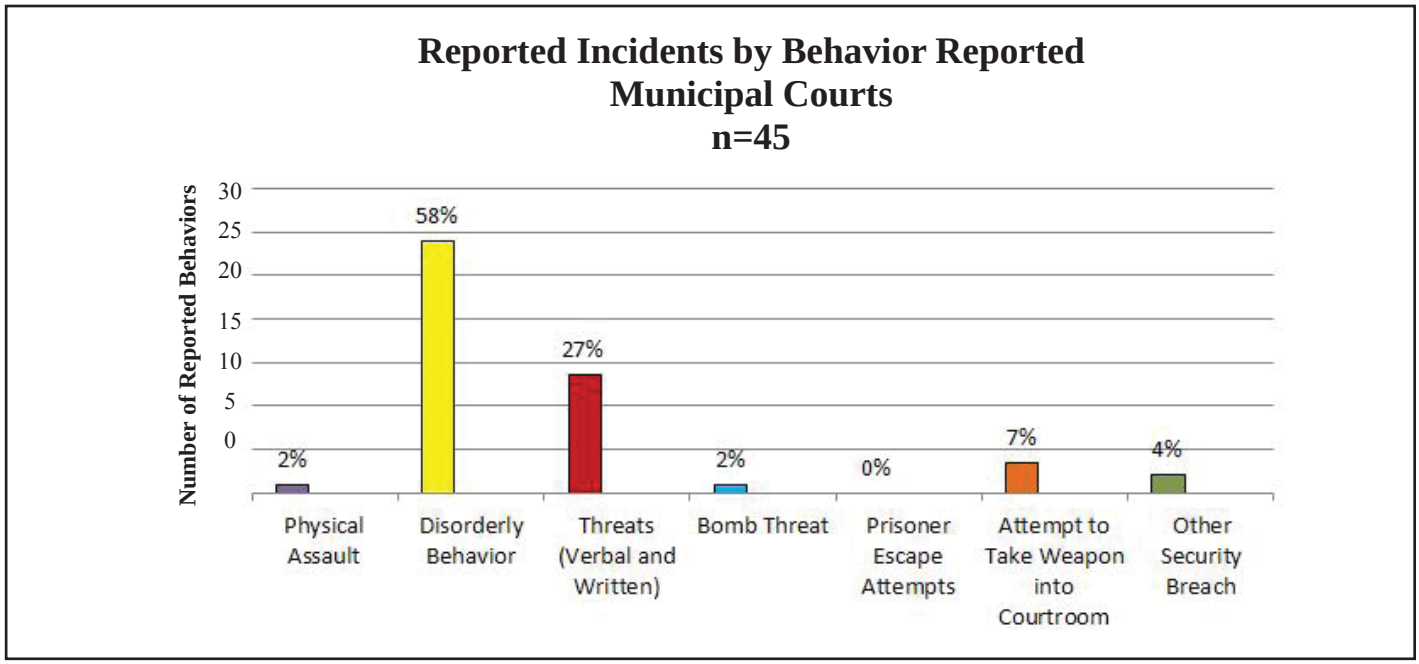
See pages 34-35 for a registration form.

Texas Court Security Incident Reports FY 2011

The FY 2011, Texas Court Security Incident Reports provides information on the 184 security incidents reported to the OCA—37 incidents or 20 percent occurred in municipal courts. The report can be used to help document the need for court security and training in your court. The entire 2011 report is available online at the website of the Office of Court Administration (OCA) at www.courts.state.tx.us/oca/pdf/IncRpt-FY2011.pdf.

In municipal courts, disorderly behavior accounted for more than half of reported behaviors (58 percent or 26 reports). The next most common behavior reported was written or verbal threats (27 percent or 12 reports). The following are some examples of incidents that occurred in municipal courts during the year:

- A threatening and verbally abusive letter was sent to a judge. The envelope containing the letter also held a small amount of drugs. The case was turned over to local police for further investigation.
- A firearm was discovered during the screening process of a defendant. The individual was charged and held.
- An unknown man, who had accompanied a juvenile defendant into the courtroom, removed his belt from his pants and doubled it as if to spank the juvenile during the judge's conversation with the defendant. The judge told the man not to hit the juvenile in or outside of the courtroom, a response based on the man's threatening conduct. The man remained agitated during the entire court process and left with the defendant. The police department was notified of the incident.



Update on DSC

The Driver Training Division has the responsibility to review, approve, and license these courses in Texas. This division was outsourced by the Texas Education Agency to Region XIII ESC, resulting in a website URL change. Accurate information concerning approved courses may be found at www5.esc13.txed.net/drivers. The first item under "Quick Links" directs a person to "Driving safety or ticket dismissal 6 hour courses - Online or Traditional".

If you have questions or need additional information, staff contact information may be found at www5.esc13.net/drivers/contact.html.

From the Center

In FY 13, there will be a significant change to the regional clerks programs offered by TMCEC. Beginning in the fall of 2012, these conferences will be limited to one eight-hour day with an optional half day pre-conference on the day prior. Clerks certification exams will be given during the morning before the conference. Grant funds will only pay for one night in the hotel (double occupancy) the night before the conference, as well as breakfast and lunch on the day of the conference.

The reasons for the change is not just for cost savings but also to reduce the amount of time that clerks are out of court and because of the increasing ways clerks can receive training: the many online seminars now available for clerks; the number of local seminars offered by local chapters of the Texas Court Clerks Association, other associations, and software vendors; and the increasing number of clerks seeking training. In recent years, too often there have been waitlists for the TMCEC regional clerks programs and needs have gone unmet. The new eight-hour format will allow TMCEC to train more clerks, although for fewer hours. Clerks participating in the certification program may now obtain up to six of the mandatory 12 hours of annual training with online courses.

Clerks who live in the more remote areas of Texas may want to budget for an extra night in the hotel to avoid early morning or evening travel if they live far from the seminar site.

Arrival Day (Day 1)

8:00 to 12:00 noon	Level I Clerks Certification Prep Session
8:00 to 12:00 noon	Level II Clerks Certification Prep Session
1:00 to 5:00 pm	Clerk Certification Exams
1:00 to 5:00 pm	Joint Pre-conference with Judges on Special Topic (Note: Tyler offers a post-conference instead of a pre-conference)

Overnight stay in conference hotel in double room if clerk works more than 30 miles from hotel at no additional charge (additional $50 single room charge, if requested).

Day 2 (tentative)

6:45 to 7:50 am	Breakfast
8:00 to 12:00 noon	Clerks General Session
1:00 to 5:00 pm	Clerks Breakout Sessions
5:00 pm	Clerks depart

The registration fee will remain at $50.

Questions? Comments? Concerns? Suggestions? Please email the TMCEC Executive Director, Hope Lochridge (hope@tmcec.com) or Program Director for the Clerks Program, Cathy Riedel (riedel@tmcec.com).

Certification Renewal

All clerks and court administrators who are certified at Level I and II are reminded to submit to TMCEC a renewal application with the certificates showing at least 12 hours of continuing education in 11-12. Those certified at Level III must submit documentation of 20 hours of education each academic year. The renewal application may be downloaded from the website at: www.tmcec.com/Programs/Clerks/Annual_Renewals.

*Click on the link at www.tmcec.com that says "Online Registration" to print your certificate.

Following Up From Past *Recorder* Articles

"Information Sharing on Juvenile Justice Data"

In the March 2012 article, it was said that courts wanting access to information in the Juvenile Justice Information System (JJIS) should contact the Department of Public Safety (DPS). DPS has released instructions on how municipal courts should go about requesting this information. Printed below is the letter from DPS:

INSTRUCTIONS FOR COUNTY, JUSTICE, AND MUNICIPAL COURTS TO MANUALLY REQUEST CRIMINAL HISTORY RECORDS FROM THE JUVENILE JUSTICE INFORMATION SYSTEM

Dear Sirs,

Senate Bills 1281 and 1489, 82nd Regular Legislative Session, authorize county, justice, or municipal courts to access juvenile criminal history record information (CHRI) if they are exercising jurisdiction over a juvenile under section 54.021 of the Family Code. All juvenile CHRI disseminated by the Department of Public Safety (DPS) and its associated systems is confidential and may only be released as authorized. To receive juvenile CHRI from the DPS, the following information must be provided:

1. Requesting court's name and address
2. Requestor's name and title
3. Requestor's fax and phone number
4. Cause number
5. Juvenile's name and date of birth

Please fax all requests to the Criminal History Inquiry Unit (CHIU) at 512-424-5011. Should you have any questions, please contact the CHIU at 512-424-5079 or email at CrimeRecords.compact@txdps.state.tx.us.

Thank you,

Don Farris
Manager, Access and Dissemination Bureau
Crime Records Service

"The State of License Plate Laws in Texas"

The December 2011 article discussed the omission of a penalty clause from the statute requiring a vehicle be equipped with license plates. The sponsor of H.B. 2357 requested an attorney general opinion in October asking if it is a Class C misdemeanor not to display two license plates on a motor vehicle, and if so, what would be the fine amount. General Abbott's opinion was expected in April.

UPDATE: The request for the opinion (RQ-1014-GA) was withdrawn on March 22, 2012; thus, we will not be getting any guidance from the Attorney General. The question remains: Is an offense without a penalty still an enforceable offense?

Upcoming TMCEC Programs

Tempatures are rising, and programs at TMCEC are heating up this Summer!
Sign up today for these special conferences, clinics, and schools.

Bailiffs and Warrant Officers Conference • June 4-6 • Crowne Plaza Hotel • Addison
This conference, designed for those who provide security or serve process for municipal courts, will cover important updates from the latest legislative session, case law, and attorney general opinions, as well as courses on legal advice and legal information, responding to sovereign defendants, and group discussions on a variety of topics relevant to issues faced by bailiffs and warrant officers. Break out tracks include enforcing judgments, skip tracing, JNAs, court security, grant writing, processing of cases, basic narcotics recognition, and recognizing victims of human trafficking. Participants can also attend one of the optional pre-conference sessions on the first day: 3182 (State and Federal Legal Update) or Court Security. The cost is $150 and includes up to 16 hours of TCLEOSE credit.

Court Administrators Seminar • June 24-26 • Omni Southpark • Austin
This conference focuses on management tools and leadership skills for court administrators and court supervisors. Other topics include record retention for emails, powerpoint and presentation skills, a budgeting workshop, court security and preventing workplace violence, and a legislative recap. Participants can attend the optional pre-conference session on the first day on the new laws of recusal and disqualification. The cost is $100, plus single housing fees.

19th Annual Municipal Prosecutors Conference • June 24-26 • Omni Southpark • Austin
This special conference is designed to provide each participant the necessary legal tools, tempered with the tenets of professional conduct, to effectively and competently prosecute in Texas municipal courts. The agenda has a variety of topics for new and veteran prosecutors alike, including a legislative, case law, and attorney general opinion update, identifying bias, contending with sovereign defendants, JNAs, driving safety courses and deferred disposition, voir dire, open records requests, the evolution of the Education Code and school offenses, and panel discussions on the *Stewart v. City of Dallas* opinion and issue spotting in municipal court civil jurisdiction. Participants can attend the optional pre-conference session on the first day on the new laws of recusal and disqualification. The cost begins at $200 ($300 for CLE credit), plus housing. The conference counts for up to 15.75 hours of CLE credit, including 4.75 hours of ethics.

New Clerks Seminar • July 9-12 • Omni Southpark • Austin
Offering classes on court procedures – from the filing of a citation or complaint to final disposition of a case – this seminar is a great opportunity for new or less-experienced clerks to learn the basics of municipal court processes. Courses include introduction to the codes, court costs, driving safety courses and deferred disposition, juveniles, nonappearance crimes, OCA reporting, and court security, plus a lot more! This seminar is 24 hours, over four days, and costs just $200.

New Judges Seminar • July 9-13 • Omni Southpark • Austin
This course is a requirement for new judges, who are not licensed attorneys, within one year of appointment. Over five days and 32 hours of instruction (or more if attending an optional session), new judges will learn about magistrate duties, bail and bonds, judicial ethics, court decorum, judicial authority, traffic laws, ordinances, court costs, citations and complaints, driving safety courses and deferred disposition, trial processes, contempt, juveniles, indigence and enforcement of judgments, and evidence. This seminar costs $200 for the week.

For all programs, register early as space is limited. Registration forms are available for all programs on the TMCEC website. Come spend some of your summer with TMCEC and learn something to take back to your municipal court!

2011 - 2012 TMCEC Academic Schedule At-A-Glance

Seminar	Date(s)	City	Hotel Information
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

FREE Pre-Conference
Judges, Clerks, & City Attorneys

The New Laws of Recusal and Disqualification in Texas Municipal Courts: What Every Judge, Clerk, and City Attorney Must Know

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 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.

19th Annual TMCEC Prosecutor Conference
Omni Austin Southpark
Sunday, June 24, 2012
1:00 – 5:00 p.m.

There is no registration fee to attend this pre-conference. However, it is important that you register in order for TMCEC to ensure you have course materials. Please return this form for planning purposes. *Free CLE is offered at this program. **We hope you will attend.**

☐ **Yes, I plan to attend this pre-conference and I am registered to attend this seminar**
☐ **Yes, I plan to attend this pre-conference but I am not a prosecutor registered to attend this seminar**

Name: _____

Title: _____

Court: _____

Email: _____

Please fax this form to 512-435-6118
Questions? Call Pat Ek at 800-252-3718

1609 SHOAL CREEK BLVD, SUITE 302, AUSTIN, TX 78701
TELEPHONE (512) 320-8274
1/800-252-3718
FAX (512) 435-6118
EMAIL: tmcec@tmcec.com

FUNDED BY A GRANT FROM THE TEXAS COURT OF CRIMINAL APPEALS

TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY12 REGISTRATION FORM:

Regional Judges & Clerks, Juvenile Case Manager Clinics, 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
☐ Orientation (no charge)

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 roomate **or** you may request roomate 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):*

☐ Full Time ☐ Part Time ☐ Attorney ☐ Non-Attorney ☐ Juvenile Case Manager ☐ Other _____
☐ Presiding Judge ☐ Court Administrator ☐ Justice of the Peace
☐ Associate/Alternate Judge ☐ Court Clerk/Deputy Clerk ☐ Mayor (*ex officio* 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:

Credit card type: *Amount to Charge:* *Credit Card Number* *Expiration Date*
☐ *MasterCard* $_____ _____ _____
☐ *Visa*
Name as it appears on card (print clearly): _____
Authorized signature: _____

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):*

☐ Full Time ☐ Part Time
☐ Presiding Judge
☐ Associate/Alternate Judge
☐ Attorney ☐ Non-Attorney
☐ Court Administrator
☐ Bailiff/Warrant Officer
☐ Court Clerk
☐ Prosecutor
☐ Justice of the Peace
☐ Deputy Court Clerk
☐ Mayor (*ex officio* Judge)
☐ Other _____

***Bailiffs/Warrant Officers:** Municipal judge's signature required to attend Bailiffs/Warrant Officers' program.
Judge's Signature: _____ Date: _____
Municipal Court of: _____ TCLEOSE PID # _____

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