


  
**THE** 30<sup>th</sup> YEAR ANNIVERSARY

# RECORDER

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### No Shoes, No Shirts, No *Masks*, No Service? Trespass and Masking in Texas

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Texas is open 100 percent. On March 2, 2021, Governor Greg Abbott issued Executive Order GA-34 reopening Texas businesses at full capacity and lifting the statewide mask mandate.<sup>1</sup> Importantly, the order also included provisions barring “any jurisdiction”—including mayors and county judges—from implementing their own mask rules at a local level. Interestingly, GA-34 also specifies that “nothing in this executive order precludes businesses or other establishments from requiring employees or customers to follow additional hygiene measures, including the wearing of a face covering.”<sup>2</sup>

*Trespass and Masking continued on pg. 8*

### Dazed and Confused: City Limits and County Appellate Jurisdiction

**Robby Chapman**  
 Program Attorney & Deputy Counsel, TMCEC

*Oh, I don't like when you're mystifyin' me*  
*Oh, don't leave me so confused, now*  
 - Jimmy Page, *Dazed and Confused*, Led Zeppelin

Jurisdictional certainty should be a hallmark of a criminal appeal in state court. However, Texas cities straddling multiple

*Dazed and Confused continued on pg. 11*

## **In-Person Education Resumes in August**

TMCEC is happy to announce that after a 15-month hiatus, we will resume in-person events in August. This momentous milestone coincides with our most eagerly anticipated series of events of the year: the 2021 TMCEC Legislative Updates.

Like many of you, we are excited about this announcement. However, as we anticipated, there remain logistical problems. Although hotels are open for business, many are still unable to accommodate the number of people who customarily attend TMCEC events in-person. This means that TMCEC will likely be unable to accommodate everyone who wants to attend in person at a Legislative Update.

It is not just hotel operations and logistical challenges; many cities have declared travel moratoriums and have suspended travel budgets. Because of travel restrictions, individual health concerns, or some other reason, TMCEC understands that there are many different reasons why you may not be ready or able to attend an in-person event this summer.

But we have got a plan. In addition to the four in-person events, TMCEC is happy to announce that the Legislative Update on August 24 will also be a hybrid/cyber-simulcast. TMCEC is committed to making the simulcast a one-of-a-kind and memorable experience.

Online registration is now open for virtual events through the end of July and opens June 1 for in-person events in August. Enrollment for the Legislative Updates is capped at 100 participants. Registration is on a first-come, first-served basis. If you are unable to secure a seat in person, please register for the cyber-simulcast on August 24. We want it to be the biggest TMCEC online event of AY 21.

## **A Different Kind of Stimulus Package**

On April 9, 2021, the TMCEC Board of Directors reduced registration fees to \$50 for all TMCEC events in July and August.

Additionally, the Board authorized financial assistance to all judges and municipal court personnel from now through the end of summer. This means that even if you have already attended training this academic year, if you are a judge, clerk, court administrator, juvenile case manager, or prosecutor and your city does not have adequate training funds to participate in TMCEC summer events, please let us know.

## **Summer Sale on Publications**

Have you visited TMCEC's Online Store? Many publications are currently marked down 75%. The newest edition of *The Municipal Judges Book* is now available as an eBook and on sale for 99 cents. Visit <https://www.tmcec.com/resources/books/the-municipal-judges-book-ebook/> to access links to platforms such as BookBaby and Amazon where the eBook is sold.

We welcome your questions and inquiries. E-mail: [info@tmcec.com](mailto:info@tmcec.com).

Sincerely,

Ryan Kellus Turner  
Executive Director  
Texas Municipal Courts Education Center  
June 2021



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# MASKS & COURTS



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*Editor's Note: This is a companion piece to the cover article, Trespassing and Masks.*

After more than a year of following Governor Abbott's executive orders, abiding the Texas Supreme Court's emergency orders, and operating under guidance from the Office of Court Administration, the Governor's dissolution of the statewide mask mandate raises important questions for courts. Namely, can cities and law enforcement use trespass charges to assist courts with maintaining decorum? Does Governor Abbott's prohibition of any jurisdiction implementing mask rules restrict the ability of courts to require masks to be worn by court participants? What powers can courts use to maintain the safety of personnel, defendants, and the public at large? These are complicated questions. Thoughtful examination may still not provide perfect answers, but contemplating these issues now will help courts navigate problems as they arise.

## **Trespass**

With the revocation of the statewide mask mandate, businesses and cities are looking for new ways to maintain mask wearing and preserve public health. Businesses may easily make use of trespass law to maintain mask wearing. However, the question remains as to what, if any, effect it could have in a municipal court environment.

Cities may run into constitutional issues when they attempt to exclude individuals from public or governmental buildings using criminal trespass.<sup>1</sup> The First Amendment of the U.S. Constitution protects the freedoms of speech, assembly, and the press. These rights became applicable to the states (including municipalities) by the Fourteenth Amendment Due Process Clause.

Free speech protections apply to more than spoken or written words. They also apply to actions that are closely akin to speech, i.e. expressive conduct.<sup>2</sup> During the pandemic, mask wearing has taken on expressive qualities; wearing (or not wearing) a mask often represents one's stance regarding the public health crisis.<sup>3</sup> However, it may not rise to the level of protected speech. While representative, refusing to wear a mask is not the only available channel to communicate one's stance. Cities and courts can ensure that there are clearly available alternative channels to voice opposition to mask regulations. Perhaps this could occur through virtual forums or townhalls, complaint or feedback options on court or governmental websites, or allowing and encouraging communication through social media and designated email addresses. If expression through action as demonstrated by not wearing a mask is ultimately the desired communication, citizens may need to be reminded of places where masks are not required, such as public outdoor spaces.

Even if mask wearing does rise to the level of expressive conduct, the First Amendment does not give citizens the right to exercise free speech rights on any government property at any time.<sup>4</sup> Rather, the protection given



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to speech depends on location. Depending on the forum, the government's interest in limiting the use of its property may outweigh the interests of those wishing to use the property for free expression. Strict scrutiny applies to any attempt to limit public expression at a traditional or designated public forum. But a policy limiting expression at a limited public forum or a nonpublic forum need only be reasonable and viewpoint neutral.

Courtrooms and courthouse lobbies are considered nonpublic forums.<sup>5</sup> As such, government restrictions on expression will be upheld so long as they are reasonable and are not based on the speaker's viewpoint.<sup>6</sup> While requiring masks for court users may point towards a viewpoint-neutral restriction (as it does indeed apply to all regardless of viewpoint) some may argue that it is only a restriction to those that refuse to wear masks as their way to express their opposition to the rule itself. Future case law may have to further enlighten us when a viewpoint and the mode of expression may be very closely intertwined.

These are sticky issues. Before law enforcement wades into the murky waters of trespass by court users, it may be best for courts to utilize other tools to maintain court safety during the pandemic.

## **Emergency Powers**

During a state of disaster declared by the Governor, the Government Code authorizes the Texas Supreme Court to modify or suspend procedures of any court.<sup>7</sup> On March 13, 2020, as COVID-19's presence was being felt throughout the state, with the declared state of disaster as the triggering event enabling their authority, the Supreme Court of Texas and the Texas Court of Criminal Appeals issued the First Emergency Order Regarding the COVID-19 State of Disaster.<sup>8</sup> Emergency Orders have continued throughout the pandemic, and Texas courts are now operating under Emergency Order 36.<sup>9</sup>

The Supreme Court of Texas issued the 36th Emergency Order Regarding the COVID-19 State of Disaster on March 5, 2021. The order states that courts can require or permit anyone to participate remotely, even without a participant's consent. This includes (but is not limited to) a party, attorney, witness, court reporter, grand juror, or petit juror. In fact, the 36th order specifies that courts must do so to avoid risk to court staff, parties, attorneys, jurors, and the public. Moving proceedings online obviates the enforcement issues associated with mask policies and mitigates the dangers posed by unmasked persons.

Additionally, courts should continue to take any reasonable action to avoid exposing court proceedings to the threat of COVID-19. Under Emergency Order 36, this may include requiring social distancing and face coverings over the nose and mouth. Finally, courts now must meet certain in-person requirements for both jury and non-jury proceedings. The Presiding Municipal Judge must consult with other judges in developing minimum standard health protocols for court proceedings as well as for the public attending court proceedings. These standards apply not only in all the courtrooms, but throughout the public areas of court buildings. Minimum standards may include mask wearing.

These orders continue despite the Governor's revocation of the statewide mask mandate. These powers are highly effective for enforcing mask rules. However, they are only available to courts during the pendency of the State of Disaster and could go away at any time.

Courts faced varied and changing restrictions and guidance amidst the ebbs and flows of COVID-19 in Texas. The Office of Court Administration (OCA) has been vital to courts as they navigated the latest executive and emergency orders by providing guidance documents, operating plan templates, webinars, and Zoom accounts for any court in Texas desiring one.<sup>10</sup> Effective March 2021, the latest *Best Practices for All Court Proceedings During COVID-19 Pandemic* from OCA states the following about masks:

- Cloth face coverings, at a minimum, should be required of court participants or individuals planning to enter courtrooms or court-related offices while in the courthouse. Should an individual be in the courthouse for lengthy periods of time, non-medical grade face masks should be considered if they are available.

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- Court participants who may need to lower their face mask to speak or for a short period of time should be required to wear a face shield. When speaking, a court should permit a court participant to lower his or her mask so long as a face shield is worn and the person speaking is immobile.<sup>11</sup>

## **Inherent Powers**

Courts have more lasting powers at their disposal. The law is evident—courts have an inherent power and duty to control proceedings and enforce their own orders. In Chapter 21 of the Government Code pertaining to courts, the very first section specifies that a court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders.<sup>12</sup> Further, a court shall require that proceedings be conducted with dignity and in an expeditious manner and shall control the proceedings so that justice is done.<sup>13</sup>

The power to control the courtroom is often most apparent in matters of decorum. Judges can make rules regarding crude or offensive language, tobacco or cell phone use, the prohibition of carrying guns, and proper dress. If the judge has the power to require parties to wear appropriate clothing, surely that includes the power to require participants to wear a mask. Decorum may be enforced by a posted rule, oral admonishment, or reprimand. With proper notice and signage, judges may enforce mask wearing within the courtroom.

In extreme cases, decorum can be enforced via contempt.<sup>14</sup> Although there is no statutory definition of contempt, common law defines it as conduct that tends to impede the judicial process by disrespectful or uncooperative behavior in open court or by unexcused failure to comply with clear court orders.<sup>15</sup> While the contempt power of the court should be used sparingly, a true risk of COVID-19 exposure by a defendant or a member of the public that disregards or defies the court's carefully developed minimum health standard protocols for court proceedings could rise to the threshold. In a situation where a court participant or observer is disregarding court rules or orders in the presence of the court, and the court has carefully considered all other options and recognizes the behavior is contemptuous, a judge may take the immediate action necessary to quell the disruption or disrespect to allow the proceeding to continue. This is an instance of direct contempt.<sup>16</sup>

## **Scheduling**

Courts also wield the power of the calendar. Each court maintains its own docket laying out the schedule of upcoming proceedings.<sup>17</sup> This power is part of a judge's ministerial duties and is often delegated to court clerks. Courts may use this power to push in-person proceedings down the road until it becomes safer to engage with maskless participants. Waiting out the dangers of the pandemic could moot the mask-wearing issue altogether. However, the power of the calendar is bound by two key constraints: constitutional concerns with the right to a speedy trial and Canon 3B(9) of the Code of Judicial Conduct.

The right to a speedy trial can be found in the Sixth Amendment. Additionally, the right is repeated in Article I, Section 10 of the Texas Constitution. It includes the guarantee that any accused shall have the right to a speedy trial. This is codified in Article 1.05 of the Code of Criminal Procedure. The law does not provide, however, for a firm rule applicable to all cases on when the right to a speedy trial has been violated. Furthermore, the right is not tied to a specific number of days or months.<sup>18</sup> When a speedy trial issue is raised by the defendant, the judge must consider the individual circumstances on a case-by-case basis. It is the responsibility of the State, as well as the court, to make sure that there is a speedy resolution to cases on the docket.<sup>19</sup> Over-crowded trial dockets alone cannot alone justify the diminution of the criminal defendant's right to a speedy trial.<sup>20</sup>

Amidst the extraordinary circumstances of COVID-19, it is important to note that the right to a speedy trial is necessarily relative and depends on these circumstances.<sup>21</sup> Speedy trial claims necessitate a balancing test of four factors: length of delay, the reason for the delay, the defendant's assertion of rights, and prejudice to the defendant.<sup>22</sup> COVID-19 and related emergency orders calling for broad procedural changes as well as temporary restrictions on certain in-person proceedings will contribute significantly to the weighing of both the length of and the reason for many delays. If a right is asserted, a defendant may find it challenging to show prejudice when all court users may be situated similarly.

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Judges and court personnel should additionally be mindful of ethical concerns. Canon 3B(9) of the Texas Code of Judicial Conduct requires judges to be prompt, efficient, and fair in all judicial matters.<sup>23</sup> Case management plays a huge role in this duty. Because justice delayed is justice denied, undue judicial foot-dragging strikes at the very heart of procedural fairness.

## Moving Forward

Time will tell whether this is the beginning of the end or just the end of the beginning with regards to COVID-19. Hopefully, it is the former. Regardless, whether it be pandemic, hurricane, flood, drought, or an unexpected (if not unprecedented) winter storm, states of disaster will come. These states of disaster may lead to changes to public health recommendations and requirements as well as modified and suspended court procedures. Amidst disaster, courts must balance the safety of the courtroom alongside the rights of defendants. Courts must maintain competency in the law but follow necessary and changing procedures that exemplify a rare combination of being both temporary and long-lasting. The source of these changes may come from the Governor, Supreme Court of Texas, or Office of Court Administration. They may be contingent on local health authorities, the Center for Disease Control, and local or state emergency management plans. Perhaps the only certainty is that things will continue to change.

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1. *Sanchez v. City of Austin*, No. A-11-CV-993-LY, 2012 U.S. Dist. LEXIS 190686 (W.D. Tex. 2012).
  2. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969).
  3. Jerry Davich, *Wearing a facial mask in public—or not—is our new culture war controversy*, Chi. Trib. (May 11, 2020) <https://www.chicagotribune.com/suburbs/post-tribune/opinion/ct-ptb-davich-wearing-masks-in-public-culture-war-st-0512-20200511-cdxmeaagurgy3duhzhmahpeya-story.html>.
  4. *Adderley v. State of Florida*, 385 U.S. 39, 47 (1967).
  5. *Berner v. Delahanty*, 129 F.3d 20, 26 (1st Cir. 1997).
  6. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788 (1985).
  7. Tex. Gov't Code § 22.035.
  8. Supreme Court of Texas, *First Emergency Order Regarding the COVID-19 State of Disaster*, Misc. Docket 20-9042 (Joint Order, Texas Court of Criminal Appeals, Misc. Docket 20-007), <https://www.txcourts.gov/media/1447322/sc-20-9042-cca-20-007-1st-emergency-order-regarding-covid-19-state-of-disaster-copy.pdf>.
  9. Supreme Court of Texas, *Thirty-Sixth Emergency Order Regarding the COVID-19 State of Disaster*, Misc. Docket 21-9026, <https://www.txcourts.gov/media/1451833/219026.pdf>.
  10. Texas Office of Court Administration, *Court Coronavirus Information*, [www.txcourts.gov](http://www.txcourts.gov), <https://www.txcourts.gov/court-coronavirus-information/> (last visited May 11, 2021).
  11. Texas Office of Court Administration, *Best Practices for All Court Proceedings During COVID-19 Pandemic (effective March 2021)*, <https://www.txcourts.gov/media/1451876/best-practices-for-court-proceedings-during-covid-march-2021.pdf>.
  12. Tex. Gov't Code § 21.001.
  13. *Id.*
  14. Tex. Gov't Code. § 21.002.
  15. *Ex parte Norton*, 191 S.W.2d 713 (Tex. 1946).
  16. See TMCEC 2020 Bench Book Checklist 14-1 and TMCEC 2020 Forms Book: Judgment of Direct Contempt: Adult.
  17. Tex. Crim. Proc. Code Ann. § 45.017.
  18. *Barker v. Wingo*, 407 U.S. 514, 523 (1972).
  19. *Chapman v. Evans*, 744 S.W.2d 133 (Tex. Crim. App. 1988).
  20. *Id.*
  21. *Beavers v. Haubert*, 198 U.S. 77, 25 S. Ct. 573 (1905).
  22. *Barker v. Wingo*, 407 U.S. 514, 530 (1972).
  23. Tex. Code Jud. Conduct, Canon 3b(9), reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. B.

# NO SHOES, NO SHIRTS, NO MASKS, NO SERVICE?

## Trespass and Masking in Texas

The authority to enforce Governor Abbott's current and former emergency orders (including the original statewide mask mandate included in GA-29) is traced to both Chapter 418 of the Government Code as well as the state Emergency Management Plan. The State of Texas Emergency Management Plan specifies that the governor may issue orders and proclamations to control disasters, and that these orders and proclamations have the force and effect of law.<sup>3</sup> Under the Emergency Management Plan, failure to comply with an executive order issued by the governor during a state of disaster is punishable by a fine not to exceed \$1,000.<sup>4</sup> Prior to the enactment of GA-34, previous emergency orders like GA-29 had provided for criminal penalties to enforce the statewide mask mandate. GA-29 set a lower fine ceiling than the Emergency Management Plan allows by capping the fine at \$250. GA-34 did away with these enforcement measures.

In addition to erasing potential criminal penalties for violations of the mask mandate, the new order also takes traditional local governmental responses to emergencies—like ordinances or local emergency management plans requiring masks—off the table. This move has many local leaders and business owners turning to other methods to enforce mask wearing. For instance, some are looking to trespass law to maintain pandemic protections.

On March 3, 2021, the day after GA-34 was issued, the Manor Police Department issued the following statement:

- Just to provide some clarity for the mask situation where an individual refuses to wear a mask in a place of business. In these circumstances we are usually the first called and with tensions high people are focused on their personal beliefs on wearing a mask.

- Governor Abbott's recent order does "strongly encourage" the wearing of face masks but also removes the mask mandate and reads "no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering."
- This means cities and counties cannot adopt rules or make law[s] to force people to wear masks (with certain exceptions), it does not include businesses making a requirement to enter their store or place of business.
- We all remember "No Shirt, No Shoes, No Service." The same concept applies where a business owner can refuse service if the individual is not complying with the rules set out by the business to protect their employees or customers. The rule is enforced by simply not allowing the individual to remain on the business property. Failure to leave the property upon the request of the owner or representative then leads to a criminal offense of Criminal Trespass.<sup>5</sup>

On the day of GA-34's issuance, Art Acevedo (then Chief of Police for the City of Houston) tweeted the following:

- As a reminder to our fellow Texans, private businesses enjoy property rights and may require folks to wear a mask. Please respect their property rights. If you decline to wear a mask and are asked to leave and refuse, you may be committing the offense of criminal trespass.<sup>6</sup>

With jurisdictions turning to these alternate means to enforce mask wearing, court personnel should be aware of these issues and the enforcement mechanisms that could be employed. The filing of trespass charges may increase, and while these charges will very rarely be in



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municipal court, municipal judges as magistrates will be called upon to determine whether probable cause exists to support the charge and to make bail decisions regarding these arrests.

## **Criminal Trespass**

### *Current Law*

In 1973, the Texas Legislature enacted Section 30.05 of the Texas Penal Code to provide a criminal cause of action for the unauthorized entry onto the property of another. Under 30.05, a person commits an offense if the person enters or remains on or in the property of another without effective consent and the person either had notice that the entry was forbidden or received notice to depart but failed to do so.<sup>7</sup> Criminal trespass is frequently used to compel persons to leave premises where they are unwanted or to criminalize their entry onto property not open to the public.<sup>8</sup>

While an offense under the section is generally a Class B misdemeanor, the statute contains a wide range of punishments based on the type of premises infringed upon. An offense may be a Class C misdemeanor if committed on agricultural land and within 100 feet of the boundary of the land or on residential land and within 100 feet of a protected freshwater area. Moving up the scale of punishment, an offense may be a Class A misdemeanor when committed in a habitation or a shelter center; on a Superfund site; or on or in a critical infrastructure facility.<sup>9</sup>

### *Elements*

Note that the statute does not prescribe a culpable mental state. Under Section 6.02(b) of the Penal Code, if the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. Here, a culpable mental state of intentional, knowing, or reckless is implied by law.<sup>10</sup>

Putting it all together, a person commits criminal trespass if they (1) without effective consent; (2) enter or remain on the property, including an aircraft or other vehicle, or in a building of another; (3) knowingly or intentionally or recklessly; (4) having notice that entry was forbidden or receiving notice to depart but failing to do so.

## **Definitions**

The Trespass statute includes definitions that help build out the boundaries of the elements. “Entry” means the intrusion of the entire body.<sup>11</sup> “Notice” can be achieved in several ways. It can be achieved through oral or written communication by the owner or someone with apparent authority to act for the owner.<sup>12</sup> A sign or signs posted on the property or at the entrance to the building can also give notice if they are reasonably likely to come to the attention of intruders, indicating that entry is forbidden or conditional.<sup>13</sup> In the context of mask rules, a sign on a store front indicating that masks are required for entry would fall under this provision. These definitions show that while a sign may give notice, it is not required for the purpose of giving notice. Once an owner or someone with apparent authority to act for the owner gives notice to a person who enters the premises—asking them to leave or otherwise comply with store rules—if that person remains on the premises, they become a trespasser.

## **Masks and New Implications for Trespass Law**

Property owners may face more trespass incidents as the public grapples with mask rules. Varied guidance and early flip-flopping set the stage for ongoing debate over the efficacy and necessity of public mask wearing. A survey conducted by the Pew Research Center in June 2020 found that about 65 percent of adults said they regularly wore masks in public, 15 percent said they wore masks sometimes, and 20 percent of the people surveyed by Pew said they did not wear masks at all.<sup>14</sup> As the pandemic dragged on, mask wearing took on a more political tone. While many people ardently supported the wearing of masks and believed that any minor inconvenience is significantly outweighed by measurable health benefits, this sentiment was not universally supported. Protests and rallies against masks occurred across the nation.<sup>15</sup> Some people believe that orders to wear masks violate their personal freedom and do not want the government telling them what to do.<sup>16</sup> Others believe the masks do not prevent infections.<sup>17</sup> During the pandemic, mask wearing has also taken on expressive qualities; wearing (or not wearing) a mask often represents one’s stance regarding the public health crisis.<sup>18</sup>

This contention need not influence the courts. Notably absent from the trespass statute is a requirement that

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property owners have a good reason to refuse entry. Trespass law is only concerned with the rights of property owners; namely, the right to exclude. This exclusion right may be curtailed in some circumstances. For example, businesses can arbitrarily exclude members of the public, refusing to allow them to engage in speech on the premises of the business and refusing to sell them goods or services.<sup>19</sup> However, the exclusion may not be based on any of the several grounds specifically proscribed in public accommodation statutes. This includes traditional protected classes like race, gender, national origin, etc.<sup>20</sup> It may also apply to age, sexual orientation, marital status, and disability.<sup>21</sup> Mask wearing has not been addressed by public accommodation statutes.

## Moving Forward

Magistrates and judges face the challenge of focusing solely on the facts of any potential trespassing charge. Some defendants or members of the public may decry trespass charges as criminalizing the refusal to wear a mask, but criminal trespass has been committed if a person remains on the property of another without consent after receiving notice to depart—regardless of reason. We all have seen the signs: “No Shirt. No Shoes. No Service.” Using trespass to preserve property rights is not criminalizing a lack of masks any more than it criminalizes bare feet.

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1. The Governor of the State of Tex., Executive Order GA-34, 46 Tex. Reg. 1567, 1567 (2021), <https://open.texas.gov/uploads/files/organization/opentexas/EO-GA-34-opening-Texas-response-to-COVID-disaster-IMAGE-03-02-2021.pdf>.
  2. *Id.* at Section 4.
  3. Tex. Gov’t Code §418.012; *see also* Texas Division of Emergency Management, State of Texas Emergency Management Plan (Feb. 2020), [https://tdem.texas.gov/wp-content/uploads/2019/08/2020-State-of-Texas-Basic-Plan\\_WEBSITE\\_05\\_07\\_gs.pdf](https://tdem.texas.gov/wp-content/uploads/2019/08/2020-State-of-Texas-Basic-Plan_WEBSITE_05_07_gs.pdf).
  4. *Id.* at 9.
  5. Manor Police Department (@ManorPolice), Facebook (Mar. 3, 2021, 9:54 AM), <https://www.facebook.com/ManorPolice/posts/801201963808714>
  6. Art Acevedo (@ArtAcevedo), Twitter (Mar. 2, 2021, 10:25 PM), <https://twitter.com/ArtAcevedo/status/1366967854491295747>.
  7. Tex. Penal Code §30.05(a).
  8. Gerald S. Reamey, *Criminal Offenses and Defenses in Texas* 110 (The Harrison Company, Publishers (now Thomson/West), 1987; 2d ed. 1993; 3d ed. 2000).
  9. Tex. Penal Code § 30.05(d).
  10. *West v. State*, 572 S. W. 2d 712, 713 (Tex. Crim. App. 1978).
  11. Tex. Penal Code § 30.05(b)(1).
  12. Tex. Penal Code § 30.05(b)(2)(a).
  13. Tex. Penal Code § 30.05(b)(2)(c).
  14. Ruth Igielnik, *Most Americans say they regularly wore a mask in stores in the past month; fewer see others doing it*, PEW Research Center (Jun. 23, 2020) <https://www.pewresearch.org/fact-tank/2020/06/23/most-americans-say-they-regularly-wore-a-mask-in-stores-in-the-past-month-fewer-see-others-doing-it/>.
  15. Matt Cannon, *Police Break-Up Face Mask Protest at Texas Mall, Arrest One Man*, Newsweek, Dec. 29, 2020, <https://www.newsweek.com/police-face-mask-protest-texas-mall-arrest-man-1557770>.
  16. Elisabeth Buchwald, *Why do so many Americans refuse to wear face masks? Politics is part of it — but only part*, MarketWatch, Jun. 28, 2020, <https://www.marketwatch.com/story/why-do-so-many-americans-refuse-to-wear-face-masks-it-may-have-nothing-to-do-with-politics-2020-06-16>.
  17. Denis G. Rancourt, *Masks Don’t Work: A Review of Science Relevant to COVID-19 Social Policy*, River Cities’ Reader, June 11, 2020, <https://www.rcreader.com/commentary/masks-dont-work-covid-a-review-of-science-relevant-to-covide-19-social-policy>.
  18. Jerry Davich, *Wearing a facial mask in public — or not — is our new culture war controversy*, Chi. Trib., May 11, 2020, <https://www.chicagotribune.com/suburbs/post-tribune/opinion/ct-ptb-davich-wearing-masks-in-public-culture-war-st-0512-20200511-cdxmeaagurgy3duhzhmahpeya-story.html>.
  19. Jonathan Gingerich, *Remixing Rawls: Constitutional Cultural Liberties in Liberal Democracies*, 11 Ne. U. L. Rev. 405, 457-58 (2019); Joseph William Singer, *No Right to Exclude: Public Accommodations and Private Property*, 90 Nw. U. L. Rev. 1283, 1291 (1996).
  20. 42 U.S.C.S. § 2000a (LexisNexis, Lexis Advance through Public Law 116-344, approved January 13, 2021, with a gap of Public Law 116-283).
  21. 42 U.S.C.S. § 12181 (LexisNexis, Lexis Advance through Public Law 116-344, approved January 13, 2021, with a gap of Public Law 116-283).



# DAZED AND CONFUSED

## City Limits and County Appellate Jurisdiction

counties face a surprising lack of clarity when it comes to appeals from municipal courts. Finding the right courthouse to file an appeal can become a complicated calculus involving city limits, the location of the offense, and a particular county's interpretation of appellate jurisdiction or limited case law.

### **Hypothetical Appeal Options**

The examples below include three courts of limited jurisdiction that are at the same level in the court system, are hosted by municipalities, share the same type of jurisdiction, and have the same type of judge (either attorney or non-attorney). Nevertheless, three different procedural outcomes to appeal exist.

#### *Location of the Offense*

City A, a large suburb of roughly 150,000, sits in two counties. Most of the city is in one county with a sliver in the second county. Each county follows a process whereby the appeal from the municipal trial court must be heard in the county in which the offense occurred, which is often different from the location of the municipal courthouse where the original trial occurred. Appeals from the municipal court to the court in the first county are heard within City A but appeals to the court in the second county are heard within its county seat, 20 miles away.

#### *Location of the Trial Court*

City B, another suburb located in a different part of the state, also sits in two counties. A court of appeals in that region has determined that appeals from courts in multiple counties go to the county in which the municipal courthouse is physically located. The offense location is not determinative.

#### *The Single Option*

City C, also a suburban court, sits in one very large county. While similar





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to City A and City B in size, case volume, and even offenses filed, every appeal goes to the county court in the same county as the municipal trial court.

## **The Issue: Growing Cities and Existing Statutes**

Municipal court procedure originated when Texas cities were in vast counties and largely confined within the county borders. Just prior to the codification of the Texas Code of Criminal Procedure in 1965, the population of Texas was 9,579,677.<sup>1</sup> The urban sprawl of the second half of the 20th Century doubled that number by the year 2000.<sup>2</sup> Because of this growth and a move toward urbanization in the state, smaller cities may now span more than one county. According to the last census, 72 Texas cities stretched into at least two counties.<sup>3</sup> Twenty-two of those cities had limits extending into three counties,<sup>4</sup> and three extended across four.<sup>5</sup>

### *Non-record Courts*

Despite the rapid growth and change in Texas, the primary statute governing appeals from non-record courts, Article 45.042 of the Code of Criminal Procedure (formerly Article 45.10 from 1965 until 1999), has largely remained unchanged for almost 60 years. It provides, in part, that “appeals from a justice or municipal court... shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court.”<sup>6</sup> The legislative history of Article 45.042 reveals an incredible faithfulness to the language at enactment in 1965, with very little change in keeping with the evolution of Texas.<sup>7</sup> The statute has only been amended twice in 56 years.<sup>8</sup>

### *Courts of Record*

Statutory language regarding appeals from courts of record in the Government Code does not, at first blush, provide much more clarity than the non-record courts statute. It provides that “[t]he county criminal courts or county criminal courts of appeal in the county in which the municipality is located or the municipal courts of appeal have jurisdiction” on appeal.<sup>9</sup> Although Section 30.00014 of the Government Code has been amended six times, the broad language regarding where the “municipality is located” remains substantially similar to the original language used at the statute’s enactment in 1987.<sup>10</sup> Additionally, the definition section in Section 30.00002 of the Government Code does not provide any further elucidation as to the meaning of “located.”

There is some clarification for the 50 cities specifically authorized by the Legislature to establish courts of record in Chapter 30. With some exceptions, each subchapter addressing the court of record in these cities also references the appellate court with jurisdiction.<sup>11</sup> Subchapter UU, for example, tells us that the Town of Westlake is located in Tarrant and Denton counties, but that the term “appellate courts” means the county courts at law of Tarrant County have criminal appellate jurisdiction.<sup>12</sup> Westlake’s next-door neighbor, the Town of Trophy Club, is also situated in both Tarrant and Denton counties, but Subchapter VV gives criminal appellate jurisdiction to Denton County.<sup>13</sup>

The question of appellate jurisdiction may remain, though, for cities that established municipal courts of record by ordinance. Since 1987, state law has allowed any incorporated city to establish a court of record through the enactment of an ordinance in lieu of legislative action amending the Government Code.<sup>14</sup> This path is the one more commonly taken by cities establishing courts of record. In fact, of the 180 total municipal courts of record in the state, 145 were created through local ordinance.<sup>15</sup> It is unknown how many of these 180 cities included language in their enabling ordinance naming the appellate court with appellate jurisdiction. This is less likely in cities that currently sit in only one county. Planning for the possibility of city limits spanning multiple counties, though, may be a best practice when drafting a court of record ordinance, barring any further clarification in state law. This could provide clarity for appellants in cities sitting in more than one county.<sup>16</sup>

### *Case Law*

Regarding appellate procedure for municipal courts hosted by cities sitting in more than one county, two courts of appeal decisions provide some insight. Interestingly, neither of the cases looks at the location of the offense as determinative of appellate jurisdiction (Hypothetical City A above).



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## ***Abouk v. Fuller: Location of Municipal Court Determines Appellate County***

In *Abouk v. Fuller*,<sup>17</sup> an appeal from the Richardson Municipal Court was not accepted by the Dallas County Criminal Court of Appeals No. 2 because the location of the offense as alleged in the complaint was in Collin County. The city limits of Richardson extend into both Dallas County and Collin County, although the municipal courthouse is physically located in Dallas County. The Dallas County Criminal Court of Appeals No. 2 believed that it did not have jurisdiction because the offense occurred in Collin County.

Mr. Abouk sought a writ of mandamus from the 5th Court of Appeals (Dallas) ordering the Dallas County Criminal Court of Appeals No. 2 judge to hear his appeal from the Richardson Municipal Court. However, the 5th Court of Appeals found that the location of the municipal court determined the county with proper appellate jurisdiction. The court reasoned that venue (based on the location of the offense) only applied to the trial court. Even though the appeal was de novo, the county criminal court of appeals in Dallas “was only called upon to exercise appellate jurisdiction” over lower courts in Dallas County.<sup>18</sup>

## ***Scheidt v. State: For Amarillo, the Government Code Specifically Allows Selection of the County***

In *Scheidt v. State*,<sup>19</sup> the 7th Court of Appeals (Amarillo) took a different approach, largely due to the specific language in the statute governing the City of Amarillo in Subchapter Y, Chapter 30 of the Government Code. In *Scheidt*, an appeal from the Amarillo Municipal Court to the Randall County Court at Law was dismissed for lack of jurisdiction. The City of Amarillo sits in both Randall County and Potter County. The municipal courthouse is in Potter County, but the offense in this case occurred in Randall County. If the 7th Court of Appeals had followed *Abouk*, it would have found that the Randall County Court at Law properly dismissed for lack of jurisdiction. According to *Abouk*, even though the offense occurred in Randall County, the location of the municipal court in Potter County would make it the county with proper appellate jurisdiction over the lower court.

However, the 7th Court of Appeals found the Randall County Court at Law erred in dismissing the appeal. This case is distinct from *Abouk* in that Section 30.00931 of the Government Code specifically defines “appellate courts” for the City of Amarillo to mean the county courts at law in either Potter County or Randall County. This permits the appellant to file his appeal in either county.

## **Still Confused?**

The rapid growth of Texas cities is largely viewed as a good thing when it comes to the economic engine that drives the state. When it comes to the state’s municipal courts, however, the expanding territorial limits of these cities can present real issues to court users attempting to exercise their right to appeal a criminal case.

There are three things that we currently know about Texas appellate court jurisdiction when the trial court is a municipal court: (1) if your city is entirely in one county, be thankful (until your city expands); (2) if your city straddles more than one county and is within the jurisdiction of the 5th Court of Appeals (Dallas), there is guidance that an appeal from your court would go to the county in which your courthouse sits (unless your ordinance or statutory enactment creating a court of record provides a different procedure); and (3) if your city is within two or more counties but does not fall within the jurisdiction of the 5th Court of Appeals, no clear guidance may exist. City attorneys and court personnel would be well served by reviewing local ordinances, statutes, and/or research related to common practice in particular counties.

A lack of clarity on an appeal can leave everyone a bit dazed and confused, including the state and individuals bringing the appeal. There are more than 900 municipal courts in Texas, and most users in these courts are self-represented litigants. These issues can and should be resolved and clarified by the Texas Legislature.

1. U.S. Census Bureau, *Number of Inhabitants Texas*, Population Volume, 1960 Decennial Census, 45-1 – 45-52 (1961), <https://www2.census.gov/library/publications/decennial/1960/population-volume-1/33255142v1p45ch02.pdf>
2. The 2000 decennial census lists 20,851,820 as the total population of Texas. U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, *Texas Census 2000 Profile*, U.S. Census 2000, <https://www.census.gov/prod/2002pubs/c2kprof00-tx.pdf>. For an overview of post-war trends in Texas, see also Texas State Historical Association, *Texas Post World War II*, Handbook of Texas Digital Encyclopedia, <https://www.tshaonline.org/handbook/entries/texas-post-world-war-ii> (last visited April 29, 2021).
3. Texas Health and Human Services, Texas Department of State Health Services, *Vital Statistics Annual Report, Table 46*, Texas Cities Located in More than One County Based on the 2010 Census, <https://www.dshs.texas.gov/chs/vstat/vs14/t46.aspx> (last visited April 1, 2021).
4. *Id.*
5. *Id.* The three cities are Corpus Christi, Dallas, and Fort Worth.
6. Tex. Crim. Proc. Code Ann. art. 45.042.
7. *Id.* Article 45.042 (renumbered from Article 45.10 in 1999), as enacted, originally read: Appeals from a corporation court shall be heard by the county court, except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. In such appeals the trial shall be de novo. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, as far as applicable. Act effective January 1, 1966, 59th Leg., R.S., ch. 722, § 1, 1965 Tex. Gen. Laws 317, 522 (codified at Tex. Crim. Proc. Code Ann. art. 45.10).
8. *Id.* The first change to the 1965 version of the statute simply updated the language referring to municipal courts, removing the term “corporation court.” Act effective September 1, 1987, 70th Leg., R.S., ch. 641, § 4, 1987 Tex. Gen. Laws 2439, 2440 (codified at Tex. Crim. Proc. Code Ann. art. 45.10). The second and last amendment in 1999 made non-substantive changes to renumber the code, but also removed the following clarifying language: “that appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court.” Act of May 31, 1999, 76th Leg., R.S., ch. 1545, § 40, 1999 Tex. Gen. Laws 5314, 5321 (codified at Tex. Crim. Proc. Code Ann. art. 45.042). Had it been left in, that language may have helped clarify current appeals venues for courts in multiple-county cities.
9. Tex. Gov’t Code Ann. § 30.00014.
10. *Id.* The initial court of record appeals section, numbered as Section 30.493, originally read: “The county court at law in the county in which the city is located have jurisdiction of appeals from a municipal court of record. If there is no county court at law in the county, the county court has jurisdiction of an appeal.” Act effective August 31, 1987, 70th Leg., R.S., ch. 811, § 1, 1987 Tex. Gen. Laws 2809, 2812 (codified at Tex. Gov’t Code § 30.493).
11. *Id.* An exception is Subchapter MM (Bullard), which is silent on appellate court jurisdiction.
12. Tex. Gov’t Code Ann. § 30.01781.
13. Tex. Gov’t Code Ann. § 30.01811.
14. Tex. Gov’t Code Ann. § 30.00003.
15. See Texas Municipal Courts Education Center, *Courts of Record, More Resources*, [https://www.tmcec.com/more-resources/courts\\_of\\_record/](https://www.tmcec.com/more-resources/courts_of_record/) (last visited April 15, 2021); see also Texas Office of Court Administration, *Municipal Courts*, State of Texas Judicial Branch (April 2020), <https://www.txcourts.gov/media/1448100/municipal-courts-of-record-april-2020.xlsx>. These lists provide a general picture of courts of record in Texas. Please note that the OCA data, like the TMCEC data listing courts of record, is self-reported. TMCEC only lists courts of record updated on a rolling basis of self-reporting. OCA includes all 945 existing municipal courts as of April 2020. Of these, 145 courts are reported as courts of record by local ordinance, 43 are reported as courts of record through state legislative enactment, and most of the remainder are reported as non-record courts. However, 41 courts provided “no response” regarding the court’s status.
16. The City of Baytown, for example, sits in both Harris and Chambers counties. The city’s court of record ordinance clearly gives Harris County jurisdiction of appeals from the court of record: “The appropriate county court of Harris County, Texas, shall have jurisdiction of appeals from the court.” Baytown, Tex., City Code § 60-52; Ordinance 11,746, § 2, (Sept. 22, 2011).
17. *Abouk v. Fuller*, 738 S.W.2d 297 (Tex. App.—Dallas 1987, no pet.).
18. *Id.* at 299.
19. *Scheidt v. State*, 101 S.W.3d 798 (Tex. App.—Amarillo 2003, no pet.).

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# RESOURCES FOR YOUR COURT

TMCEC, through its TxDOT-funded traffic safety grants, offers Information Sheets for use in conjunction with traffic safety education. These free Information Sheets are available at <https://www.tmcec.com/mtsi/resources-municipal-courts/>. Contact Ned Minevitz at [ned@tmcec.com](mailto:ned@tmcec.com) or (512) 320-8274 for more information. Below are selected excerpts from the *Marijuana and Driving* Information Sheet.



## JUST THE FACTS

- Marijuana has a negative effect on one's judgment, reaction time, and coordination.<sup>1</sup>
- Studies have indicated a direct relationship between THC (the active component of marijuana) in the blood and impaired driving.<sup>2</sup> More specifically, a meta-analysis of studies related to the effect marijuana use has on driving concluded that marijuana use almost doubles the risk of being involved in an automobile crash.<sup>3</sup>
- Recreational use of marijuana has recently been legalized for adults in states such as Colorado, Massachusetts, and Washington. Just because it may be legal in certain jurisdictions does not make it safe. It is well known that even though alcohol is legal for adults 21 years old or older, drinking and driving is extremely dangerous. Marijuana is no different.

## IT'S THE LAW

- Drivers of any age can be charged with a Driving While Intoxicated (DWI) offense for driving under the influence of marijuana under Section 49.01 of the Texas Penal Code.

# MARIJUANA AND DRIVING

## Keep It Safe

Responsible drivers should remember:

- Do not use marijuana. It is illegal in Texas and can be extremely dangerous – or even deadly.
- Never drive a vehicle under the influence of marijuana, even if you are in a state where marijuana is legal.
- Never ride in a vehicle where the driver is or may be under the influence of marijuana, even if you are in a state where marijuana is legal.
- Do not assume that you are less likely to get in legal trouble for driving while under the influence of marijuana than driving under the influence of alcohol. Law enforcement is becoming increasingly skillful in identifying indicators of drug use by motorists. Many officers are even designated as “drug recognition experts” if they have received specialized training in identifying and testing for marijuana and other drugs.

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• “Intoxicated” means that one does not have “normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance...[or] a drug.”<sup>4</sup>

• If a person receives a DWI in Texas for driving while under the influence of marijuana, the penalties for a first offense might include:

1. A fine up to \$2,000;<sup>5</sup>
2. Up to 180 days in jail; and/or<sup>6</sup>
3. A license suspension for up to one year.<sup>7</sup>

• Marijuana is illegal in Texas.<sup>8</sup> Thus, there is not an amount of marijuana that one can legally have in his or her system while driving in Texas – any amount is illegal for drivers of all ages.

- 
1. National Institute on Drug Abuse, Marijuana Research Report: Does Marijuana Use Affect Driving (July 2020), <https://www.drugabuse.gov/publications/research-reports/marijuana/does-marijuana-use-affect-driving>.
  2. *Id.*
  3. National Institute on Drug Abuse, Drugged Driving DrugFacts (December 31, 2019), <https://www.drugabuse.gov/publications/drugfacts/drugged-driving>.
  4. Tex. Penal Code Ann. § 49.01.
  5. Tex. Penal Code Ann. § 12.22(1).
  6. Tex. Penal Code Ann. § 12.22(2).
  7. Tex. Transp. Code § 524.022(a)(2).
  8. Tex. Health & Safety Code § 481.121.

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# CONGRATULATIONS TO THE 2021 MTSI TRAFFIC SAFETY AWARD WINNERS!



These courts went the extra mile to promote traffic safety in their cities:

**Low Volume:** Alvin, Columbus, Freer, Harker Heights, Lakeway, Melissa

**Medium Volume:** College Station, Conroe, La Porte, Mesquite

**High Volume:** Arlington, Austin, El Paso, Houston, Irving

**New Applicant:** Odessa, Victoria

Despite the COVID-19 pandemic, cities across Texas were able to conduct meaningful traffic safety outreach in their communities. The 2021 MTSI Traffic Safety Award winners were recognized on March 30, 2021 at the Virtual Municipal Traffic Safety Initiatives Conference. For more information and to apply for a 2022 award, visit <https://www.tmcec.com/mtsi/mtsi-awards/>.



MUNICIPAL TRAFFIC SAFETY  
INITIATIVES



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# USING DRSR CHILDREN'S BOOKS TO HELP SAVE LIVES

## Reaching Out to Schools Virtually

Elizabeth De La Garza | TxDOT Grant Administrator, TMCEC

Driving on the Right Side of the Road (DRSR) encourages courts to reach out to their community's schools! Courts can do this by visiting their local school or having students make a field trip to the municipal court! DRSR has created materials to assist in this outreach including lessons that teach traffic safety, children's books, and other traffic safety education resources. All these materials are available to courts free of charge thanks to our generous TxDOT grant.

Due to the worldwide COVID-19 pandemic, courts are finding these outreach programs may only be possible in a virtual format. DRSR children's books are an easy way to provide this important traffic safety education without risking in-person visits by students. Available in English, Spanish, big book, PowerPoint, and flip book formats, taking part in a children's book reading is easily done using both hard copies and virtual copies of the book available through DRSR and on the DRSR webpage.

### Available Titles Include

#### Don't Monkey Around with Safety on Field Trips

Marigold learns about traffic safety when her class goes on a field trip to a local museum. Students in the story are asked to sign a contract for safe behavior. An unexpected occurrence (losing a hair ribbon) reminds Marigold of the importance of asking adults for assistance.

Spanish version: *No Hagas Payasadas Durante Paseos Escolares: La Seguridad No Es un Juego*

#### Safe-T-Squad

Students form a club when they realize there is a lot of unsafe behavior on campus. They become so aware of safe and unsafe behavior at their school that at the end they realize that even adults need reminders.

Spanish version: *El Esquadron de Seguridad*

#### Don't Monkey Around with Safety in a Car

Marigold learns about not distracting her parents as they drive as well as not driving under the influence of alcohol.

Spanish version: *No Juegues con la Seguridad en un Carro*

#### Be Careful, Lulu!

Lulu's uncle explains to her to be careful, especially in cars, when bicycling, and when skateboarding.

Spanish version: *Ten Cuidado, Lulú*

#### Safe Not Sorry (Sticker Book)

The characters in this book learn valuable safety rules concerning riding in cars, riding in school buses, riding bicycles, walking, and playing in the neighborhood. Students may place "yes" or "no" stickers on safe or unsafe practices throughout the book. Other various traffic safety stickers included.

Spanish version: *Actúa Seguro Sin Arrepentirse*

#### Don't Monkey Around with Safety in Your Neighborhood

Marigold and her brother Milton have a fun day playing in their neighborhood while following the rules of

safety taught to them by their parents.

Spanish version: *No Juegues con la Seguridad en Tu Comunidad*

## Don't Monkey Around with Safety on Your Bicycle

Marigold learns the rules and responsibilities that come with her new bike. The book is supported by a bike safety poster.

Spanish version: *No Juegues con la Seguridad al Pasear en Bicicleta*

The PowerPoint and flip-book versions available on the TMCEC/DRSR website (<http://www.tmcec.com/drsr/educators/childrens-books/>) are also accompanied by lessons written by classroom teachers! These lessons are written so that educators and non-educators can both use them. Using the lessons after reading the books out loud with the students helps to check for understanding and reinforce the important safety lessons contained within each of the books.



### Children's Books

TMCEC has developed seven traffic safety books for kids. You can listen to the books in English or Spanish and view the books using the PowerPoint files below. To order free copies of the books, please email [elizabeth@tmcec.com](mailto:elizabeth@tmcec.com) or download, fill out, and submit the order form! Please allow 4-6 weeks for delivery.



English MP3

English PowerPoint

English Online Flipbook

Lesson for grades Kinder through 2

Lesson for grades 3 through 5



Spanish MP3

Spanish PowerPoint

Spanish Online Flipbook



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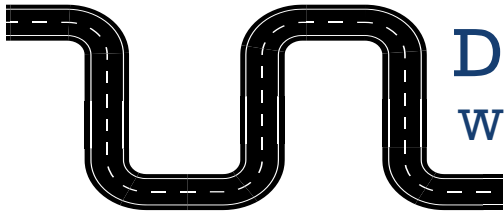
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  - Lessons and Curriculum
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  - Traffic Safety Resources
- Judges and Clerks
- Materials Request Forms
- Project Update

#### Announcements

- THE TMCEC SUMMER SCHEDULE HAS ARRIVED!
- The Brief – April 2021 Edition
- TMCEC's March 2021 issue of The Recorder
- 2021 MTSI Award Results
- 2021 Virtual Prosecutors Conferences

Using the PowerPoint, a judge or clerk can easily read along with students while presenting virtually. The PowerPoints, which are read in English and Spanish, are a great way to share the books with students who are visiting courts in person and virtually. DRSR can send the books directly to the school that is visiting. This way each student can follow along with the reading using their own book that they can also take home as their own! At the end of each page, or small section of the book, it is always a good idea to stop the PowerPoint, or pause in the reading of the book, and check for understanding.

A lesson to use with the *Don't Monkey Around with Safety in Your Neighborhood* book for grades 3 through 5 is replicated on the next page of this edition of *The Recorder*. It is a good representation of most of the lessons that are written for all the DRSR children's books. If you and your court decide that the time is right for a school outreach program (either virtual, hybrid, or in-person), please contact DRSR ([elizabeth@tmcec.com](mailto:elizabeth@tmcec.com)) for materials and help with any aspect of your outreach, including help with the book lessons.



# DON'T MONKEY AROUND WITH SAFETY IN YOUR NEIGHBORHOOD LESSON PLAN (3-5)

## Learning Objectives

### **Students will:**

1. Understand the importance of neighborhood safety rules.
2. Listen critically to interpret and evaluate.
3. Participate in class discussion.

## TEKS:

**SS:** 3.11C, 3.12B, 3.17ACE, 3.18AB, 3.19AB;  
4.21BCD, 4.22ABCDE, 4.23AB; 5.24BCD,  
5.25ABCDE, 5.26AB

**ELAR:** 3.2ABC, 3.5AB, 3.8AB, 3.10A, 3.13ABC,  
3.19, 3.23ABCD, 3.26C, 3.31; 4.3A, 4.6B, 4.7, 4.11A,  
4.13B, 4.17, 4.18C, 4.24C, 4.27AB, 4.28; 5.6C, 5.17,  
5.23AB, 5.28, 5.29

**HEALTH:** 3.2A, 3.8B, 3.9A, 3.11ACDE; 4.4F, 4.11E;  
5.5EFG, 5.8BC, 5.9C

**MATERIALS NEEDED:** *Don't Monkey Around With Safety in Your Neighborhood* book, various materials from the classroom to create props, paper

**RESOURCES:** DRSR Children's Books website, DRSR Education Publications and Lessons website

**VOCABULARY:** safe, helmet, signal, crosswalk

## Teaching Strategy

- You can order the DRSR books and the Our Town Community map in color on the DRSR website for FREE.
- This would be a great story to use for shared and modeled reading. You can project the book on the screen.
- You might consider having students reread the story during teacher-assigned station time. Provide questions for students to find text evidence at the station. Students can also write/draw cause and effect statements about safety tips for their neighborhood.
- Other DRSR Children's Books would make great read-alouds.

## Teaching Tips

1. Ask students "What are some things you do in your neighborhood?" (play with friends, work in the yard, ride my bike, etc). Have a class discussion about different activities the students enjoy in the neighborhood.
2. In groups of 3-4 kids, create a list of ways to stay safe doing those activities. Each group should brainstorm ways they know of to stay safe in the neighborhood. Have each group share with the class. Students can show their list in any way, allow choice in organizing their thoughts.
3. Share with students that you are going to read a book titled *Don't Monkey Around With Safety in Your Neighborhood*. Show the cover. Have students predict what it might be about. Have them explain their predictions.
4. As we read, we will see Marigold and Milton explore their neighborhood. We will add their neighborhood activities to our class list as we read. **TEACHER NOTE:** remind students to add to their lists as we hear new activities or ways to stay safe.
5. When you finish the book, ask students "Why is it important to be safe in our neighborhood?" Discuss cause and effect of activities on their lists. Ask questions such as:
  - "What would happen if..."
  - "How could we make sure this activity was safe?"
6. Have each group choose one activity from their list to act out. They should create a short skit including the chosen activity and how to make sure to stay safe. Any props should be made from materials they have at hand in the classroom.
7. Each group will act out their skit. Allow the students to ask each group questions about their skit. The class can talk about what could happen if they didn't use safety in their activity. Remind students to stay safe while having fun!!



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### 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.

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