

The Recorder

The Journal of Texas Municipal Courts

Volume 23

August 2014

No. 4

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FIVE IS THE LONELIEST NUMBER IN TEXAS MUNICIPAL COURT JURIES

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Texas municipal courts reported only 3,833 jury trials in fiscal year 2013.¹ Such irregularity hardly equips judges and court

support personnel with proficiency in conducting jury trials, let alone in the nuances that so often accompany procedures in municipal courts. The nuance within the scope of this article results from the following scenarios.

Scenario 1:

It is trial day in both the county court and municipal court. The first trial of the day is a jury trial. In both courts, only five persons are left after each side used their challenges. In each court, the defendant and the State agree to proceed with five jurors.

Scenario 2:

It is trial day in both the county court and municipal court. In both courts the jury in the first trial of the day is impaneled and sworn. Not long after presentation of

Loneliest Number continued on pg. 5

HOW GRADUATED DRIVERS LICENSE PROGRAMS ARE MAKING OUR ROADS SAFER

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The Center for Disease Control and Prevention perhaps said it best: “The elevated crash risk for beginning drivers is universal...”¹ According to 2008 National Highway Traffic Safety Administration (NHTSA) data, motor vehicle crashes are the leading cause of death for 15- to 20-year-olds in the United States.² Texas and the rest of the United States, however, are reducing young driver crashes through the implementation of graduated driver license (GDL) programs. GDL programs are also effective in reducing distracted and

impaired driving amongst young motorists. The Texas GDL program began on January 1, 2002 with Senate Bill 577, which was codified into various provisions of the Transportation Code outlined below. Nationally, between 1998 and 2008, there was a 27% decrease in traffic fatalities for 15- to 20-year-olds.³ There is little doubt that the emergence of GDL programs is one of the main reasons for this reduction.

All GDL programs essentially operate by gradually easing new drivers into actual on-road driving through

GDL Programs continued on pg. 8

Inside This Issue

Finding Balance: Crime Control and Due Process
in Texas Public Schools and in Misdemeanor Courts ...3
Judges Reporting Flex-Time and Opt-Out.....23
Introducing Full Court Press.....19
Judge Goldstein Honored by SBOT MJ Section2

OCA Webinar on Monthly Reports.....10
Summer Webinar Series 2014.....21
Teen Courts Offer Alternative for Minor Defendants.....12
Texas Court Remote Interpreters Service10
TMCEC Registration Site vs. Online Learning Center ...10

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Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. An annual subscription is available for \$35.

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AROUND THE STATE

JUDGE GOLDSTEIN HONORED BY SBOT MJ SECTION

Judge Bonnie Goldstein of Royse City, New Hope, and Cockrell Hill was selected by the Municipal Judges Section of the State Bar of Texas (SBOT) for a 2014 judicial award. Judge Goldstein received the Michael L. O'Neal Distinguished Jurist Award at the Municipal Judges Section meeting on June 27th in Austin. The Award bestowed is in the name of retired Dallas Municipal Judge Michael O'Neal. Judge O'Neal was a former Chair of the State Commission on Judicial Conduct and is known for boosting the professionalism, reputation, and respect of municipal judges in Texas. He also served as President of the Texas Municipal Courts Education Center and the Texas Municipal Courts Association.



Judge Goldstein ran unopposed in the November General Election and will be stepping up to preside over the 44th District Court (Dallas County) in January. Judge Goldstein previously served as an Associate Municipal Judge in the City of Dallas from 2004-2009 and has vast legal experience in state and local government law. Since opening a solo practice in 2003, she has been called upon by several cities for her experience in planning and zoning matters, contracts for construction projects, annexation, and nuisance abatement issues among others. She has several publications on municipal law and is a frequent presenter for the TMCEC, TMCA, North Texas Council of Governments, and the Texas Municipal League.

Judge Goldstein's ethical manner in promoting judicial outreach gained her esteem from members of the Municipal Judges Section. Her efforts in promoting what municipal courts are doing in terms of public outreach in traffic safety in an effort to reduce impaired driving automobile crashes, traffic fatalities, driving under the influence, child safety seat offenses, red light running, and other-traffic related offenses earned her the TMCEC Municipal Traffic Safety Award in 2010 for the cities of Balch Springs and Royse City, and in 2012 for Royse City. In 2012, Judge Goldstein assisted in the creation and implementation of the Teen Court Program in Royse City. Teen Court, which began in 1986, provides an alternative system of justice for young adults charged with Class C misdemeanors to promote accountability and community engagement.

"Judge Goldstein was primarily recognized for her judicial outreach activities and her efforts to involve other judges in making a positive difference in their communities," noted Judge Robin Smith, Chair of the State Bar Municipal Judges Section, who presented Judge Goldstein with the award.

FROM THE GENERAL COUNSEL

FINDING BALANCE: CRIME CONTROL AND DUE PROCESS IN TEXAS PUBLIC SCHOOLS AND IN MISDEMEANOR COURTS

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Courts and controversy are well acquainted. Since the birth of the nation, America's criminal courtrooms and what courts do (and do not do) have been center stage in the public debate surrounding criminal justice.

Since the late 1960s, college students in America have been taught two models which highlight competing values concerning the role of criminal courts: the crime control model and the due process model.¹

The most important value in the crime control model is the suppression of criminal conduct. Absent crime control, the rights of the law abiding will not be protected and the collective sense of security cherished by society is diminished.

In contrast, the most important value in the due process model is respect and protection of individual rights.

While these two competing models have proven effective for jump starting debates, promoting the overuse and abuse of political labels, and fanning the flames of division in public discourse, perhaps, the more aspirational goal of the two models is in striking a balance between competing values in the criminal justice system.

It has been nearly a year since the 83rd Texas Legislature passed S.B. 393 and S.B. 1114.² Both bills aimed at striking a balance between the interests of schools (i.e., the ability of schools to maintain order and discipline in the classroom environment) and the interests of children (specifically, the rights of children attending public schools who are accused of criminal misconduct by school officials and law enforcement).

The role of municipal courts in school discipline has been chronicled by TMCEC. The June 2012 issue of *The Recorder* offered a hypothesis explaining retrospectively how municipal and justice courts became the primary venue for adjudicating the misconduct of children in Texas.³ The August 2012 issue examined the judiciary's role in the public policy debate concerning ticketing at schools and set the stage for a discussion of related



legislative proposals that ultimately became S.B. 393 and parts of S.B. 1114.⁴

For the past 12 months, changes in juvenile and school-related law have been a primary focus of TMCEC training. By the end of Fiscal Year 2014, TMCEC will have conducted more than 30 hours of training on juvenile issues to more than 2,320 judges, clerks, prosecutors, bailiffs, warrant officers, and juvenile case managers throughout Texas.

On June 3, 2014, the Senate Jurisprudence Committee heard testimony on its first interim charge: "Monitor the implementation of Senate Bill 393 and Senate Bill 1114 and determine if any statutory changes are necessary to clarify the intent of this legislation. In addition, determine those school districts that have implemented the graduated sanctions envisioned by Senate Bill 393 and decide if any additional statutory changes are necessary to ensure that school districts are complying with its intent." If there is any question as to whether the crime control model and the due process model are alive and well, you should watch the testimony on the interim charge. Video of the June 3rd hearing and a witness list are available online.⁵ Critics claim that the inability of school-based law enforcement to issue citations to children under 16 has "tied the hands" of law enforcement and encouraged gang and drug activity. Supporters, on the other hand, claim that although the new requirements may take more time for schools, they provide important procedural safeguards for children and information necessary for prosecutors and judges to ensure justice.

Looking Forward: Related Questions and Observations

1. Does Texas have a criminal justice problem in public schools or is the debate surrounding the use of citations

for Class C misdemeanors really just a symptom of a larger problem in public education? Are public teachers provided adequate training in terms of managing classroom discipline? Do you see any similarities between the debate surrounding ticketing and that of corporal punishment?

2. Sentencing in the criminal justice system consists primarily of three punishments: capital punishment, incarceration, and fines. In terms of 8th Amendment case law, the U.S. Supreme Court has, as recently as 2012, continued a seven-year trend of holding that delinquent youth cannot be punished in the same manner as adult criminals.⁶ If children cannot be executed or jailed in the same manner as adults, under what rationale can they be fined?

3. Juvenile courts were created in the progressive era of the 1890s because they differed from adult courts in five important ways: (1) the emphasis was on rehabilitation, not punishment; (2) proceedings were informal and not adversarial in nature; (3) proceedings were based in civil rather than criminal law; (4) proceedings were not conducted in public; and (5) the absence of jury trials. With the exception of traffic and underage smoking offenses, all Class C misdemeanors in Texas can be handled as petitions alleging CINS (conduct indicating a need for supervision) in juvenile court. However, according to data from the Office of Court Administration (OCA), the number of CINS petitions adjudicated statewide by juvenile courts has declined to less than a 1,000 cases per year. If juvenile courts and juvenile probation are not actively involved in CINS cases, should the Legislature consider shifting or expanding jurisdiction of CINS to municipal and justice courts?

4. There is a significant amount of misinformation about the new filing requirements under Subchapter E-1 of Chapter 37, Education Code. OCA reports that between September 1 and December 31, 2013, the number of citations issued in Texas public schools declined by 71 percent.⁷ Does this mean that the legislation is working? Testimony from school officials before the Senate Jurisprudence Committee suggests that some schools are unaware that Class C misdemeanors can still be filed via complaint. Others apparently know that the complaint process exists, but have not begun to file complaints. Could it be that misinformation and the lack of information pertaining to the filing requirements have contributed to the decline in case filings by schools reported by OCA? If this is the case, with training and time, such case filings are likely to increase (albeit not to the levels recorded prior to the passage of S.B. 393 and S.B. 1114). It is also likely that schools may begin to file more cases in juvenile court. If so, is that a bad thing? Isn't that where these cases were intended to be filed?

5. Perhaps fewer juvenile cases are finding their way to municipal and justice courts because more emphasis is being placed on diversion. Deferred disposition and other types of deferral authorized by Chapter 45 of the Code of Criminal Procedure allow a child, subject to a court order, to avoid final imposition of a final judgment of guilt. Such statutes, rather than diverting children from court, require a court appearance, and are akin to unsupervised probation. Prior to 2013, there was no statute that authorized diverting a child accused of a fine-only misdemeanor from court. The 83rd Legislature marked a substantial change in public policy in terms of diversion programs for children and Class C misdemeanors. The changes appear to clearly signal that a diversion from court is preferred to formal adjudication. Generally, a diversion program is a program that refers certain criminal defendants before trial to community programs on job training education and the like, which, if successfully completed, may lead to the dismissal of the charges.⁸ In the context of juvenile justice, a diversion program has been defined as a "community-based program or a set of services designed to prevent the need for court intervention in matters of child neglect, minor juvenile delinquency, truancy, or incorrigibility."⁹ Notably, in other states, teen court programs are used as a diversion from court. Should Article 45.042 of the Code of Criminal Procedure be amended to allow teen court programs to be utilized as a statutory diversion?

While the debate as to whether Texas should continue criminalizing the behavior of children for fine-only misdemeanors continues, the changes in law made in 2013 clearly signify the Legislature's preference that, with the exception of traffic offenses, diversions are preferred over the formal adjudication of a child in a criminal court (even for a fine-only offense). In the eyes of the Legislature, municipal and justice courts should be the last, not the first resort, when children commit Class C misdemeanors. Consequently, anticipate continued focus and discussion on additional ways to divert children from court.

¹ Herbert Packer, *The Limits of the Criminal Sanction* (Stanford University Press 1968).

² Bill Summary S.B. 393, *The Recorder* (August 2013) at 25; Bill Summary S.B. 1114, *The Recorder* (August 2013) at 36.

³ Ryan Kellus Turner, "Passing the Paddle' Part I: The Emergence of Local Trial Courts in the Texas Juvenile Justice System and the Criminalization of Misconduct by Children," *The Recorder* (June 2012) at 19.

⁴ Ryan Kellus Turner, "Passing the Paddle' Part II: The Emergence of Local Trial Courts in the Texas Juvenile Justice System and the Challenges of the Judiciary Moving Forward," *The Recorder* (August 2012) at 12.

⁵ Senate Committee on Jurisprudence, <http://www.senate.state.tx.us/75r/senate/commit/c550/c550.htm> (accessed July 2, 2014).

⁶ *Miller v. Alabama* 132 S.Ct. 2455 (2012); *Roper v. Simons*, 543 U.S. 551 (2005); and, *Graham v. Florida*, 130 S.Ct. 2011 (2010).

⁷ Terri Langford, *Texas Students Receive Fewer Disciplinary Tickets*, *Texas Tribune* (June 3, 2014), <http://www.texastribune.org/2014/06/03/texas-students-see-fewer-tickets-issued/>.

⁸ *Black's Law Dictionary* (9th ed., West 2009).

⁹ *Id.*



evidence has begun, a lone juror in each court becomes ill and cannot continue to serve on the jury. The defendant in each case requests to proceed with the remaining five jurors. The State agrees.

Scenario 3:

Both the county court and municipal court are left with five jurors after each side used their challenges. The defendant does not consent to proceeding with five jurors.

The question presented in the preceding scenarios is whether each court may proceed with a jury of five. In scenario 3, the answer for both courts is no, but each court has different options, which will be discussed later. In scenarios 1 and 2, the answer for the county court is yes.² Not surprisingly, the answer for the municipal court in scenarios 1 and 2 is not as clear.

Waiver of the Right of Trial by a Complete Jury in County Court

A county court in Texas is constitutionally and statutorily required to consist of six qualified jurors.³ For the county court, the Court of Criminal Appeals has provided specific guidance for the fact patterns presented in scenarios 1 and 2. In *Mackey v. State*,⁴ the defendants were jointly indicted for adultery in the County Court of Taylor County. After both sides used their challenges, only five jurors were left. Both sides subsequently agreed in open court to try the case before a jury of five, which was done. After a verdict of conviction, the defendants complained on appeal that they did not agree to the jury size.⁵ On review, the Court found that the record clearly showed each of the defendants did so agree and affirmed the convictions.⁶ Citing a case decided by the Court of Appeals of Texas (the Court's predecessor) in 1883,⁷ the Court reiterated that the statute⁸ permitting a defendant in a misdemeanor case to waive a jury altogether carries with it the right to agree to a trial by a jury composed of less than six jurors.⁹ Today, that statute is Article 1.14 of the Code of Criminal Procedure, which provides that a defendant in a criminal prosecution for any offense may waive any rights secured him or her by law except that a defendant in a capital felony case may waive the right of trial by jury only in the manner permitted by Article 1.13(b). Article 1.13 of the Code of Criminal Procedure specifically addresses waiver of trial by jury, providing the right to waive the right of trial by jury to a defendant in a criminal prosecution, upon entering a plea, for any offense except a capital felony case carrying the death penalty. The waiver must be made in person by the defendant in open court, in writing, and approved by the court and the attorney representing the State.

In 2011, the Texas Court of Criminal Appeals cited *Mackey* and its line of cases¹⁰ in *Ex Parte Garza*,¹¹ where one of the issues before the Court was whether a trial court should have granted a mistrial without first exploring the option of proceeding to trial with only five jurors where the defendant expressed a tentative willingness to waive his right to a jury of six. After the jury was impaneled and sworn, but before trial commenced in County Criminal Court at Law No. 8, Harris County, one juror became temporarily ill. The defense counsel stated that the defendant wanted the current jury to hear his case and requested a continuance, and in the alternative, to continue with the remaining jurors. The trial judge denied the request for a continuance without acknowledging the alternative request to proceed to trial with the remaining jurors and ordered a mistrial, finding the potential one or two week delay in holding the trial to be a manifest necessity for mistrial.¹² The court of appeals held that the trial court erred by declaring a manifest necessity for mistrial without entertaining the viability of the appellant's suggested, less drastic alternative (proceeding with five jurors). To the State's argument that the 6th and 14th Amendments guarantee the right to trial by at least six jurors, the court of appeals replied that the appellant could opt and apparently was willing to waive that constitutional guarantee.¹³

In its analysis, the Court first addressed the constitutionality of a five-member jury, beginning with the U.S. Supreme Court case upon which the State relied, *Ballew v. Georgia*.¹⁴ In *Ballew*, the Supreme Court held that a Georgia state-law scheme that imposed a jury of fewer than six members upon a defendant, even one accused of only a misdemeanor offense, violated his 6th Amendment right to a jury trial.¹⁵ However, as the court of appeals noted, that case did not address whether the accused may opt to affirmatively waive that right. Nor did it have to, according to the Court. At the time of the *Ballew* decision, the Supreme Court had already established that "the advantages of the right to trial by jury are not so indispensable to the proper functioning of a criminal trial that an accused may not affirmatively waive it, in whole or in part."¹⁶

Affirming that there was no manifest necessity to declare a mistrial without waiting a week and then possibly to conduct the trial with only five jurors, the Court then discussed whether Texas state law prohibits waiver of a full jury in county court. While Section 62.301 of the Government Code expressly permits trying a case with fewer than 12 jurors in district court upon agreement of the parties, no comparable statute in either the Government Code or Code of Criminal Procedure mandates or permits a jury of fewer than six members in a county court. Section 62.301 of the Government Code, the statute requiring county court juries to be composed of six qualified persons, does not contain an exception

as does Section 62.201 for district courts. However, the Court notes that it and its predecessor, the Texas Court of Appeals, have held for more than a century that the Code of Criminal Procedure at least implicitly permits waiver of the right to six jurors in county court, recanting the *Mackey* line of cases.¹⁷

The State argued that Section 62.301 abrogated that line of cases. To which the Court did not agree, stating its disbelief that the Legislature intended to annul a century worth of precedent with an absence of statutory language expressly permitting such a waiver. Such an absence, according to the Court, has never been regarded to mean a waiver is implicitly prohibited. To the contrary, the Court has always regarded the absence of statutory language explicitly prohibiting such a waiver to mean that it is implicitly permitted.¹⁸ The general provision in the Code of Criminal Procedure that permits a criminal defendant to waive “any rights secured him by law,” the Court has assumed, includes the right to knowingly waive a jury comprised of the full constitutionally required number.¹⁹ That Section 62.301 of the Government Code does not specifically authorize the parties in county court to consent to go to trial with fewer than six members does not mean that such an alternative is forbidden.²⁰ The Court harmonizes Section 62.301 of the Government Code, with Articles 1.13 and 1.14 of the Code of Criminal Procedure, by holding that, while none of these statutes explicitly prohibits an accused in county court from waiving a trial by fewer than six jurors, and the first does not expressly permit it, the latter two at least implicitly permit it.²¹

Waiver of Trial by a Complete Jury in Municipal Court

The Legislature has also dictated jury size in Texas municipal courts as six qualified persons in Article 45.027 of the Code of Criminal Procedure.²² If that provision and Articles 1.13 and 1.14 of the Code of Criminal Procedure were the only statutes referencing jury size and waiver for municipal courts, then the reasoning in *Ex Parte Garza* would lend to the same result for the municipal court in scenarios 1 and 2. The stumbling blocks are Articles 45.025 and 45.028 of the Code of Criminal Procedure. Article 45.025 provides that the accused may waive a trial by jury in writing. It goes on to state that, “[i]f the defendant waives a trial by jury, the justice or judge shall hear and determine the cause without a jury.” While the Court’s century-long precedent has held Article 1.14 to carry with it the right to agree to a trial by a jury composed of less than six jurors, that statute lacks the additional strong language found in 45.025 that makes it seem like a trial by jury in municipal court is all or nothing. Arguably, that language could be circumvented by a defendant that specifically waives a trial by a *complete jury* or a *jury of five*. Article 45.028 provides that “[i]f, from challenges or any other cause,

a sufficient number of jurors are not in attendance, the justice or judge shall order the proper officer to summon a sufficient number of qualified persons to form the jury.” The mention of “challenges or any other cause” appears to cover both scenarios 1 and 2. Again, there is strong language with a specific mandate what to do if ever a sufficient number of jurors are not there. Could five jurors be a sufficient number? The statute doesn’t say “six jurors” or specifically define what constitutes a sufficient number. The placement of 45.027 mandating six jurors right before it lends to the conclusion that the Legislature meant six.²³ Does the reasoning in *Ex Parte Garza* help? Does it follow that the Legislature did not intend to annul a century of precedent with this statute? In that case, the Legislature was silent as to what to do if a sufficient number of jurors are not present in county court, whereas in municipal court, 45.028 imposes a duty on the judge to order the proper officer to summon another juror.²⁴ Can the Legislature annul a century of precedent with a statute? Of course it can. Like in *Ex Parte Garza*, there is no statute expressly mandating or permitting a jury composed of less than six members in municipal court. Arguably, Article 45.028 prohibits it, at the very least implicitly.

So in scenario 1, after challenges leave only five jurors, the only express authorized (or more correctly, mandated) option is to order another juror to be summoned. What about scenario 2 where trial has already begun and the jurors have heard evidence? Did the Legislature mean for the language, “any other cause,” in 45.028 to apply at any stage of the trial? The statute does not restrict when in the course of a trial it applies. A logical reading of the statute could be that it only applies before trial commences. First, the mention of challenges supports fixing its application to pre-trial. Second, practically, applying it in scenario 2 would be unworkable and lead to an unfair trial. The juror would not have the evidence to weigh to make a decision. If he or she did not hear a witness, for example, it would be impossible to make a credibility determination if the witness’ testimony was merely retold or provided in transcript form (not to mention improper). According to the Code Construction Act, the Legislature, in enacting a statute, is presumed to intend a just and reasonable result, as well as a result feasible of execution.²⁵ It is, therefore, likely that the Legislature intended Article 45.028 to apply before trial commences, when it is both just and reasonable and feasible of execution. If that is true, there may be no statute prohibiting a defendant from waiving the right to a trial by a complete jury after trial commences,²⁶ and the reasoning in *Ex Parte Garza* could become instructive. In that case, the trial had not yet commenced, but neither *Garza* nor Article 1.14 contains a restriction on when waiver may occur.

If Article 45.028 prohibits proceeding to trial with less than six jurors, then it raises more questions. Does its

prohibition violate a defendant's right to waive the right to a trial by a complete jury? Does it then conflict with Article 1.14, which provides that a defendant in a criminal prosecution for any offense may waive any rights secured him or her by law? First, the Legislature is presumed, in enacting a statute, to intend compliance with the constitutions of this state and the United States.²⁷ It, therefore, did not intend to violate any constitutional rights of a defendant. Instead, it can be read to uphold the right to a trial by jury. The error in *Garza* attributed to the trial court was an abuse of discretion to declare a mistrial when the defendant requested a less drastic alternative of proceeding with the remaining five jurors. For municipal judges, Article 45.028 has removed any discretion. Compliance with the statute is the safer route. Securing a full jury to proceed to trial is much different than declaring a mistrial over a defendant's objection. In the latter, the defendant is not given the right to proceed with the jury originally selected (a potential abuse of discretion according to the Court of Criminal Appeals and a violation of the duty imposed in Article 45.028). In the former, the defendant keeps the original remaining jurors and gains a full jury, carrying with it the 6th Amendment mandated sufficient size "to promote group deliberation, to insulate from outside intimidation, and to provide a representative cross-section of the community."²⁸ It will be the rare defendant who objects to a complete jury.²⁹ And after all, the defendant still has the right to waive the jury all together.

As to whether Article 45.028 conflicts with Article 1.14, both became law through the same legislation.³⁰ Article 1.14 provides that a defendant may waive any right secured to him or her by law. Article 45.028 implicitly prohibits the right to waive the right to trial by a complete jury. They are arguably irreconcilable. However, the right to waive the right to trial by a complete jury is founded in case law as an implication.³¹ The case law makes no mention of Article 45.028, which, if addressed, could have supported the view that the Legislature did not have such a right in mind when it passed those statutes. Even if Article 45.028 is irreconcilable with Article 1.14, Article 45.028, the local provision, prevails as an exception to Article 1.14, the general provision.³²

Alternate Jurors in County and Municipal Courts

In scenario 3, the defendant did not consent to proceeding with an incomplete jury. Statutory and case law is axiomatic that the right to a trial by jury is inviolate.³³ There are no cases or statutes permitting a judge to force a defendant to proceed with less than the constitutionally or statutorily mandated jury size. If a court finds itself in scenario 3, declaring a mistrial is only an option if manifest necessity exists.³⁴ If no manifest necessity exists to declare a mistrial, retrial is barred by double jeopardy.³⁵ The Court of Criminal Appeals has repeatedly

admonished that "a trial court must remain solicitous of the defendant's valued right to proceed to verdict with the jury originally selected, and abuses its discretion when it grants a mistrial without first entertaining every reasonable alternative."³⁶ If the defendant objects to a mistrial and will not consent to proceeding with an incomplete jury, is there a reasonable alternative? If the defendant is in a district or county court, there is specific authorization for alternate jurors in Article 33.011 of the Code of Criminal Procedure. No such authorization exists for municipal courts, which are left with Article 45.028 mandating the judge to order the proper officer to summon another juror. It is not clear why "inferior courts" were not included in Article 33.011, but are specifically mentioned in the preceding statute, Article 33.01 (Jury Size), passed with the same legislation.³⁷

Conclusion

In scenario 1, after challenges and before trial commences, only five persons remain in the jury. The safe route for the municipal court is to comply with Article 45.028. Municipal courts lack case law directly on point and Article 45.028 arguably (1) imposes a duty to order the proper officer to summon another juror and (2) prohibits proceeding to trial with less than six jurors. In scenario 2, where a juror becomes ill after the trial has begun, there is an argument that the Legislature did not intend for Article 45.028 to apply because it is presumed, in enacting a statute, to intend a result feasible of execution.³⁸ Without a statute prohibiting proceeding with five jurors,³⁹ the reasoning in *Ex Parte Garza* could lend to the same result as that in county court, that Article 1.14 implicitly permits the defendant to waive a trial by a complete jury. In that case, the trial had not yet commenced, but a restriction on when waiver may occur is not found in *Garza* or Article 1.14. In scenario 3, the defendant did not waive a trial by a complete jury. If the trial has not commenced, a municipal judge arguably has a duty to order the proper officer to summon another juror. If the trial has commenced, a municipal courts lack specific authorization for alternate jurors. In that situation, a mistrial may be the only option if the defendant won't waive the right to a trial by six jurors.

Whether intentionally or not, the Legislature has limited the options of a municipal court with a jury that falls below six members (as well as the options of the defendant). If trial has commenced, the municipal judge does not have the reasonable alternative to a mistrial of alternate jurors that has been provided to other courts. Unfortunately, Texas municipal courts are quite familiar with that type of scenario.

¹ Office of Court Administration, *Annual Statistical Report for the Texas Judiciary*, <http://www.txcourts.gov/pubs/AR2013/AR13.pdf> (January 2014).

² Not only is it permissible for a county court to proceed with five

jurors in scenarios 1 and 2, but the trial court is obliged to consider every less drastic alternative than declaring a mistrial. *Ex Parte Garza*, 337 S.W.3d 903, 917 (Tex. Crim. App. 2011). The Court of Criminal Appeals has repeatedly admonished that a trial court must remain solicitous of the defendant's valued right to proceed to verdict with the jury originally selected, and abuses its discretion when it grants a mistrial without first entertaining every reasonable alternative. *Id.* at 916.

³ Tex. Const. art. V, § 17; Article. 33.011, C.C.P.; Sec. 62.301, G.C.

⁴ *Mackey v. State*, 68 Tex. Crim. 539, 151 S.W. 802 (1912).

⁵ *Id.* at 540.

⁶ *Id.*

⁷ *Stell v. State*, 14 Tex. Ct. App. 59, 1883 Tex. Crim. App. LEXIS 121 (Tex. Crim. App. 1883).

⁸ Article 22 of the 1879 Code of Criminal Procedure, in effect when *Stell* was decided, read: "No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded." The very next provision of the 1879 Code, Article 23, read: "The defendant to a criminal prosecution for any offense may waive any right secured to him by law, except the right of trial by jury in a felony case." *Ex Parte Garza*, 337 S.W.3d 903, 913 n.29 (Tex. Crim. App. 2011).

⁹ *Mackey*, 68 Tex. Crim. at 540.

¹⁰ See, *Hatch v. State*, 958 S.W.2d 813 (Tex. Crim. App. 1997); *Buck v. State*, 599 S.W.2d 810 (Tex. Crim. App. 1980); *Kuhn v. State*, 142 Tex. Crim. 40, 151 S.W.2d 208 (1941); *Shulman v. State*, 76 Tex. Crim. 229, 173 S.W. 1195 (1915).

¹¹ *Ex Parte Garza*, 337 S.W.3d 903 (Tex. Crim. App. 2011).

¹² The Due Process Clause of the 5th Amendment gives a criminal defendant a "valued right to have his trial completed by a particular tribunal." *Wade v. Hunter*, 336 U.S. 684, 689 (1949). The premature termination of a criminal prosecution by the declaration of a mistrial, if it is against the defendant's wishes, will ordinarily bar further prosecution for the same offense. *Brown v. State*, 907 S.W.2d 835, 839 (Tex. Crim. App. 1993). The State has a heavy burden to demonstrate a "manifest necessity" for a mistrial, meaning a "high degree" of necessity, and the trial court's discretion to declare a mistrial based on manifest necessity is limited to, and must be justified by, extraordinary circumstances. *Ex Parte Garza*, 337 S.W.3d 903, 909 (Tex. Crim. App. 2011) (citing *Brown v. State*, *supra* (quoting *Downum v. United States*, 372 U.S. 734, 736 (1963)).

¹³ The court of appeals cited *Ex Parte Fierro*, 79 S.W.3d 54, 57 (Tex. Crim. App. 2002) (holding where the trial judge fails to explicitly or implicitly rule out a less drastic alternative in favor of granting a mistrial, he has abused his discretion).

¹⁴ *Ballew v. Georgia*, 435 U.S. 223 (1978).

¹⁵ *Id.* at 245.

¹⁶ *Garza* at 910, citing *Patton v. U.S.*, 281 U.S. 276 (1930) (holding that right to jury composed of a constitutionally requisite number of jurors may be waived, rejecting numerous "public policy" arguments to the contrary). In *Patton*, the Supreme Court held that an accused could waive a 12 member jury, the number traditionally required by common law. Shortly after *Patton* was decided, the Texas Legislature first provided that an accused in a non-capital felony case would be permitted to waive a jury trial and plead guilty. Acts 1931, 42nd Leg., ch. 43, p. 65, eff. April 8, 1931.

¹⁷ See, n. 7, n.8, n.9, n.10.

¹⁸ *Garza* at 913.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See also, Article 33.01, C.C.P., referencing "inferior courts." Section 62.301 of the Government Code requires a jury of six in county and justice courts with no mention of municipal courts. The only reference to municipal courts in Chapter 62 is a lone statute in Subchapter F; Section 62.501 provides that a juror must be a resident of the municipality to be qualified to serve on a municipal court jury.

²³ Both statutes became law with the same legislation in 1965, also

supporting the argument that they should be read together.

²⁴ "Shall" imposes a duty. Section 311.016(2), G.C.

²⁵ Section 311.021(3), (4), G.C.

²⁶ But see, Article 45.025, C.C.P., discussed *supra*.

²⁷ Section 311.021(1), G.C.

²⁸ *Ballew* at 230.

²⁹ There is always a risk that the newly summoned juror will not be favorable to the defense. The purpose of the right to waive the right to a jury of six is not only to avoid being subjected to another trial, but to proceed with the jury originally selected, which did not include the juror summoned under Article 45.028.

³⁰ Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), Section 1.

³¹ *Garza* at 913.

³² Section 311.026(b), G.C.

³³ Article I, Section 15, Texas Constitution; Article 1.12, C.C.P.; *Garza* at 911.

³⁴ As a general rule, if, after the defendant is placed in jeopardy, the jury is discharged without reaching a verdict, double jeopardy will bar retrial. *Wade v. Hunter*, 336 U.S. 684, 688 (1949). An exception to this rule is made if the defendant consents to a retrial, or if a retrial before a new jury is mandated by some form of manifest necessity. *Torres v. State*, 614 S.W.2d 436, 441 (Tex. Crim. App. 1981) (citing *Ariz. v. Wash.*, 434 U.S. 497, 505 (1978)).

³⁵ The Double Jeopardy Clause of the 5th Amendment protects a criminal defendant from repeated prosecutions for the same offense. *United States v. Dinitz*, 424 U.S. 600, 606 (1976). As a part of the protection against multiple prosecutions, the Double Jeopardy Clause affords a criminal defendant a "valued right to have his trial completed by a particular tribunal." *Wade v. Hunter*, 336 U.S. 684, 689 (1949). But see, *Gori v. U.S.*, 367 U.S. 364, 368 (1961) ("Where, for reasons deemed compelling by the trial judge, who is best situated intelligently to make such a decision, the ends of substantial justice cannot be attained without discontinuing the trial, a mistrial may be declared without the defendant's consent and even over his objection, and he may be retried consistently with the Fifth Amendment.").

³⁶ *Garza* at 916.

³⁷ See, n. 33.

³⁸ See, n. 25.

³⁹ See, n. 26.



GDL Programs

continued from pg. 8

a series of restrictions placed upon the new driver. In Texas, all minors (under age 18), assuming they meet the regular requirements for applying for a license⁴ (i.e., adequate vision, ability to read English traffic signs, etc.),⁵ must comply with certain statutory provisions in the Transportation Code that collectively comprise the Texas GDL. The Texas GDL program has two "phases." During Phase One, new minor drivers must hold an *instruction permit* (also known as a *learner license*) for a minimum of six months before they may be issued a regular driver's license (which, as you will see later, may be subject to further restrictions).⁶ The minimum age to obtain an instruction permit is 15 years old.⁷ Furthermore, completion of driver's education is required before issuance⁸ and the applicant must be a student or have a high school diploma.⁹ When driving, learner license holders must be accompanied by a

person aged 21 or over.¹⁰ This accompanying person must have a license of their own and at least one year of driving experience.¹¹ Also, he or she must not be intoxicated, asleep, or engaged in any activity that prevents him or her from “observing and responding to the actions of the driver,”¹² unless there is another qualified person in the vehicle.¹³

After the six-month period is up, instruction permit holders are able to apply for a Class C driver’s license provided they are at least 16 years old at that point.¹⁴ For Class A and B licenses, they must be at least 17 years old.¹⁵ If the driver is still under the age of 18 upon issuance, however, his or her license will be subject to certain restrictions until he or she turns 18. This period is known as Phase

Two of the Texas GDL program and licenses are often referred to as *provisional licenses* during this time. Provisional license holders may not drive with more than one passenger in the vehicle under age 21 who is not a family member,¹⁶ operate a vehicle after 12:00 am or before 5:00 am (unless such operation is necessary to attend or participate in employment, a school-related activity, or is due to a medical emergency),¹⁷ or use a wireless communication device while driving.¹⁸ Note that until last year, the provisional period ended 12 months after issuance. House Bill 3483 (effective September 1, 2013) amended this to require that the provisional period restrictions remain in force until the age of 18. Thus, it is clear that Texas lawmakers are trending toward a more stringent GDL program. It would be difficult to argue that this is anything but a positive for the safety of Texas roadways.

While the Texas GDL program is invaluable in that it forces young drivers to gradually progress toward full-fledged solo driving, it may also be effective in reducing impaired and distracted driving. During Phase One, the accompanying person requirement adds a layer of oversight that helps ensure the young driver will not drive impaired or distracted. The accompanying person will typically be the new driver’s parent or guardian. This parental pressure will likely cause the driver to be as conscientious and distraction free as



(not actual size)

possible behind the wheel – and it is unfathomable that a parent would allow their newly licensed child to drive impaired. Phase Two requirements may also combat distracted or impaired driving. The limitation of one under-21 non-family member quite clearly aims to prevent a car full of young people who might distract the driver or pressure him or her to consume alcohol or drugs. Furthermore, the curfew restriction helps guard against nighttime driving, such as on the way home from a party where alcohol may have been served. It is worth noting that nationally the number of young drivers involved in alcohol-related fatal crashes has decreased since 1998. Specifically, in 1998, 7,987 young drivers were involved in fatal alcohol-related crashes, whereas only 5,864 were in 2008.¹⁹ While there is no way to pinpoint the precise reason for

this reduction, it is a safe bet that the emergence of GDL programs across the United States has had something to do with it—and it is refreshing to see that Texas has successfully crafted an effective GDL system and has continued to improve upon it.

¹ Dorothy Begg, Daniel R. Mayhew, Ruth A. Shults, and Herb M. Simpson, *Graduated Driver Licensing*, Centers for Disease Control and Prevention, http://www.cdc.gov/MotorVehicleSafety/Teen_Drivers/GDL/GradDrvLic.html (last updated April 23, 2010)

² National Highway Traffic Safety Administration’s Center for Statistics and Analysis, *Young Drivers*, <http://www-nrd.nhtsa.dot.gov/Pubs/811169.PDF>.

³ *Id.*

⁴ Section 521.222(a)(4), T.C.

⁵ Section 521.161, T.C.

⁶ Section 521.204(b), T.C.

⁷ Section 521.222(a)(1), T.C.

⁸ Section 521.222(a)(2), T.C.

⁹ Section 521.222(a)(3), T.C.

¹⁰ Section 521.222(d)(2)(B), T.C.

¹¹ Section 521.222(d)(2)(A) and (C), T.C.

¹² Section 521.222(g), T.C.

¹³ Section 521.222(h), T.C.

¹⁴ Section 521.204(a)(1), T.C.

¹⁵ Section 521.203(1), T.C.

¹⁶ Section 545.424(a-1)(2), T.C.

¹⁷ Section 545.424(a-1)(1), T.C.

¹⁸ Section 545.424(a), T.C.

¹⁹ See, n. 2.



RESOURCES FOR YOUR COURT

OCA WEBINAR ON MONTHLY REPORTS

The Office of Court Administration, Judicial Information Section, has created a webinar on the Municipal Court Monthly Court Activity Report. It is available from the OCA website at <http://www.txcourts.gov/oca/required.asp>. The 50-minute webinar covers background information, reporting requirements, definition of important terms (such as active and inactive pending cases and dispositions), how to submit the report, and important and common problems that clerks should look out for when submitting the report.

Justice and Municipal Court Monthly Case Activity Reports ...top...

Percentage of Criminal Dispositions Reported under All Other Dispositions, by Court: Justice Courts [xls](#) Municipal Courts [xls](#)

Justice Courts (for September, 2013 reports and beyond):
 Form [\[pdf\]](#) | [\[xls\]](#) | [\[Instructions\]](#) | [\[Frequently Asked Questions\]](#) | XML Specifications [\[pdf\]](#) -
 Instructions Updated 01/29/2014

Justice Courts (for reports prior to September, 2013):
 Form [\[pdf\]](#) | [\[xls\]](#) | [\[Instructions\]](#) | [\[Case category charts\]](#) | [\[Frequently Asked Questions\]](#) | XML Specifications [\[pdf\]](#) -
 Instructions Updated 01/29/2014

FOR CASES FILED ON OR AFTER AUGUST 31, 2013
 Justice Court Civil Case Information Sheet
 Type-In Version [\[Word\]](#) [\[pdf\]](#)
 Print and Fill Out Version [\[Word\]](#) [\[pdf\]](#)

Municipal Courts:
 Form [\[pdf\]](#) | [\[xls\]](#) | [\[Instructions\]](#) | [\[Case category charts\]](#) | [\[Frequently Asked Questions\]](#) | XML Specifications [\[pdf\]](#)
[\[Webinar\]](#) | [\[Webinar Handout\]](#)



Please send any questions or comments to ReportingSection@txcourts.gov.

TMCEC REGISTRATION SITE VS. ONLINE LEARNING CENTER (OLC)

TMCEC staff members get countless questions about where to register online for seminars or how to register for a webinar. Both are accessed via the TMCEC website (www.tmcec.com), but there are separate links for each. See the chart to the right to help understand where you should go and when. The same password works on both sites. If you have forgotten your password, email tmcec@tmcec.com.

Activity	Register Site	OLC
Print TMCEC Seminar Certificates	✓	
Print Archived Webinar Certificates		✓
View Past TMCEC Events	✓	
View Upcoming TMCEC Events	✓	
Clerk Prep Tests and Flashcards		✓
Clerk Certification Discussion Forum		✓
Register for TMCEC Events	✓	
Button on TMCEC Homepage	Online Registration	TMCEC OLC

TEXAS COURT REMOTE INTERPRETER SERVICE

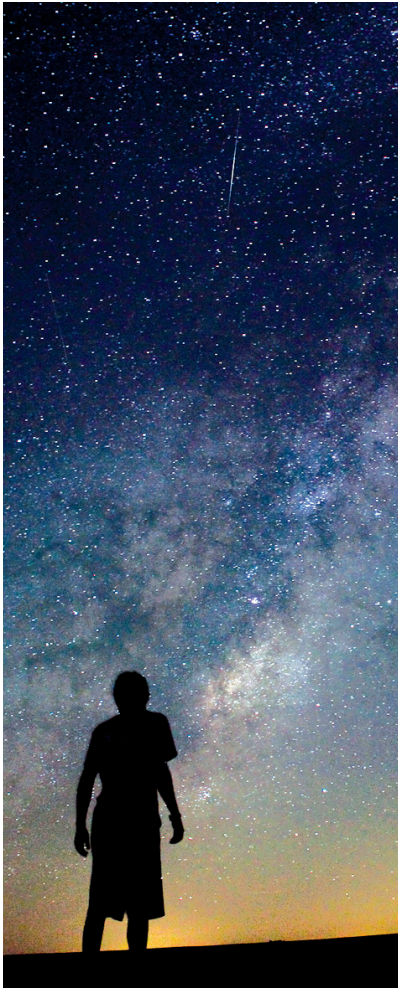
The State Office of Court Administration (OCA) is pleased to announce the availability of the Texas Court Remote Interpreter Service (TCRIS) for municipal courts statewide. During the first five months of operation, January through May of 2014, TCRIS provided services for 46 judges in 33 counties at 160 hearings.

This OCA program provides:

- free Spanish language interpretation services by licensed court interpreters in all case types
- by telephone or by videoconferencing, using the court's existing equipment
- for short, non-evidentiary hearings that are typically 30 minutes or less in length*
- by advanced scheduling or on demand, as available

*Note: Examples of short, non-evidentiary hearings are hearings in which no or limited evidence is introduced, such as arraignments, plea hearings, bail hearings, pre-trial motions, magistrate's order for emergency protection hearings, etc.

TCRIS is a small program and does not replace the need to maintain existing arrangements with local, licensed court interpreters. The program's primary goal is to improve access to licensed Spanish court interpreters in rural district and county-level courts with limited access to licensed interpreters. However, as time and resources permit, we will accept requests for interpretation services from justice and municipal courts. OCA invites you to visit the TCRIS webpage for more information on the program, at: www.courts.state.tx.us/oca/tcris. And, if you have any questions, please contact Marco Hanson, OCA Language Access Coordinator, at marco.hanson@txcourts.gov or 512.936.7559.



OUTDOOR LIGHTING REGULATIONS? LIGHT TRESPASS?

The issue of light trespass, excessive outdoor lighting, and loss of the night sky are more and more in the forefront of issues that communities face. On Friday, August 15, 2014, at the Dripping Springs Ranch Park Event Center, the City of Dripping Springs, the first Dark Sky Community in Texas, and the International Dark Sky Association Texas (IDA Texas) present the Better Lights for Better Nights Conference, a day-long event designed to educate and inform attendees about the advantages and importance of using artificial light at night only where and when it is needed. Vendors and exhibitors will be sharing displays and demonstrations, and organized sessions led by professionals and educators will cover:

- Detailed education addressing the challenges presented by outdoor lighting, including:
 - Energy costs and economic impact to your area
 - Actual safety & security versus the illusion of security
 - Light trespass and saving our common view of the sky
 - Health & ecological consequences of artificial light at night
- Ordinances and Texas laws: examples of current ordinances and guidance on implementing new/improved lighting regulations
- Instruction on the finer details of inspections/enforcement of such ordinances
- Approaches for unincorporated areas

Learn more and register: TexasNightSkyFestival.org.

REGISTER NOW FOR INTERPRETER WORKSHOP

Registration is now open for the Austin Area Translators and Interpreters Association's court interpreting workshop,* to be held in Austin on Saturday, August 16, 2014. This workshop is approved by the Texas Department of Licensing and Regulation (TDLR).

This workshop, presented by the ever-popular Eta Trabing, will feature 3 hours of ethics training and 5 hours of terminology training and practice.

- **Does Culture Impact Ethics?** will explore whether and how cultural differences between interpreters and their clients shape the way they think and may affect the way they react to the nine ethical cannons of the Code of Ethics and Professional Responsibility for TDLR-licensed court interpreters. That ought to generate some discussion!
- **Municipal Courts and Their Terminology** will cover the purpose of municipal courts, the types of cases heard and the terminology used. Time will be allowed for practice/discussion in small groups.

In addition, Mr. Jeff Rinard from the Office of Court Administration (OCA) will be on hand to give a talk and answer questions about the transfer of responsibility for court interpreter licensing from TDLR to OCA.

The workshop is intended mainly for court interpreters licensed by TDLR who are seeking to fulfill their TDLR continuing education requirements, but will also provide excellent training for interpreters preparing to take the TDLR licensing exam.

* *"Does Culture Impact Ethics?"* TDLR Course No. 11435; *"Municipal Courts and Their Terminology,"* TDLR Course No. 12019. Provider: Berkana Language Center, Provider no. 1345



TRAFFIC SAFETY: NEWS YOU CAN USE

TEEN COURTS OFFER ALTERNATIVE FOR MINOR DEFENDANTS

Teen courts provide a voluntary alternative to traditional adjudication and sentencing for teenagers in municipal or justice courts. Texas teen courts are governed by Section 45.052 of the Code of Criminal Procedure and Section 54.032 of the Family Code. Where offered, young defendants are able to plea no contest or guilty and have their case heard amongst peers. Typically, instead of paying a fine, the defendant's penalty will be in the form of community service, educational programs, and/or future participation in teen court. Once the penalty is satisfied, the case is dismissed and the offense does not count as a conviction on the defendant's record.

There are multiple aims of teen court. Rather than simply assessing a fine that will likely be paid for by the defendant's parents, teen court requires the teen to answer personally for his or her wrongdoing. This helps prevent repeat offenses as the defendant will not want to spend more time doing community service or going to teen court. Also, a teen defendant might feel disdain for a judge and the judicial system, so judicial admonitions



and suggestions might fall on deaf ears. When a case is tried in front of juries and lawyers comprised of one's peers, however, there can be a much more profound effect on the defendant. Last, a subsidiary yet important goal is to promote respect for and understanding of the legal system.

In Texas, there are a variety of teen court models. Each one is slightly different. Generally, a juvenile is referred to teen court by the municipal or justice court and has his or her case argued by a teen prosecuting attorney and teen defense attorney. A jury of the defendant's peers deliberates and decides on a binding punishment for the defendant. These various roles are filled by teens fulfilling the punishment that was assessed upon them in teen court. Some courts have adult judges, some have teen judges, and some have adult volunteers who serve on teen court.

The types of trials vary: adult judge court, teen/peer judge court, master jury, tribunal jury, advocate court, plea in bar, and court supervised. TMCEC recommends that you observe the various types of teen court to determine what best suits your community and court.

The management of teen court also varies: some teen courts are run by cities or counties while some are run by non-profit boards or agencies.

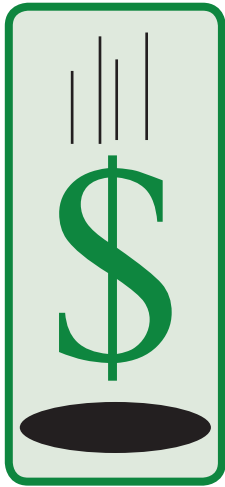
Links to Resources to Help with Setting Up A Teen Court:

Texas Teen Court Association (www.txteencourt.com) – the TTCA website contains a list of cities offering teen court, news, membership information, important dates, and more. TTCA members are known for generously sharing their forms, handouts, pamphlets, letters, and other useful materials.

National Association of Youth Courts (www.youthcourt.net) – this national website contains a wealth of information and links.

TMCEC, through its TxDOT grant, sometimes has funding to offer planning sessions for courts interested in setting up a teen court. Email tmcec@tmcec.com if you would like to be notified of the next session.

HOW MUCH A DWI COSTS



Just the Facts

A DWI arrest and conviction can cost \$17,000 or more.¹ That figure includes, but is not limited to, punishment, bail, attorney's fees, court costs, court-ordered classes, vehicle towing and impoundment, costs of a hearing to regain a driver's license, an SR-22 (proof of high-risk insurance), a potential ankle monitor, and a DPS surcharge. The chart below lists the amounts attributable to such costs. Other expenses include an increase in vehicle insurance, probation costs, and lost time at work or loss of a job. Furthermore, the social stigma associated with a DWI is immeasurable.

There is no statewide average cost for a DWI because certain factors cause fluctuation. For example, attorney's fees and court costs vary by county, so where the DWI takes place determines these costs. Also, fines and bail are affected by the defendant's previous record. If the DWI is accompanied by assault or manslaughter, the cost will go up exponentially. Moreover, a DWI with a passenger younger than 15 years of age is punishable by a fine of up to \$10,000, up to two years in a state jail, and loss of a driver's license for up to two years.²

Keep it Safe

The cost of a DWI is completely avoidable. Don't drink and drive. Use a designated driver.

Additional Resources

- DWI Statutes
 - Driving While Intoxicated (Tex. Penal Code § 49.04)
 - Enhanced DWI Penalties (Tex. Penal Code § 49.09)
 - Administrative Driver's License Suspensions (Tex. Transp. Code § 524.022)
 - Ignition Interlock Requirements (Tex. Transp. Code § 521.246)
- DWI Safety Tips
 - Tips on the dangers and penalties associated with DWI offenses under Texas law: <http://www.txdot.gov/safety/tips/intoxication.htm>.
- DWI Education Program
 - Details on the required education program following a DWI conviction in Texas are found on the Texas Department of State Health Services website: http://www.dshs.state.tx.us/offendered/oe_edinfo.shtm.

**Stay Sober
or Get
Pulled
Over**



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Texas Department of Transportation

www.tmcec.com

See Cost Chart on Next Page 

¹ Texas Department of Transportation Labor Day 2011 *Drink. Drive. Go to Jail.* Campaign, Retrieved August 30, 2012, from http://ftp.dot.state.tx.us/pub/txdot-info/safety/labor_day/fact.pdf (hereinafter referred to as TxDOT Labor Day 2011).

² Secs. 12.35 and 49.045, P.C.



It's the Law

Cost of a DWI Arrest and Conviction	
Punishment	<p>First Offense</p> <ul style="list-style-type: none"> • A fine of up to \$2,000³ • Up to 180 days in jail⁴ • Loss of driver's license for not less than 90 days or more than one year⁵ <p>Second Offense*</p> <ul style="list-style-type: none"> • A fine of up to \$4,000⁶ • Up to one year in jail⁷ • Loss of driver's license for one year⁸ <p>Third Offense*</p> <ul style="list-style-type: none"> • A fine of up to \$10,000⁹ • Two to ten years in prison¹⁰ • Loss of driver's license for not less than 180 days or more than two years, unless the court has ordered an ignition interlock device, in which case, suspension becomes for not less than one year or more than two years¹¹ <p>*After two or more DWI convictions in five years, installation of a special ignition switch that prevents a vehicle from being operated if the driver has been drinking is required.¹² This costs \$54-\$150 to install and \$600-\$2,800 in monthly fees¹³</p>
Bail	\$185 - \$5000 ¹⁴
Attorney's fees	\$275 - \$10,000 ¹⁵
Court costs	\$25 - \$1500 ¹⁶
Court-ordered classes	\$25 - \$185 ¹⁷
Vehicle towing and impoundment	\$30 - \$350 ¹⁸
Hearing to regain driver's license	\$125 - \$1,937 (includes attorney fees) ¹⁹
SR-22 Insurance	\$75 - \$2,400 ²⁰
Ankle monitor	Up to \$4,500 (\$375 per month for 12 months) ²¹
Alcohol Education Course	\$25 - \$185 ²²
Texas Department of Public Safety Driver Responsibility Program Surcharge ²³	<p>Drivers who receive a conviction will pay an automatic annual surcharge for a period of three years from the date of conviction.</p> <p>First DWI offense</p> <ul style="list-style-type: none"> • \$1000 per year for three years <p>Subsequent DWIs</p> <ul style="list-style-type: none"> • \$1,500 per year for three years <p>DWI with blood alcohol concentration of 0.16 or more</p> <ul style="list-style-type: none"> • \$2,000 per year for three years

³ Secs. 12.22 and 49.04, P.C.

⁴ *Id.*

⁵ Sec. 521.344, T.C.; But see, Art. 42.12, Sec. 13(k), C.C.P.

⁶ Secs. 12.21 and 49.09, P.C.

⁷ *Id.*

⁸ *See*, n. 5.

⁹ Secs. 12.34 and 49.09, P.C.

¹⁰ *Id.*

¹¹ *See*, n. 5.

¹² *See*, n. 1; Section 521.246, T.C.; Article 17.441, C.C.P. (condition of release from jail on bond requiring motor vehicle ignition interlock).

¹³ Mark Agee, *Driving Drunk Can Take a Financial Toll*, Texas District and County Attorneys Association forum, <http://tdcaa.infopop.net/eve/forums/a/tpc/f/157098965/m/2741000241?r=1111030241> -

1111030241 (accessed August 30, 2012)

¹⁴ Sec. 521.246, T.C.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

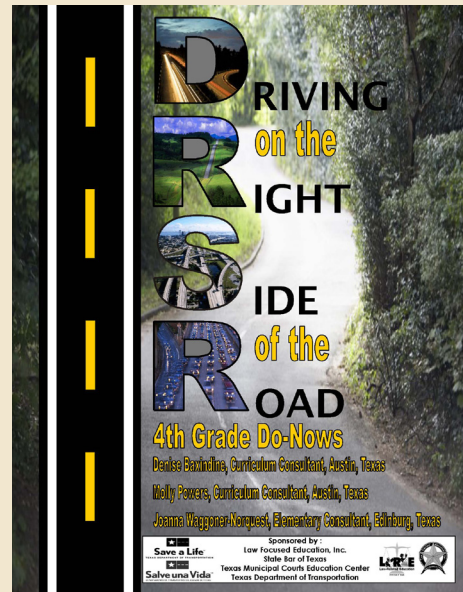
²² *Id.*

²³ Texas Department of Public Safety, Driver Responsibility Program, <http://www.txdps.state.tx.us/DriverLicense/drp.htm> (accessed August 30, 2012).

TRAFFIC SAFETY INFORMATION SHEETS

These handouts are designed for use by outside resource persons when speaking to youth or student groups. They contain the latest available statistics and information on the topics listed below in a summary format. We encourage you to make copies and distribute them as you speak before youth or adult groups. Please email tmcec@tmcec.com if you would like to suggest other topics for information sheets.

- Aggressive Driving
- Bicycle Safety
- Cell Phones & Texting
- Distracted Driving
- Driving While Intoxicated & Driving Under the Influence
- Driving with Pets
- Drowsy Driving
- How Much a DWI Costs
- Ignition Interlock
- In-Line Skating
- Motorcycles
- Passenger Safety
- Pedestrians
- Pets & Driving
- Railroad Crossings
- School Buses & School Zones
- Safety Belts & Child Restraints
- Skateboarding
- Speeding



- Things With Wheels
- Turn Around Don't Drown
- Young Drivers

The information sheets may be accessed at www.tmcec.com/drsr/information_sheets/



SPEAK OUT!



TMCEC has a speakers' bureau. Knowledgeable judges and court support personnel can serve as guest speakers in K-12 classrooms. The *Driving on the Right Side of the Road* and *Municipal Traffic Safety Initiatives* project has many resources, materials, and PowerPoint presentations that will assist you as you speak in your community and organize field trips and mock trials at your court.

Check out our website: <http://www.tmcec.com/drsr/>

There are many upcoming events where judges and court support personnel can play an important role in getting the word out about traffic safety:

- Back-to-School Nights
- Fall Fairs
- National Stop on Red Week (8/15-9/1/2014)
- Drive Sober or Get Pulled Over (8/15-9/1/2014)
- National Childhood Injury Prevention Week (9/1-7/2014)
- National Child Passenger Safety Week (9/14-20/2014)
- National Night Out Texas (10/7/2014)
- Drive Safely to Work Week (10/19-25/2014)
- National Teen Driver Safety Week (10/19-25/2014)
- National School Bus Safety Week (10/20-24/2014)
- Municipal Court Week (11/3-7/2014)
- National Teens Don't Text & Drive Week (11/17-23/2014)
- "3D" Month – Drunk & Drugged Driving Prevention (12/1-31/2014)

TMCEC, thanks to the generosity of its TxDOT grants, has resources that judges and court support personnel can use to set up exhibits in their courts and communities. Contact ned@tmcec.com to see what is available.



We Want You!

Sign Me Up for the TMCEC
Traffic Safety Speakers Bureau!

Name: _____

Court: _____

Number: _____

Email: _____

Texas Municipal Courts Education Center
2210 Hancock Drive
Austin, Texas 78756
512.320.8274(t)
512.435.6118(f)
tmcec@tmcec.com



Save a Life™
Texas Department of Transportation



DRSR Online Games fun for all ages!

As part of the TxDOT Driving on the Right Side of the Road (DRSR) project, TMCEC has partnered with the Law-Related Education (LRE) Department of the State Bar of Texas and developed a series of online games. These may be accessed at <https://www.texaslre.org/games.html> or http://www.tmcec.com/drsr/line_learning_games/. The games are excellent for social studies classes, kids and grandkids over the summer, and for use with youth groups. Originally designed for use with desktop computers and laptops, this summer they are being redesigned for use on tablets and smart phones. Please help us spread the word as to their availability.



Students read a case, play as the prosecution or defense, and pick a municipal jury.



Students must decide if the question is objectionable or acceptable, considering the case and the witness on the stand.



This simulation will assist teachers in walking students through the Texas legislative system. Students will be asked to make the best choices as a traffic safety bill works its way through the process to becoming a law.



This game is played like Concentration and can be played in English or Spanish. The goal is to make as many pairs of traffic safety cards as you can in the shortest amount of time. The cards shuffle so you can play each level over and over or move on to the next level.



Students must make safe and smart choices to get from one place to another in their community.

More Online Traffic Safety Games available at <http://www.tmcec.com/drsr/traffic-safety-games/>:

- *Things on Wheels* – Answer the questions about bicycles, inline skating, and skateboarding to win! (grades 1-8)
- *Bus Safety Challenge* – Do you know what it takes to stay safe on the bus? (grades 1-8)
- *Young Driver Millionaire Challenge* – In the style of *Who Wants to be a Millionaire*, this challenge will quiz the knowledge of would-be young drivers to see if they have what it takes to be on the road. (grades 8-12)
- *Traffic Safety Quiz*—Test your general knowledge of Texas traffic safety. (all levels)

2015 Municipal Traffic Safety Initiatives Awards

Purpose:

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

Eligibility:

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

Awards:

Award recipients will be honored at the Texas Municipal Courts Education Center (TMCEC) Traffic Safety Conference that will be held on March 29-31, 2015 in Austin, Texas at the Omni Southpark Hotel.

Nine (9) awards will be given:

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

Award recipients receive for two municipal court representatives, complimentary conference registration, travel to and from the 2015 Municipal Traffic Safety Initiatives Conference to include airfare or mileage that is within state guidelines, two nights' accommodations at the Austin Omni Southpark Hotel, and most meals and refreshments.

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

Deadline:

Entries must be postmarked no later than December 31, 2014.

Presentation:

Award recipients and honorable mention winners will be notified by February 15, 2015 and honored during the Traffic Safety Conference to be held March 29-31, 2015 in Austin, Texas at the Omni Southpark Hotel.

Details:

For complete award details, submission guidelines, and application form, go to www.tmcec.com, Municipal Traffic Safety Initiatives, Traffic Safety Awards 2015. Remember to include activities to help stop drugged and drunk driving.

Drink. Drive. Go to Jail.



Traffic safety benefits can go far beyond the traffic stop!

What Can You Do?

- Get involved
- Add traffic safety materials to your city's and court's websites
- Host a warrant round-up with nearby cities
- Invite school groups into your court
- Start a proactive fine collection program
- Recognize situations where a "fine is not fine"
- Join the TMCEC Save A Life listserv on traffic safety
- Approve adequate funding, staff, and support for your municipal court
- Speak to local civic groups on the importance of traffic safety and stopping impaired driving
- Build community partnerships
- Set up a traffic safety exhibit
- Ask law enforcement officers and prosecutors to work together to identify at-risk drivers in your community
- Create meaningful sentencing alternatives for repeat offenders, especially juveniles and minors using deferred disposition
- At the close of a trial after sentencing, remind jurors and court observers of the importance of compliance with traffic laws
- Adopt a safety belt and cell phone policy for all city employees
- Participate annually in Municipal Courts Week and incorporate traffic safety outreach

FROM THE CENTER

INTRODUCING FULL COURT PRESS!

Mark Goodner
Program Attorney & Deputy Counsel

July 2014 marks the arrival of *Full Court Press*, a new blog offered by TMCEC. This blog will supplement the already substantial social media presence of TMCEC. Close to 400 follow us on twitter (www.twitter.com/tmcec), more than 800 like us on facebook, and we hope that you will check in with *Full Court Press* frequently at blog.tmcec.com (there is no “www.” preceding the address), or by clicking on the “blog” link at our website (www.tmcec.com).

With *Full Court Press*, we aim to fill the space between our social media offerings on twitter and facebook and our traditional publications available in print and online, such as *The Recorder*. Twitter and facebook are fantastic vehicles for sending information in small doses or for passing along links to relevant articles and websites. *Full Court Press* will allow us to examine topics and stories that support more commentary and discussion.

Many of you may habitually follow blogs and are aware of the numerous benefits of following a blog. Those of you new to reading or following blogs will want to explore some of the features of *Full Court Press* as we continue to post new entries. Perhaps the most important aspect of *Full Court Press* (and blogging, in general) is the discussion that it can generate through comments. Thoughts and analysis that emerge from this discussion among municipal court constituents can be interesting and enlightening to the participants and observers, and it is invaluable to TMCEC as it allows us to keep our fingers on the pulse of the courts, discover new issues, and even plan trainings and publications. *Full Court Press* will, over time, develop into a living resource where readers can quickly and easily find specific entries and information through the use of categories and tags assigned to the posts. We hope you enjoy this new service of TMCEC, and we hope to see you join the discussion in the comments!

Below you will see the first post on *Full Court Press*. To add comments, read the post at blog.tmcec.com.



From Hybrids to Hydrogen to Flying Cars: What is the Future of Personal Travel?

My first car was a 1974 Orange Volkswagen Super Beetle, not unlike the one in the picture below (if the one below had a red spot of primer above the rear fender). It was cheap, older than me, and not especially reliable. I named it Spot. I learned very quickly that Spot's fuel gauge did not work after I ran out of gas on a country road not long after marveling that Spot seemed to show a quarter of a tank for at least a week. Spot had a rusted hole in the floorboard behind the passenger seat that allowed my friends to envision propelling the car Fred Flintstone style. When I could not get Spot to start, a friend and I would usually just have to push it as fast as we could and then hop in and pop the clutch to get Spot's little engine to sputter and run again. Spot wasn't the prettiest. Spot wasn't the fastest. Spot wasn't the safest. But I loved that car. Perhaps it was the car, or maybe it was the memories created in it.



If you're anything like me, you vividly remember your first car with no small amount of nostalgia. You can probably remember every car you have ever owned, as well. It amazes me when I think back to Spot with its hand-cranked windows, lack of air conditioning, and hot vinyl seats and compare it to all the comforts and safety features in our cars today. Air conditioners, heated seats, leather upholstery, front and side air bags, bluetooth phone connections, navigation, satellite radio, the list goes on and on.

It makes me wonder, "What's next?" You and I can't know for sure, but the things being envisioned are truly fascinating. If you're curious, I encourage you to check out TED (see www.ted.com). TED is a nonprofit devoted to spreading ideas, usually in the form of short, powerful talks. Many of you have watched TED talks as they are frequently shared on facebook and websites. There are a few TED talks that I would like to recommend to you that deal with the future of personal travel.

http://www.ted.com/talks/reinventing_the_car



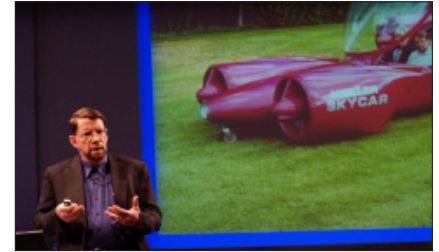
The first one I recommend to you is Larry Burns' talk, "The Future of Cars." Although it's from 2008, the information remains

remarkable. As of 2008, 750 million people in the world owned a car, that's a mere 12 percent of the population. Over the coming 10-15 years, that number could exceed one billion vehicles—enough to wrap around the earth 125 times if they were all parked end to end. GM's Vice President of Research & Development, Larry Burns, reveals some fascinating ideas and projects. He mentions hydrogen fuel cell cars that have been in development for some time that are much more efficient than our current cars and emit only water. Burns also mentions that our cars sit idle 90 percent of the time, yet they possess an intriguing capability to generate power. In fact, the power of four percent of our automobiles

equals the power of the entire electric grid of the United States. I encourage you to click on the link above.

Two other TED talks are also worth your time and deal with the future of travel. Paul Moller talks about the progress toward making his dream of a flying car a reality. He hopes to come up with something that can replace the automobile for 50-plus mile trips, as those make up 85 percent of the miles we travel in America.

http://www.ted.com/talks/paul_moller_on_the_skycar



Bill Ford's "A Future Beyond Traffic Gridlock" is another compelling talk. As Henry Ford's great grandson, Bill Ford has

cars in his blood. They are his great passion. His other great passion is the environment. He talks about eliminating CO2 emissions, electric cars, and dealing with population density. In the future, 75 percent of the world's population will live in cities, and 50 of those cities will be of 10 million people or more. The summer of 2010 gave us a glimpse of problems to come when China saw a hundred-mile traffic jam that took 11 days to clear. Perhaps a solution lies in the work being done to create smart roads, smart parking, and smart public transportation systems all operating within the same system.

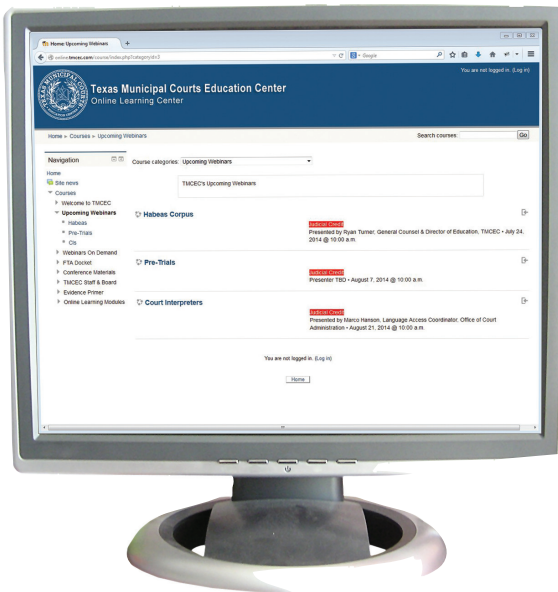
http://www.ted.com/talks/bill_ford_a_future_beyond_traffic_gridlock



What do you think is the future of personal travel? How will it affect your life? What will we see in municipal courts? Will we see violations for flying cars? Will we see environmental

crimes filed as Class C misdemeanors?

Post your comments on the *Full Court Press* blog!



SUMMER WEBINAR SERIES 2014

August 7:
Pre-Trials
August 21:
Court Interpreters

Michael Acuna, Municipal
Judge, City of Dallas
Presented by Marco Hanson,
Language Access Coordinator,
Office of Court Administration

Webinar Instructions:

1. First go to the Online Learning Center at <http://online.tmcec.com>.
2. Find the login box in the upper left corner of the page and enter your TMCEC username and password. Call TMCEC if you do not already know that information: 800.252.3718
3. Click Login.

To enroll in an upcoming webinar:

1. Look for the list of Course Categories in the middle of the page just below the welcome message.
2. Click on Upcoming Webinars to view a full schedule.
3. Click on the title of the webinar you would like to attend.
4. You will see a message that says "You are about to enroll yourself as a member of this course. Are you sure you wish to do this?" You need not pre-register for upcoming webinars, but you must be enrolled to view the webinar link, course materials, and most importantly, to receive credit for the webinar. Click Yes to enroll.
5. You are now considered enrolled in the webinar. You will see the webinar title and, below, links for Webinar, Course Materials (there may be more than one), CLE reporting (if applicable), Evaluation, and a Certificate.

To view the webinar no more than 30 minutes prior to the scheduled start time:

1. Click on the Webinar link inside the course page for the webinar you would like to view.
2. The link will open a new window in your web browser. You should see the title of the webinar and two options for logging in. Choose Enter as a Guest and type your full name into the space provided. Do not enter your same username and password, as it will not work with Adobe Connect.
3. Click Enter Room.
4. You will experience a short delay as the software to display the webinar is automatically installed and configured on your system. You should not be asked to download or confirm anything. When the software is configured, you should be able to view the webinar.
5. Make sure you have the sound turned up on your computer speakers as you will not be calling in on the telephone.

About Webinars:

Webinar participation is open to all municipal judges, clerks, court administrators, prosecutors, bailiffs, warrant officers, juvenile case managers, and court interpreters.

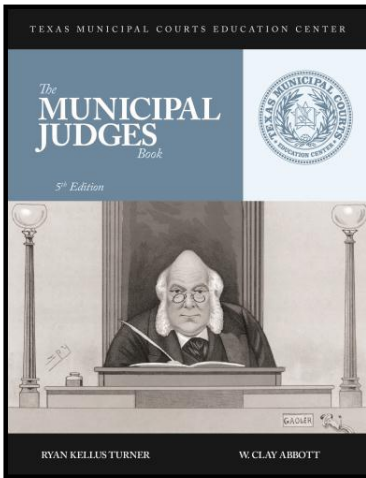
All webinars begin at 10:00 a.m. and last approximately one hour. Webinar participation counts for one hour of credit toward the clerk certification program. Webinars noted with a label on the OLC count for one hour of judicial credit (red label) and many will be submitted for MCLE credit from the State Bar for licensed attorneys (yellow label).

2014 Webinars On Demand:

- Protective Order Reporting
- Parks & Wildlife Code and Boater Safety Courses
- Child Safety Seat Laws
- Pro Se Defendants
- Commercial Motor Vehicles
- *State v. Cooper*: The Criminalization of International Codes by Local Governments in Texas
- Noise
- Bonds
- Driving Under the Influence

For more detailed instructions on watching webinars, visit the Upcoming Webinars page of the OLC, the Webinars page on tmcec.com, or contact TMCEC at 800.252.3718.

The Municipal Judges Book (5th Edition)



Featuring both historic and contemporary issues, *The Municipal Judges Book* critically analyzes the nature of municipal courts and the judge's role in the Texas criminal justice system. An ideal textbook for new judges and others interested in procedural and substantive laws impacting Texas municipal courts, the content includes (1) an introduction to municipal courts and the Texas judicial system, (2) judgments, indigence, and enforcement, (3) rights of the accused and victims, (4) contempt, (5) the adjudication of juveniles in municipal court, (6) judicial ethics, and (7) legal research.

Since the beginning of statehood in 1845, Texas municipal courts have served an important role in both local government and the state judiciary. The evolution of these courts can best be described as the gradual accumulation of answers to long-standing questions. In the first 50 years of their existence, municipal courts were plagued by an indefinite legislative mandate and a lack of uniform procedures. In the last 50 years, uniform procedures have been created by the Legislature, many legal issues have been clarified, and, perhaps most notably, municipal courts have begun to gain a collective sense of identity and purpose that were notably absent during their formative years.

There still, however, remain many unanswered questions about municipal courts in Texas. Often an answer that would seem satisfactory in other Texas trial courts falls short because of the subtle nuances in Texas statutory law. As the subject matter of municipal courts continues to evolve, and as the case load of these courts increase, so do the number of people who have questions about the operations of such courts.

What was missing prior to this publication was a book that critically analyzed the nature of municipal courts and the judge's role in the Texas criminal justice system. This publication fills such a gap by providing a primer to judges assuming a municipal bench, as well as a refresher for seasoned judges. The book is also written for the broad array of people interested in Texas municipal courts (e.g., city officials, attorneys, other judges, legislators, educators, students, and the public at large). Just as municipal courts occupy a unique niche in the Texas judicial system, this book is intended to fill a unique niche in terms of the public's understanding of the courts with which most Texans come into contact.

Order copies directly from TMCEC. \$25.00 each plus shipping.

Send order to:

Texas Municipal Courts Education Center 2210 Hancock Drive, Austin, Texas 78701 Fax: (512) 435-6118

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TMCEC MISSION STATEMENT

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

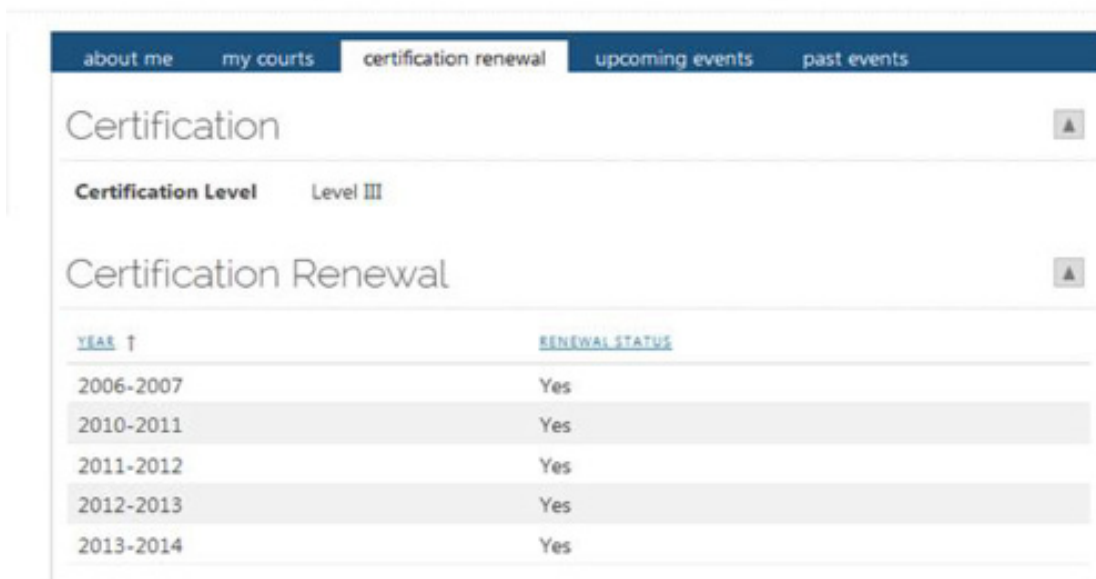
The Recorder is available online at www.tmcec.com. The print version is paid for and mailed to you by TMCA as a membership benefit. Thank you for being a member of TMCA. For more information: www.txmca.com.

Clerks: Verify Your Renewal Status Online

There is now a way for you to verify the status of your Clerk Certification Renewal online!

- Once logged into your online account at register.tmcec.com look for the tab “Certification Renewal.”
- Displayed under the tab is the most current year renewed. For example, if you have already renewed for FY 14 it will say “2013-2014 Yes” (see below for an example).
- If you do not remember your log in information, please contact TMCEC for assistance.

****Emails will no longer be sent out confirming renewals. This will now serve as your confirmation.****



The screenshot shows a web interface with a navigation bar containing tabs: "about me", "my courts", "certification renewal", "upcoming events", and "past events". The "certification renewal" tab is selected. Below the navigation bar, there are two sections: "Certification" and "Certification Renewal". The "Certification" section shows "Certification Level" as "Level III". The "Certification Renewal" section contains a table with two columns: "YEAR ↑" and "RENEWAL STATUS".

YEAR ↑	RENEWAL STATUS
2006-2007	Yes
2010-2011	Yes
2011-2012	Yes
2012-2013	Yes
2013-2014	Yes