

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**1. General Procedures**

Checklist 13-1	Script/Notes
<p><input type="checkbox"/> 1. If the defendant does not appear as required, see Checklist 13-17.</p> <p><input type="checkbox"/> 2. If the defendant appears, determine age of offender at the time of the offense.</p> <p><input type="checkbox"/> a. Generally, a municipal court has jurisdiction over a person between 10 years of age and under 17 years of age for the following offenses:</p> <p>(1) Certain traffic offenses;</p> <p>(2) Status Alcoholic Beverage Code offenses;</p> <p>(3) Certain Education Code offenses;</p>	<p>A student required to make a court appearance, including days absent from school due to traveling, receives an excused absence from school. Sec. 25.087, E.C.</p> <p>Secs. 51.02(2)(A) and 51.03(f), F.C., and Sec. 8.07, P.C.</p> <p>A “status” offender is a child who is accused, adjudicated, or convicted of conduct that would not, under state law, be a crime if committed by an adult. Sec. 51.02(15), F.C.</p> <p>H.B. 2398 (84th Legislature) repealed Failure to Attend School and designated justice, municipal, and certain county courts as truancy courts, having original, exclusive jurisdiction over allegations of truant conduct, handled as civil cases under Title 3A of the Family Code. See <i>Texas Truancy Resource Manual</i>.</p>

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| <p>(4) Class C misdemeanors in the Penal Code;</p> <p>(5) Status tobacco offenses in the Health and Safety Code; and</p> <p>(6) Other fine-only offenses.</p> <p><input type="checkbox"/> b. A person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing a fine-only offense under state law or local ordinance, other than a juvenile curfew or traffic offense.</p> <p><input type="checkbox"/> (1) The presumption may be refuted if the prosecution proves to the court by a preponderance of the evidence that the child had sufficient capacity to understand that the conduct was wrong at the time.</p> <p><input type="checkbox"/> (2) The prosecution is not required to prove that the child knew that the act was a crime or knew the legal consequences of the offense.</p> <p><input type="checkbox"/> c. Under the Transportation Code, a “minor” is a person who is younger than 17 years of age.</p> <p><input type="checkbox"/> d. Under the Alcoholic Beverage Code, a “minor” is a person under 21 years of age.</p> <p><input type="checkbox"/> e. Municipal courts do have jurisdiction of public intoxication of children.</p> <p>A defendant younger than age 21 is subject to the penalties in Section 106.071, A.B.C.</p> | <p>Effective September 1, 2011, juveniles younger than 12 may not be charged criminally for most types of Disorderly Conduct offenses occurring at a public school campus (involving language, gestures, odors, noise, and fights). Sec. 42.01., P.C.</p> <p>Sec. 8.07(d), P.C.</p> <p>Sec. 729.001, T.C.<br/>See Checklists 13-3 and 13-4 for a listing of traffic offenses and penalties.</p> <p>Sec. 106.01, A.B.C.<br/>See Checklists 13-6, 13-7, and 13-16 for a listing of Alcoholic Beverage Code offenses and penalties.</p> <p>Sec. 49.02(e), P.C.<br/>See Checklist 13-6.</p> |
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| <p><input type="checkbox"/> f. For purposes of status tobacco offenses, a “minor” is an individual under 21 years of age.</p>   | <p>Sec. 161.252(a), H.S.C.<br/>See Checklists 13-8 and 13-9 for a listing of status tobacco offenses and penalties.</p>  |
| <p><input type="checkbox"/> g. For purposes of all other offenses, a child is a person who is at least age 10 and under the age of 17.</p>  | <p>Sec. 51.02(2), F.C.<br/>Municipal court has jurisdiction only if the child is at least 10 years of age.</p>   |
| <p><input type="checkbox"/> 3. Court determines if there is probable cause to believe that a child, including a child with mental illness or developmental disability:</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. Lacks the capacity to understand the proceedings or to assist in their own defense and is unfit to proceed; or</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. Lacks substantial capacity either to appreciate the wrongfulness of the child’s own conduct or to conform their conduct to the requirements of the law.</p> | <p>Sec. 8.08, P.C.</p>   |
| <p><input type="checkbox"/> 4. If court determines that probable cause exists under step 3 above, the court may dismiss the complaint after giving notice to the prosecution.</p>   | <p>The prosecution has the right to appeal such determinations. Art. 44.01, C.C.P.</p>   |
| <p><input type="checkbox"/> 5. Court determines whether to retain jurisdiction or to transfer a case involving a child under the age of 17 to the juvenile court.</p>   | <p>See Checklist 13-2.<br/>The court may not transfer a traffic offense or a tobacco offense involving persons under the age of 17.</p>                          |
| <p><input type="checkbox"/> 6. If the court does not waive jurisdiction, the court proceeds.</p>  |  |
| <p><input type="checkbox"/> 7. Determine if parent(s) is present. (Parent’s presence required for all proceedings if the child or minor is under the age of 17 and for a 17-year-old defendant charged with a sexting offense under Section 43.261, P.C.)</p>   | <p>Art. 45.0215, C.C.P.<br/><br/>“Parent” includes a person standing in parental relation, a managing conservator, or a custodian. Art. 45.057(a)(3), C.C.P.</p> |

- ❑ 8. If the parent does not appear, determine if the parent(s) has been served with a summons. If not, reset the case.
  - ❑ a. The court must summon the parent(s) to appear in open court with his or her child (a person under the age of 17 or a 17-year-old charged with a sexting offense under Section 43.261, P.C.).
  - ❑ b. If the parent(s) has been served with a summons but failed to appear, the court may waive the requirement of the presence of the parents, guardian, or managing conservator if, after diligent effort, the court cannot locate them or compel their presence.

Marriage removes the disability of minority. Thus, the parents of defendants who are younger than 17 years of age and who are married need not be summoned. Sec. 1.104, F.C.

Art. 45.0215, C.C.P.

If the court waives this requirement, it is advisable to document what action the court employed to compel the parent's presence in the offender's file. If the parent, guardian, or managing conservator fails to respond to the summons, it is punishable as a Class C misdemeanor. Art. 45.057(g), C.C.P.

- 9. Notify parent and child in writing of their continuing obligation to give written notice of current address. The court should provide a copy of Article 45.057(h) and (i), C.C.P., to child and parent.

Art. 45.057, C.C.P.

“Here is a copy of the law requiring you and your parent to give notice of your current address. If you fail to give this court written notice of your current address or if you move and fail to give written notice of your current address within seven days after moving, you and your parent(s) could be charged with a Class C misdemeanor that has a maximum penalty of \$500.”

Art. 45.057(h), C.C.P. A child and parent required to appear before the court have an obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt.

Art. 45.057(i), C.C.P. If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice under Subsection (h) to the appellate court.

- 10. Make notes on child’s sophistication and maturity and file notes with case.
  
- 11. If an attorney appears without the child or the child’s parent(s), reset the case.
  
- 12. If the child does not appear with an attorney, determine whether the child or child’s parent(s) is intending to hire an attorney.
  - a. If an attorney is going to be hired, reset the case and inform the child and parent or guardian to have the attorney present for the date and time in which the case is rescheduled.
  
  - b. Provide the specific:
    - (1) Date;
    - (2) Place; and
    - (3) Time of the resetting.
  
  - c. If an attorney is not going to be hired, proceed.
  
- 13. Explain the child’s rights, charge(s), pleas, and penalties. Make sure that child understands consequences of each plea.

Article 45.045, C.C.P., requires the court to consider the defendant’s sophistication and maturity before issuing a *capias pro fine* for the defendant when the defendant reaches age 17. This might be the only time that the court has to determine that information. See Checklist 13-21 Children Now Adults Who Fail to Pay.

Art. 45.0215, C.C.P.  
 “The law requires that a child and his or her parents must personally be present in open court before the court can proceed with the child’s case. Therefore, I am resetting this case.”

See Checklist 3-2 for explaining the defendant’s right to counsel.

“At your next court date and at any subsequent court appearances, you and your parent(s) must still appear even though you will be represented by an attorney.” Art. 45.0215, C.C.P.

See Checklists 3-2 and 4-1 for rights and pleas; see Checklists 13-3, 13-5, 13-6, 13-8, and 13-13 for information on charges and penalties for each code.

- 14. In addition to the rights in Checklists 3-2 and 4-1, if the offense is a fine-only misdemeanor penal offense (includes Penal Code offenses, penal ordinance offenses, and Education Code offenses the court must:
  - a. Notify the parent and child of the child’s right to an expunction at the commencement of the proceedings; and
  - b. Give both the parent and child a copy of the expunction statute, Article 45.0216, C.C.P.
  
- 15. Request a plea.
  
- 16. On a plea of not guilty, determine whether the defendant wants to:
  - a. Waive a jury trial and proceed with a non-jury trial; or
  - b. Exercise his or her right to a trial by jury.
  - c. Set the case according to the juvenile offender’s request.
  - d. Set bail, if applicable.
  - e. Inform both the defendant and his or her parent or guardian of the date, time, and place of the trial.
  
- 17. On a plea of “guilty” or “no contest,” inform the defendant and his or her parent or guardian of the possible options to dispose of the case:
  - a. Driving safety course, if applicable.
  - b. Teen court, if applicable.

See Checklist 13-22.

“You have the right to have the offense of \_\_\_\_\_ expunged.

Here is a copy of the law regarding your right to expunction. Please take time to read this information.”

See Chapter 5 on taking pleas.

“How do you plead to the charge of \_\_\_\_\_ brought against you? ‘Guilty,’ ‘No Contest,’ or ‘Not Guilty’?”

All trials are to be open to the public. Art. 1.24, C.C.P.

See Chapters 6 and 7 for pretrial and trial procedures.

If the trial date is not known at the time of plea, tell the defendant and parent or guardian that notice is coming. Verify the juvenile’s address at this time.

See Checklist 5-1.

Art. 45.052, C.C.P.

- c. Deferred disposition, if applicable.
  
- 18. Set the fine and impose any required sanctions. The court may require rehabilitative sanctions under Article 45.057, C.C.P. See Checklist 13-16 for imposing those sanctions.
  
  
  
  
  
  
  
  
  
- 19. Unless the defendant is under the conservatorship of the Department of Family and Protective Services or in extended foster care, you may allow a defendant who is a child to elect at the time of conviction to discharge the fine and costs by:
  - a. Performing community service or receiving tutoring under Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011; or
  - b. Paying the fine and costs.
  
- 20. If you do not allow election by the child, determine how you would like the fine to be discharged. It can be discharged by:
  - a. Payment (unless the defendant is under the conservatorship of the Department of Family and Protective Services or in extended foster care);
  - b. By performing community service, if eligible, under Article 45.049, C.C.P., if:

See Checklist 8-2.  
See Checklist 8-1 for sentencing.

“The fine is set in the amount of \$\_\_\_\_\_. In addition to the fine, you must pay court costs.”

For Alcoholic Beverage Code offenses, see Checklist 13-7 for information on required sanctions.

For tobacco offenses, see Checklist 13-9 for information on required sanctions.

For additional sanctions that the court might also impose upon conviction for any offense, see Checklist 13-16.

Art. 45.041(b-3), C.C.P.  
Effective Sept. 1, 2021, a defendant in conservatorship or extended foster care may not be ordered to pay the fine and costs but may be required to discharge by community service as provided by Art. 45.049 or 45.0492, C.C.P.  
Art 45.041(b-6), C.C.P.

Art. 45.041(b-6), C.C.P.

See Checklist 8-3 for indigent hearings.



(1) Defendant failed to pay previously assessed fine or cost; or

(2) Defendant is determined by the court to have insufficient resources or income to pay fine or costs.

- c. By performing community service, if defendant is younger than 17 years, under Article 45.0492, C.C.P.;
- d. By performing tutoring, if defendant is younger than 17 years of age and the criminal offense occurred in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense, under Article 45.0492, C.C.P.; or
- e. Through a combination of the alternatives described above.

Art. 45.049, C.C.P.

“If you do not have the resources to pay the fine and costs, you may perform community service for a governmental entity or a non-profit organization to discharge payment of your fine and costs.”

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**2. Waiver of Municipal Court Jurisdiction and Transfer of Child to Juvenile Court**

It would be prudent for the municipal judge and other interested officials to meet with the juvenile court judge in their respective jurisdiction to devise a system of transfer that is acceptable to both courts.

<b>Checklist 13-2</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. If the court decides to waive jurisdiction, see the following information:</p> <p><input type="checkbox"/> a. A municipal court may enter an “order of waiver of jurisdiction” and transfer the juvenile defendant to juvenile court whenever a complaint is pending against a juvenile for any fine-only offense other than a traffic offense, or a tobacco offense under Section 161.252, H.S.C. This is called discretionary transfer.</p> <p><input type="checkbox"/> b. A municipal court shall enter an “order of waiver of jurisdiction” and transfer the juvenile defendant to juvenile court if the complaint pending alleges a violation of Section 43.261, P.C., that is punishable by fine-only (e.g., “sexting”).</p> <p><input type="checkbox"/> c. A municipal court shall enter an “order of waiver of jurisdiction” and transfer the juvenile defendant to juvenile court if the municipal court or another court has previously dismissed a complaint against the child under Section 8.08, P.C.</p> <p><input type="checkbox"/> d. A municipal court shall enter an “order of waiver of jurisdiction” and transfer the juvenile defendant to juvenile court when the juvenile has previously been convicted of:</p> <p><input type="checkbox"/> (1) Two or more misdemeanors punishable by fine-only other than traffic or tobacco;</p>	<p>Sec. 51.08(b)(2), F.C. Sec. 161.257, H.S.C.</p> <p>Sexting offenses alleged against a child must be transferred to juvenile court. Municipal courts may only see a defendant age 17 for a sexting offense.</p> <p>Sec. 51.08(f), F.C. Section 8.08, P.C., allows a court to dismiss a complaint if probable cause exists to believe that the child lacked sufficient capacity to proceed in the trial or to appreciate the wrongfulness of the child’s action.</p> <p>If court is waiving because of two prior convictions, include information on prior convictions in waiver notice.</p> <p>Sec. 161.257, H.S.C. Sec. 51.08(b)(1), F.C.</p>

(2) Two or more violations of a penal ordinance of a political subdivision other than a traffic; or

(3) One or more of each of the types of misdemeanors described above.

This is called mandatory transfer.

2. A municipal court may elect not to enter an “order of waiver of jurisdiction” for a third or other subsequent violation if the court employs a juvenile case manager under Article 45.056, C.C.P.

Sec. 51.08(d), F.C.

3. Notice to Juvenile Court

Sec. 51.08(c), F.C.

a. A municipal court is required to notify the juvenile court of any pending complaint against a juvenile in which jurisdiction is not waived except for:

A letter addressed to the juvenile court judge or the appropriate designee of the juvenile court should contain the following information:

- 1) Name of the court;
- 2) Name of the defendant;
- 3) Name of the judge;
- 4) Offense charged; and
- 5) Cause number assigned to the case.

See *TMCEC 2022 Forms Book*:  
Report to Juvenile Court of  
Complaint Filed.

(1) A traffic offense; or

(2) A tobacco offense committed by a person under the age of 17.

b. In addition, the municipal court must furnish the juvenile court with notice of the final disposition of the cases in which the municipal court retained jurisdiction.

Sec. 51.08(c), F.C.

## CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

### Traffic and Other Motor Vehicle Misdemeanors

Section 729.001, T.C., provides that Chapter 729 applies to a person who is under the age of 17. Municipal courts may not waive jurisdiction over traffic offenses committed by a person under age 17 regardless of the number of convictions for fine-only traffic offenses. Sec. 51.08, F.C.

#### 3. Offenses

<b>Checklist 13-3</b>	<b>Script/Notes</b>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.</li> <li><input type="checkbox"/> 2. Identify the traffic law that is alleged to have been violated.</li> <li><input type="checkbox"/> 3. A person under the age of 17 may be charged with the following traffic offenses:               <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Chapter 502, T.C., (Registration of Vehicles) other than an offense under Sec. 502.412;</li> <li><input type="checkbox"/> b. Chapter 521, T.C., (Driver’s Licenses and Certificates) other than an offense under Sec. 521.457;</li> <li><input type="checkbox"/> c. Transportation Code Chapters 541-600, Subtitle C (Rules of the Road), other than an offense punishable by imprisonment or confinement in jail under Secs. 550.021, 550.022, 550.024, and 550.025, T.C.;</li> <li><input type="checkbox"/> d. Chapter 601, T.C. (Motor Vehicle Safety Responsibility Act);</li> <li><input type="checkbox"/> e. Chapter 621, T.C. (General Provisions Relating to Vehicle Size and Weight);</li> <li><input type="checkbox"/> f. Chapter 661, T.C. (Protective Headgear for Motorcycle Operators and Passengers); and</li> <li><input type="checkbox"/> g. Chapter 681, T.C. (Privileged Parking).</li> </ul> </li> </ul>	<p style="text-align: center;">Ch. 729, T.C.</p> <p style="text-align: center;">Municipal courts have jurisdiction over the offense of Failure to Maintain Financial Responsibility.</p>

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Traffic and Other Motor Vehicle Misdemeanors**

**4. Penalties**

Checklist 13-4	Script/Notes
<p><input type="checkbox"/> 1. General and specific penalties for traffic offenses:</p> <p><input type="checkbox"/> a. Registration of Vehicles – Chapter 502, T.C.</p> <p>Sec. 502.401, T.C. (General Penalty) – A fine not to exceed \$200.</p> <p><input type="checkbox"/> b. Driver’s License Offenses – Chapter 521, T.C.</p> <p>Sec. 521.461, T.C. (General Penalty) – A fine not to exceed \$200.</p> <p><input type="checkbox"/> c. Rules of the Road Offenses – Title 7, Subtitle C, T.C. (Chapters 541-600)</p> <p>Sec. 542.401, T.C. (General Penalty) – A fine of not less than \$1 or more than \$200.</p>	<p>Sec. 729.001(c), T.C., provides that the fine range provided in Transportation Code violations applies to violators under age 17.</p> <p>Sec. 521.025, T.C., provides that if a person fails to display a driver’s license but actually had a valid driver’s license on the day of the offense, it is a defense to the prosecution. The prosecutor must make a motion to dismiss the charge. An optional \$10 fee may be assessed.</p> <p>The court may double the minimum and maximum fines for offenses committed in a construction or maintenance work zone when workers are present. Sec. 542.404, T.C.</p>

- d. Motor Vehicle Safety Responsibility Act – Chapter 601, T.C.

Sec. 601.191, T.C. (Specific Penalty) – A minimum fine of \$175 and a maximum fine of \$350.

If the offense involves failure to yield right-of-way that causes a crash and bodily injury to a person other than defendant, the fine is a minimum of \$500 and a maximum of \$2,000. The fine increases to a minimum of \$1,000 and a maximum of \$4,000 if the offense results in serious bodily injury or death. Sec. 542.4045, T.C.

Fines for no safety belt are a minimum of \$25 and a maximum of \$50. Fines for allowing a child younger than 17 to ride in a vehicle without requiring a safety belt are a minimum of \$100 and a maximum of \$200. Sec. 545.413, T.C.

If the driver is charged with not having a child secured, the fines are a maximum of \$25 for the first offense and a maximum of \$250 for a second or subsequent offense. Sec. 545.412(b), T.C.

The fine for passing a school bus is a minimum of \$200 and a maximum of \$1000. Sec. 545.066(c), T.C.

If the court determines that a person has not been previously convicted of Failure to Maintain Financial Responsibility and that the person is economically unable to pay the fine, the court may reduce the fine to not less than \$175. Sec. 601.191(d), T.C.

Sec. 601.191(c), T.C. (Specific Penalty) – If a person has been previously convicted of an offense of failure to maintain financial responsibility, the fine is not less than \$350 or more than \$1000. (The complaint must be enhanced alleging a prior judgment and the prosecution must prove the prior judgment before the court may assess this fine.)

- e. General Provisions Relating to Vehicle Size and Weight – Chapter 621, T.C.

Sec. 621.507, T.C. (General Penalty) – A fine not to exceed \$200. (Subsequent offenses include jail time. Hence, municipal court does not have jurisdiction.)

- f. Protective Headgear for Motorcycle Operators and Passengers – Chapter 661, T.C.

Sec. 661.003(h), T.C. (Specific Penalty) – A minimum fine of \$10 and a maximum fine of \$50.

- 2. In addition to the fine, upon conviction, the court may also require optional sanctions under Article 45.057, C.C.P.
- 3. There is no right to expunge traffic convictions.

On a second or subsequent conviction for Failure to Maintain Financial Responsibility, the court shall order the sheriff to impound the vehicle if the defendant was an owner at the time of the offense and at the time of conviction. Sec. 601.261, T.C. See *TMCEC 2022 Forms Book: Order for Impoundment of In-State Motor Vehicle*.

If a person is covered with valid insurance or other form of financial responsibility at the time of offense, presents it to the court, and the court (clerk) verifies that it is valid at the time of the offense, the court shall dismiss the charge. No fee may be charged.

All persons under the age of 21 must wear protective headgear. Exceptions to this rule are contained in Section 661.003(c), T.C.

See Checklist 13-16.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Alcoholic Beverage Code**

**5. General Status Offenses**

<b>Checklist 13-5</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. Before proceeding with this Checklist, see Checklists 3-2, 4-1, and 13-1 for general procedures, rights, and pleas.</p> <p><input type="checkbox"/> 2. Identify the code provision that is alleged to have been violated.</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Purchase of Alcohol by a Minor – Elements of this offense are:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) A minor;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) Purchases;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (3) An alcoholic beverage.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Attempt to Purchase Alcohol by a Minor – Elements of this offense are:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) A minor;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) With specific intent to purchase alcohol;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (3) Does an act amounting to more than mere preparation;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (4) That intends but fails to commit the offense.</p> <p style="padding-left: 20px;"><input type="checkbox"/> c. Consumption of Alcohol by a Minor – Elements of this offense are:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) A minor;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) Consumes;</p>	<p>Sec. 106.02, A.B.C.</p> <p>It is not an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.</p> <p>Sec. 106.025, A.B.C.</p> <p>Sec. 106.04, A.B.C.</p>



- (3) An alcoholic beverage.
- (4) It is an affirmative defense if the minor consumed an alcoholic beverage in the visible presence of the minor’s adult parent, guardian, or spouse.
- (5) This offense does not apply to a minor who:
  - (A) Requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;
  - (B) Was the first person to make a request for medical assistance;
  - (C) Remained on the scene until medical assistance arrived; and
  - (D) Cooperated with medical assistance and law enforcement personnel.
- (6) This offense does not apply to a minor who reports the sexual assault of the minor or another person, or is the victim of a sexual assault reported by another person, to:
  - (A) a health care provider treating the victim of the sexual assault;
  - (B) an employee of a law enforcement agency, including an employee of a campus police department of an institution of higher education; or

Sec. 106.04(b), A.B.C.

Sec. 106.04(e), A.B.C.

A minor is entitled to raise this defense only if the minor is in violation of this section at the time of the commission of the reported sexual assault. A minor who commits a sexual assault that is reported is not entitled to raise the defense. Secs. 106.04(e)-(g), A.B.C.

<ul style="list-style-type: none"> <li><input type="checkbox"/> (C) the Title IX coordinator of an institution of higher education or another employee of the institution responsible for responding to reports of sexual assault.</li> </ul>	
<ul style="list-style-type: none"> <li><input type="checkbox"/> d. Driving or Operating Watercraft Under the Influence of Alcohol by a Minor – Elements of this offense are:             <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) A minor;</li> <li><input type="checkbox"/> (2) Operates a motor vehicle or a watercraft;</li> <li><input type="checkbox"/> (3) In a public place;</li> <li><input type="checkbox"/> (4) With any detectable amount of alcohol in his or her system.</li> </ul> </li> </ul>	<p>Sec. 106.041, A.B.C.</p> <p>Sec. 106.041, A.B.C.            Juvenile DUI is not a lesser included offense under Section 49.04, P.C., which is the offense of Driving While Intoxicated.            Sec. 106.041(g),            A.B.C.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> e. Possession of Alcohol by a Minor – Elements of this offense are:             <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) A minor;</li> <li><input type="checkbox"/> (2) Possesses;</li> <li><input type="checkbox"/> (3) An alcoholic beverage.</li> <li><input type="checkbox"/> (4) It is an exception to an offense under this section if the minor possesses an alcoholic beverage:                 <ul style="list-style-type: none"> <li><input type="checkbox"/> (A) In the course and scope of his or her employment provided that such employment is not prohibited by this code;</li> <li><input type="checkbox"/> (B) In the presence of an adult parent, guardian, or spouse; or</li> </ul> </li> </ul> </li> </ul>	<p>Sec. 106.05, A.B.C.</p>

(C) In the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

(5) This offense does not apply to a minor who:

(A) Requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(B) Was the first person to make a request for medical assistance;

(C) Remained on the scene until medical assistance arrived; and

(D) Cooperated with medical assistance and law enforcement personnel.

(6) This offense does not apply to a minor who reports the sexual assault of the minor or another person, or is the victim of a sexual assault reported by another person, to:

(A) a health care provider treating the victim of the sexual assault;

(B) an employee of a law enforcement agency, including an employee of a campus police department of an institution of higher education; or

Sec. 106.05(d), A.B.C.

A minor is entitled to raise this defense only if the minor is in violation of this section at the time of the commission of the reported sexual assault. A minor who commits a sexual assault that is reported is not entitled to raise the defense. Sec. 106.05(e)-(g), A.B.C.



**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Alcoholic Beverage Code**

**6. General Penalty Provision, Section 106.071, A.B.C.**

Checklist 13-6	Script/Notes
<input type="checkbox"/> 1. Section 106.071, A.B.C., provides the punishment scheme for the following offenses:	
<input type="checkbox"/> a. Purchase of Alcohol by a Minor.	Sec. 106.02, A.B.C.
<input type="checkbox"/> b. Attempt to Purchase Alcohol by a Minor.	Sec. 106.025, A.B.C.
<input type="checkbox"/> c. Consumption of Alcohol by a Minor.	Sec. 106.04, A.B.C.
<input type="checkbox"/> d. Possession of Alcohol by a Minor.	Sec. 106.05, A.B.C.
<input type="checkbox"/> e. Misrepresentation of Age by a Minor.	Sec. 106.07, A.B.C.
<input type="checkbox"/> f. Public Intoxication Under the Age of 21.	Sec. 49.02(e), P.C.
<input type="checkbox"/> 2. <b>FIRST CONVICTION:</b> A charge is punishable as a Class C misdemeanor—maximum fine of \$500.	“You have been found guilty of the offense of _____ and the fine is assessed at \$_____. In addition, you must pay court costs. Moreover, the court must require other sanctions.” See items below.
<input type="checkbox"/> 3. In addition to assessing a fine for an offense under Section 106.071, A.B.C. or for Driving or Operating a Watercraft Under the Influence of Alcohol by a Minor (Section 106.041, A.B.C.; See Checklist 13-7), the court is required to order:	Sec. 106.115, A.B.C.
<input type="checkbox"/> a. Successful completion of an alcohol awareness or drug education program regulated under Ch. 171, G.C., or a drug and alcohol driving awareness program (DADAP) under Sec. 1001.103, E.C.;	H.B. 1560 (87th Legislature) repeals DADAP from Sec. 106.115(a), A.B.C. and Sec. 1001.103, E.C., effective June 1, 2023.

(1) If the defendant resides in a county with a population of 75,000 or less and access to an alcohol awareness program is not readily available in the county:

(A) The court may allow the defendant to take an online alcohol awareness program if the Texas Department of Licensing and Regulation approves online courses;

(B) The court may require the defendant to perform not less than eight hours of community service related to alcohol abuse prevention or treatment and approved by the Texas Department of Licensing and Regulation instead of attending the alcohol awareness program.

(2) The minor has 90 days from the date of final conviction to submit to the court evidence of satisfactory completion of a court-ordered program.

(3) For good cause, the court may extend this period by not more than 90 days.

Sec. 106.115(b-1) A.B.C.

A defendant's residence is the one listed on the defendant's driver's license. If no driver's license or state ID, residence is that of defendant's voter registration certificate. If not registered to vote, the residence is that which is on file with the public school district. If not enrolled in public school, residence is determined by the court. The court may consider a defendant who is a college student to be a resident of the county where the college is, if the county offers readily available alcohol awareness classes. See Sec. 106.115(b-2), A.B.C.

Community service ordered under this subsection is in addition to community service ordered under Section 106.071(d).

Sec. 106.115(c), A.B.C.

"You have 90 days from today to submit to this court evidence of completion of the program ordered by the court."

"If you fail to submit the proper evidence within 90 days, this court will schedule a show cause hearing."

- ❑ (4) Failure by the defendant to present evidence of completion of an awareness program within the prescribed time period obligates the court to order the Department of Public Safety to suspend the defendant’s driver’s license or permit, or, if the defendant does not have a driver’s license or permit, to deny the issuance of a license or permit for a period not to exceed six months in either event.
  
- ❑ (5) If the minor fails to present evidence of completion of an alcohol awareness program, the court may order the parent or guardian of the minor to do any act or refrain from doing any act if the court determines that the doing or refraining from doing the act will increase the likelihood that the minor will complete the alcohol awareness course.
  
- ❑ (6) Court order on parents may be enforced by contempt.
  - ❑ (A) Punishment for the parents: up to three days in jail and a fine up to \$100.
  
- ❑ (7) If the defendant presents evidence of successful completion of the course in a timely manner, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.

“If the court determines that you did not have a good reason for not completing the alcohol awareness program and submitting evidence of completion within 90 days, I will order the Texas Department of Public Safety to suspend or deny issuance of your driver’s license for up to 180 days.” Sec. 106.115(d)(1)(A), A.B.C.

Sec. 106.115(d)(2), A.B.C.

*Ex parte Powell*, 883 S.W.2d 775 (Tex. App.—Beaumont 1994), Sec. 21.002(c), G.C.

Sec. 106.115(c), A.B.C.

- b. Eight to 12 hours of alcohol-related community service; and

Sec. 106.071(e), A.B.C.  
“In addition to the fine and alcohol awareness program, you must perform eight to 12 hours of community service (judge selects amount of hours between eight to 12 hours). You must complete the community service by \_\_\_\_\_.”

Community service ordered must be related to education about or prevention of misuse of alcohol or drugs if programs and services are available in the community. If educational programs and services are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

- c. DPS to suspend or deny issuance of the minor’s DL or permit for 30 days.

“Also, I am going to order the Texas Department of Public Safety to suspend (or deny issuance of) your driver’s license for 30 days. The suspension is effective 11 days from today.” Sec. 106.071(h), A.B.C.

The judge should order the clerk to immediately send notice of the order to DPS.

- d. The court may also issue additional orders per Art. 45.057, C.C.P.

- 4. SUBSEQUENT CONVICTION: A charge alleging a prior conviction is punishable as a Class C misdemeanor--maximum fine of \$500.

- a. The court is required to order:



(1) 20-40 hours of alcohol-related community service; and

(2) DPS to suspend or deny issuance of the minor's DL or permit for 60 days.

b. The court may, but is not required to, order an alcohol awareness program, a drug education program, or DADAP.

However, if the court opts to order the defendant to attend a program and the defendant fails to provide proof of attending with the proscribed period, the court may either order the suspension of the defendant's driver's license or permit for a period not to exceed one year or, if the defendant does not have a license or permit, may deny the issuance of a license or a permit for a period not to exceed one year.

c. The court may also issue additional orders per Art. 45.057, C.C.P.

Community service ordered must be related to education about or prevention of misuse of alcohol if programs and services are available in the community. If educational programs and services are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

The driver's license suspension takes effect on the 11<sup>th</sup> day after the date the minor is convicted. Sec. 106.071(h), A.B.C. The judge should order the clerk to immediately send notice of the order to DPS.

If the court requires the minor to attend a court-ordered program, the court may require that the parent or guardian of the minor attend the program when the minor is younger than 18 years of age. Sec. 106.115(a), A.B.C.

Sec. 106.115(d)(1)(B), A.B.C.

- ❑ 5. ENHANCEMENT TO CLASS B MISDEMEANOR: If it is shown at trial that a minor (17 to 20 years of age) has two prior convictions under this section, the offense is punishable by a fine of not less than \$250 or more than \$2,000; confinement in jail of not more than 180 days; or both fine and confinement; plus 180 days suspension or denial of DL or permit.
  
- ❑ 6. MANDATORY TRANSFER TO JUVENILE COURT: If a person is under 17 years of age and has two prior convictions under this section, then the court must transfer the case to juvenile court.
  
- ❑ 7. WHAT IS CONSIDERED A CONVICTION: For purposes of determining whether a minor has been previously convicted:
  - ❑ a. An adjudication under Title 3, F.C., that the minor engaged in DUI is considered a conviction; and
  
  - ❑ b. An order of deferred disposition for an offense alleging DUI is considered a conviction.

Sec. 106.071(c) and (d), A.B.C.

Sec. 51.08, F.C.

An exception is made in Section 51.08(d), F.C., for courts that have created juvenile case managers under Article 45.056, C.C.P.

Sec. 106.071(f), A.B.C.

Note: When a defendant receives deferred disposition for an alcohol offense (excluding DUI), the defendant's driver's license is not suspended. The court does, however, report the deferred disposition to DPS using Form DIC-15. If the defendant is subsequently convicted of an alcohol offense, prior deferred disposition orders are treated as convictions for the purpose of determining the duration of the driver's license suspension (e.g., a defendant convicted of an alcohol offense with two prior deferred dispositions would face a 180 day suspension). Furthermore, prosecutors may use prior deferred dispositions to allege enhanced charges.

- |   |   |
|---|---|
| <p><input type="checkbox"/> 8. DEFERRED DISPOSITION: If a court grants deferred disposition, the court, in addition to any other term ordered under Article 45.051, C.C.P., must require the minor to:</p> <p style="margin-left: 40px;"><input type="checkbox"/> a. Attend an alcohol awareness program, drug education program, or DADAP; and</p> <p style="margin-left: 40px;"><input type="checkbox"/> b. Perform eight to 40 hours of community service.</p> <p><input type="checkbox"/> 9. Minors convicted of or arrested for an Alcoholic Beverage Code status offense may request an expunction.</p> | <p>Sec. 106.115, A.B.C.</p> <p>Sec. 106.071, A.B.C.</p> <p>Sec. 106.12, A.B.C.<br/>See Checklist 13-23.</p> |
|---|---|

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Alcoholic Beverage Code**

**7. Specific Penalty Provision, Section 106.041, A.B.C. – Operating Motor Vehicle Under Influence of Alcohol by a Minor (DUI/BWI)**

With two notable exceptions, adjudicating an allegation of Section 106.041, A.B.C., generally follows the provisions of Section 106.071, A.B.C. (See Checklist 13-6). However, because operation of a motor vehicle by a minor with any detectable amount of alcohol in the minor’s system is, as a matter of public policy, considered an “at-risk” behavior and potentially a gateway to more dangerous criminal behavior, Texas law (1) proscribes more community service than for other Chapter 106 offenses, and (2) makes suspension of driving privileges a separate administrative matter.

Checklist 13-7	Script/Notes
<p><input type="checkbox"/> 1. Section 106.041, A.B.C., provides the punishment for Driving or Operating Watercraft Under the Influence of Alcohol by a Minor.</p>	<p>Sec. 106.041, A.B.C.</p>
<p><input type="checkbox"/> 2. FIRST CONVICTION: Punishable as a Class C misdemeanor—maximum fine of \$500.</p>	<p>“You have been found guilty of the offense of driving under the influence and the fine is assessed at \$ _____. In addition, you must pay court costs. Moreover, the court must require other sanctions.” See items below.</p>
<p><input type="checkbox"/> a. In addition to a court-ordered program (see Checklist 3-6), the court is required to order 20-40 hours of alcohol-related community service.</p>	<p>Sec. 171.0001, G.C.                      Sec. 106.115, A.B.C.                      “In addition to the fine and alcohol awareness program, you must perform 20 to 40 hours community service (judge selects amount of hours). You must complete the community service by _____.”</p> <p>Community service ordered must be related to education about or prevention of misuse of alcohol.</p>
<p><input type="checkbox"/> b. The court has no authority to order DPS to suspend or deny issuance of the DL.</p>	<p>An administrative DL suspension is conducted in the same manner as DWI offenders.</p> <p>See Chapters 524 and 724, T.C.</p>

- ❑ 3. SUBSEQUENT CONVICTION: A charge alleging a prior conviction is punishable as a Class C misdemeanor—maximum fine of \$500.
  - ❑ a. The court is required to order 40-60 hours of alcohol-related community service.

Community service ordered must be related to education about or prevention of misuse of alcohol.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Health & Safety Code**

Section 161.257, H.S.C., provides that Title 3, F.C., does not apply to a proceeding under Chapter 161, Subchapter N (Tobacco Use by Minors), H.S.C. This means that minors charged with tobacco offenses may not be transferred to juvenile court.

**8. Tobacco Offenses Committed by Minor**

Checklist 13-8	Script/Notes
<p><b>Definitions:</b></p> <p>Section 161.251, H.S.C., incorporates the definitions of “cigarette,” “e-cigarette,” and “tobacco product” found in the Tax Code and elsewhere in the Health and Safety Code.</p> <p>“Cigarette” is defined in Section 154.001, Tax Code, as a roll for smoking:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and</li> <li><input type="checkbox"/> (2) that is not a cigar.</li> </ul> <p>“E-cigarette” is defined in Section 161.081, H.S.C., as an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device or a consumable liquid solution or other material aerosolized or vaporized during its use. The term does not include a prescription medical device unrelated to the cessation of smoking. The term includes:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) a device described by this subdivision regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and</li> <li><input type="checkbox"/> (2) 2. a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.</li> </ul> <p>“Tobacco product” is defined in Section 155.001, Tax Code, as:</p>	

- (1) a cigar;
- (2) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;
- (3) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing;
- (4) snuff or other preparations of pulverized tobacco; or
- (5) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.

2. A person must be younger than 21 years of age to commit the offenses described in Section 161.252, H.S.C.

3. Identify the code provision that is alleged to have been violated.

a. Possession, Purchase, Consumption, or Acceptance of Cigarettes, E-cigarettes, or Tobacco Products by a Minor – Elements of this offense are:

(1) an individual younger than 21;

*(select one):*

Sec. 161.252(a), H.S.C.

Sec. 161.252(a)(1), H.S.C.

To give defendant adequate notice of the offense charged, complaint must allege only one specific violation (e.g., “possessed a cigarette” or “purchased a cigar”). A complaint alleging defendant “possessed, purchased, or received” or alleging “a tobacco product” is subject to being quashed.

- (2) possesses;
- (3) purchases;
- (4) consumes; or
- (5) accepts

*(select one):*

- (A) a cigarette; or
- (B) an e-cigarette; or
- (C) a tobacco product (specify the product).

b. False Proof of Age by a Minor to Obtain Cigarette, E-cigarette, or Tobacco Product – Elements of this offense are:

- (1) an individual younger than 21;
- (2) falsely represents himself or herself to be 21 or older;
- (3) by displaying a proof of age that is false;
- (4) in order to *(select one)*:
  - (A) obtain possession of;
  - (B) purchase; or
  - (C) receive

*(select one):*

Sec. 161.252(a)(2), H.S.C.

To give defendant adequate notice of the offense charged, complaint must allege only one specific violation (e.g., “to obtain possession of a cigarette” or “to purchase chewing tobacco”). A complaint alleging “to obtain possession of, purchase, or receive” or alleging “a tobacco product” is subject to being quashed.



- (i) a cigarette; or
- (ii) an e-cigarette; or
- (iii) a tobacco product (specify the product).

c. Exceptions:

- (1) It is an exception if the defendant is in the presence of an employer, if possession or receipt is required as part of defendant’s duties as an employee.
- (2) It is an exception if the defendant is participating in an inspection or test of compliance in accordance with Section 161.088, H.S.C.
- (3) It is an exception if the defendant is at least 18 years of age and presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.

The employee exception applies only to possession or receipt by a minor. Sec. 161.252(b)(2), H.S.C.

This is sometimes known as “the minor sting operation” exception and applies to all Section 161.252 offenses. Sec. 161.252(c), H.S.C.

Sec, 161.252(c-1), H.S.C.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Health & Safety Code**

**9. Penalties for Tobacco Use by Minors. Section 161.253, H.S.C.**

Checklist 13-9	Script/Notes
<p><input type="checkbox"/> 1. Section 161.253, H.S.C., provides the punishments for tobacco offenses committed by persons under the age of 21.</p> <p><input type="checkbox"/> 2. A conviction is punishable by a fine not to exceed \$100.</p> <p><input type="checkbox"/> 3. The court is required to:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Suspend execution of sentence; and</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Order attendance at an e-cigarette and tobacco awareness program.</p> <p style="padding-left: 20px;"><input type="checkbox"/> c. Determine if an e-cigarette and tobacco awareness program approved by the Texas Department of State Health Services is readily available where defendant resides.</p>	<p>Sec. 161.252(d), H.S.C.                      “You have been found guilty of the offense of _____. I am assessing a fine in the amount of \$_____.”</p> <p>Sec. 161.253, H.S.C.                      “I am going to suspend execution of the sentence, which means that I am not going to require you to pay the fine. However, you must pay court costs.”</p> <p>Sec. 161.253(b), H.S.C.                      “I am going to require you to attend an e-cigarette and tobacco awareness program (or perform eight to 12 hours of tobacco related community service). You have 90 days to attend the program (or perform the community service) and submit evidence to me that you completed the program.”</p> <p>Defendant may request an e-cigarette and tobacco awareness program be taught in a language other than English.</p>

<p><input type="checkbox"/> d. If approved e-cigarette and tobacco awareness program is available, order defendant to complete program by the 90th day after conviction.</p>	<p>Call the Office of Tobacco Prevention and Control, Texas Department of State Health Services, at 800.345.8647 for a list of approved providers.</p> <p>Sec. 161.253(a) and (e), H.S.C.</p>
<p><input type="checkbox"/> e. If e-cigarette and tobacco awareness program is not readily available, order defendant to complete eight to 12 hours of e-cigarette and tobacco-related community service by the 90th day after conviction.</p>	<p>Sec. 161.253(c) and (e), H.S.C.</p>
<p><input type="checkbox"/> f. Court may order parent or guardian to attend e-cigarette and tobacco awareness program with the defendant.</p>	<p>Sec. 161.253(a), H.S.C.</p>
<p><input type="checkbox"/> g. Defendant to present to court, in the manner required by the court, evidence of completion of the awareness course or of the community service.</p>	<p>Sec. 161.253(e), H.S.C.</p>
<p><input type="checkbox"/> h. If defendant presents evidence on time:</p> <p>(1) On first conviction: Judge shall dismiss the case.</p> <p>(2) On subsequent conviction: Case not dismissed, but judge has discretion to reduce fine to not less than half the fine imposed.</p>	<p>Sec. 161.253(f)(2), H.S.C.            “If you complete the e-cigarette and tobacco awareness program and present evidence of completion within 90 days from today, I will dismiss your case.”</p> <p>“If you do not present this court with evidence of completion of the program, I will enter a final judgment and assess a fine of \$_____.”</p> <p>Sec. 161.253(f)(1), H.S.C.</p>
<p><input type="checkbox"/> 4. The court may also order a sanction under Section 45.057, C.C.P.</p>	<p>See Checklist 13-15.</p>

- ❑ 5. Minors convicted of a status tobacco offense may apply to the court to have the conviction expunged on or after their 21st birthday.

Sec. 161.255, H.S.C.  
See Checklist 13-25.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Penal Code Offenses and Other Fine-Only Misdemeanors**

**10. Offenses**

<b>Checklist 13-10</b>	<b>Script/Notes</b>
<ul style="list-style-type: none"><li data-bbox="212 457 911 558"><input type="checkbox"/> 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.</li><li data-bbox="212 596 911 659"><input type="checkbox"/> 2. Identify the Penal Code offense alleged to have been violated.</li><li data-bbox="212 697 911 800"><input type="checkbox"/> 3. Municipal court has jurisdiction over all fine-only offenses (Class C misdemeanors) in the Penal Code, other state codes, and local ordinances.</li></ul>	

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Penal Code Offenses and Other Fine-Only Misdemeanors**

**11. Penalties**

<b>Checklist 13-11</b>	<b>Script/Notes</b>
<input type="checkbox"/> 1. Fine-only offenses in the Penal Code are called Class C misdemeanors and have a maximum fine of \$500.	Sec. 12.23, P.C.
<input type="checkbox"/> 2. Outside the Penal Code, offenses are classified as Class C misdemeanors if the offense is punishable by fine only.	Sec. 12.41, P.C.
<input type="checkbox"/> 3. In addition to the fine, upon conviction, the court may order a sanction under Section 45.057, C.C.P.	See Checklist 13-15.
<input type="checkbox"/> 4. A child charged with a Class C misdemeanor Penal Code offense has a right to expunction.	Art. 45.0216, C.C.P. See Checklist 13-22.

## CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

### Education Code Offenses

#### 12. Criminal Procedure for School Offenses

Chapter 37, E.C., contains subchapters governing “Law and Order,” “Protection of Buildings and School Grounds,” and “Penal Provisions,” but until the passage of S.B. 393 in 2013, no subchapter in the Education Code governed criminal procedure. This omission contributed to existing disparities in the legal system and has resulted in greater consumption of limited local judicial resources.

The creation of a new subchapter in the E.C. (Subchapter E-1, Criminal Procedure) balances the interest of the other subchapters with due process and procedural protections for children accused of criminal violations. Under Section 37.141, E.C., Subchapter E-1 only governs criminal procedures to be utilized when a child is alleged to have committed an offense on property under the control and jurisdiction of a school district which is a Class C misdemeanor, excluding traffic offenses. It aims to preserve judicial resources for students who are most in need of formal adjudication.

Checklist 13-12	Script/Notes
<p><b>Definitions:</b></p> <p>“Child” is a person who is at least 10 years of age and younger than 18 years of age, who is charged with or convicted of an offense that a justice or municipal court has jurisdiction of, and who is a student.</p> <p>“School offense” is an offense committed by a child enrolled in a public school that is a Class C misdemeanor other than a traffic offense and that is committed on property under the control and jurisdiction of a school district.</p>	<p>Sec. 37.141(1), E.C.</p>
<p><input type="checkbox"/> 1. To the extent of any conflict, this subchapter controls over any other law applied to a school offense alleged to have been committed by a child.</p>	<p>Sec. 37.142, E.C.</p>
<p><input type="checkbox"/> 2. A peace officer may not issue a citation to a child who is alleged to have committed a school offense.</p>	<p>Sec. 37.143(a), E.C.</p>
<p><input type="checkbox"/> 3. Subchapter E-1 does not prohibit a child from being taken into custody under Section 52.01, Family Code.</p>	<p>Sec. 37.143(b), E.C.</p>

- 4. Graduated Sanctions: A school district that commissions peace officers under Section 37.081 may develop a system of graduated sanctions that the school district may require to be imposed on a child before a complaint is filed under Section 37.145 against the child for a school offense that is an offense under Section 37.124 or 37.126, E.C., or under Section 42.01(a)(1), (2), (3), (4), or (5), P.C. A system adopted under this section must include multiple graduated sanctions. The system may require:

  - a. A warning letter to be issued to the child and the child’s parent or guardian that specifically states the child’s alleged school offense and explains the consequences if the child engages in additional misconduct;
  - b. A behavior contract with the child that must be signed by the child, the child’s parent or guardian, and an employee of the school and that includes a specific description of the behavior that is required or prohibited for the child and the penalties for additional alleged school offenses, including additional disciplinary action or the filing of a complaint in a criminal court;
  - c. The performance of school-based community service by the child; and
  - d. The referral of the child to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the child’s behavioral problems.
- 5. If a child fails to comply with or complete graduated sanctions, or if the school district has not adopted a system of graduated sanctions, the school may file a complaint against the child with a criminal court in accordance with the subchapter.
- 6. In addition to the requirements imposed by Article 45.019, C.C.P, a complaint alleging the commission of a school offense must:

Sec. 37.144, E.C.

A referral to counseling may include participation by the child’s parent or guardian if necessary.  
Sec. 37.144(b), E.C.

Sec. 37.145, E.C.

Sec. 37.146(a), E.C.



- a. Be sworn to by a person who has personal knowledge of the underlying facts giving rise to probable cause to believe that an offense has been committed; and
  - b. Be accompanied by a statement from a school employee stating:
    - (1) Whether the child is eligible for or receives special services under Subchapter A, Chapter 29; and
    - (2) The graduated sanctions, if required under Section 37.144, that were imposed on the child before the complaint was filed.
  
- 7. After a complaint has been filed under this subchapter, a summons may be issued under Article 23.04 and 45.057(e), C.C.P. Sec. 37.146(a), E.C.
  
- 8. An attorney representing the state in a court with jurisdiction may adopt rules pertaining to the filing of a complaint under this subchapter that the state considers necessary in order to: Sec. 37.147, E.C.
  - a. Determine whether there is probable cause to believe that the child committed the alleged offense;
  - b. Review the circumstances and allegations in the complaint for legal sufficiency; and
  - c. See that justice is done.
  
- 9. An employee of a school district or open-enrollment charter school may report a crime witnessed at the school to any peace officer with authority to investigate the crime. Sec. 37.148, E.C.
  - a. A school district or open-enrollment charter school may not adopt a policy requiring a school employee to:
    - (1) Refrain from reporting a crime witnessed at the school; or

- ❑ (2) Report a crime witnessed at the school only to certain persons or peace officers.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Education Code Offenses**

**13. Offenses**

<b>Checklist 13-13</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.</p> <p><input type="checkbox"/> 2. Identify the Education Code offense alleged to have been violated.</p> <p><input type="checkbox"/> 3. The following offenses may be violated under the Education Code:</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. Rules Enacted by School Board (related to the operation of vehicles and parking on school property);</p> <p style="padding-left: 40px;"><input type="checkbox"/> b. Trespass on School Grounds;</p> <p style="padding-left: 40px;"><input type="checkbox"/> c. Possession of Intoxicants on School Grounds;</p> <p style="padding-left: 40px;"><input type="checkbox"/> d. Disruption of Classes;</p>	<p>H.B. 2398 (84th Legislature) repealed Failure to Attend School and designated justice, municipal, and certain county courts as truancy courts, having original, exclusive jurisdiction over allegations of truant conduct, handled as civil cases under Title 3A of the Family Code.</p> <p>Sec. 37.102, E.C.</p> <p>Sec. 37.107, E.C.</p> <p>Sec. 37.122, E.C. It is a defense to prosecution under this section that the person possessed the intoxicating beverage at a performing arts facility during an event held outside of regular school hours and not sponsored or sanctioned by a school district. Sec. 37.122(a-1), E.C.</p> <p>This offense cannot be committed by a primary or secondary grade student enrolled at the school. Sec. 37.124, E.C.</p>

- e. Disruption of Transportation; and
  
- f. Pledging or soliciting another to pledge to a public school fraternity, sorority, secret society, or gang that is not sanctioned by the statute or state or national authorities.

This offense cannot be committed by a primary or secondary grade student. Sec. 37.126, E.C.

Sec. 37.121, E.C.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Education Code Offenses**

**14. Penalties and Orders**

Checklist 13-14	Script/Notes
<p><input type="checkbox"/> 1. The following offenses are Class C misdemeanors with a maximum fine of \$500:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Rules enacted by School Board Relating to Traffic;</li> <li><input type="checkbox"/> b. Trespass on School Grounds;</li> <li><input type="checkbox"/> c. Possession of Intoxicants on School Grounds;</li> <li><input type="checkbox"/> d. Disruption of Classes;</li> <li><input type="checkbox"/> e. Disruption of Transportation;</li> <li><input type="checkbox"/> f. Pledging or soliciting another to pledge to a public school fraternity, sorority, secret society, or gang that is not sanctioned by the statute or state or national authorities; and</li> </ul> <p><input type="checkbox"/> 2. A child charged with an Education Code offense has a right to an expunction under Article 45.0216, C.C.P.</p>	<p>Sec. 37.102, E.C.</p> <p>Sec. 37.107, E.C.</p> <p>Sec. 37.122(c), E.C</p> <p>Sec. 37.124(b), E.C.</p> <p>Sec. 37.126(b), E.C.</p> <p>Sec. 37.121(2)(c), E.C.</p> <p>See Checklist 13-22.</p>

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**15. Additional Optional Orders**

While deferred disposition allows courts to impose conditions as terms of probation, Article 45.057, C.C.P., provides a “laundry list” of orders that can be imposed on any child upon conviction.

Checklist 13-15	Script/Notes
<p><input type="checkbox"/> 1. In addition to any fine and upon finding that the child committed a fine-only misdemeanor, the municipal or justice court may:</p> <p><input type="checkbox"/> a. Refer the child or the child’s parents, managing conservators, or guardians for services under Section 264.302, F.C.; or</p> <p><input type="checkbox"/> b. Order parent to refrain from conduct that may encourage the child to violate court order.</p> <p><input type="checkbox"/> c. Parent may be ordered to attend a parenting class or a parental responsibility program.</p> <p><input type="checkbox"/> d. Require that the child attend a special program that the court determines to be in the best interest of the child. Programs include:</p> <p><input type="checkbox"/> (1) Rehabilitation;</p> <p><input type="checkbox"/> (2) Counseling;</p> <p><input type="checkbox"/> (3) Self-esteem and leadership;</p> <p><input type="checkbox"/> (4) Work and job skills training;</p>	<p>Art. 45.057, C.C.P.            “In addition to the fine that I have already assessed, I am going to require you (or you and your parents) to _____.            This must be completed by _____.”</p> <p>Art. 45.057(b)(3), C.C.P.            Any order for a parent should be included in the child’s judgment. The court should inform the parent of the consequences of not complying — contempt with a maximum fine of \$100 and/or up to three days in jail. See Chapter 14 of this book concerning contempt.</p>

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|--|----------------------------------|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> (5) Job interviewing and work preparation;</li> <li><input type="checkbox"/> (6) Self-improvement;</li> <li><input type="checkbox"/> (7) Parenting;</li> <li><input type="checkbox"/> (8) Manners;</li> <li><input type="checkbox"/> (9) Violence avoidance;</li> <li><input type="checkbox"/> (10) Tutoring;</li> <li><input type="checkbox"/> (11) Sensitivity training;</li> <li><input type="checkbox"/> (12) Parental responsibility;</li> <li><input type="checkbox"/> (13) Community service;</li> <li><input type="checkbox"/> (14) Restitution;</li> <li><input type="checkbox"/> (15) Advocacy; and</li> <li><input type="checkbox"/> (16) A mentoring program.</li> </ul> |                                  |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> e. If the program involves the expenditure of municipal or county funds, it must be approved by the governing body of the municipality or county commissioners court.</li> </ul>   | <p>Art. 45.057(b)(2), C.C.P.</p> |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> f. The court may not order a parent, managing conservator, or guardian of a child to pay an amount greater than \$100 for the costs of the program.</li> </ul>   | <p>Art. 45.057(c), C.C.P.</p>    |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> g. The court may require that a person required to attend this program submit proof of attendance to the court.</li> </ul>   | <p>Art. 45.057(d), C.C.P.</p>    |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> h. A municipal or justice court shall endorse on the summons issued to a parent, managing conservator, or a guardian an order to personally appear at the hearing with the child.</li> </ul>   | <p>Art. 45.057(e), C.C.P.</p>    |

- i. An order under this section involving a child is enforceable as contempt under Article 45.050, C.C.P.

Art. 45.057(f), C.C.P.  
See Checklist 13-28.



**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**16. Difficulty or Default in Payment of Fine**

Checklist 13-16	Script/Notes
<p><input type="checkbox"/> 1. If the defendant notifies the judge that the defendant has difficulty paying the fine and costs in compliance with the judgment, the judge shall hold a reconsideration of satisfaction hearing to determine whether the judgment imposes an undue hardship on the defendant. The defendant may notify the judge by voluntarily appearing in court, filing a motion, mailing a letter, or any other method established by the judge.</p> <p><input type="checkbox"/> a. If the judge determines at the hearing that the judgment imposes an undue hardship on the defendant, the justice or judge shall consider whether to allow the defendant to satisfy the fine and costs through one or more methods listed under Article 45.041(a-1).</p> <p><input type="checkbox"/> b. The judge may decline to hold the hearing if the judge:</p> <p><input type="checkbox"/> (1) previously held a hearing under that subsection with respect to the case and is able to determine without holding a hearing that the judgment does not impose an undue hardship on the defendant; or</p> <p><input type="checkbox"/> (2) is able to determine without holding a hearing that the judgment imposes an undue hardship on the defendant and the fine and costs should be satisfied through one or more methods listed under Article 45.041(a-1).</p> <p><input type="checkbox"/> c. The justice or judge retains jurisdiction for the purpose of making a determination under this article.</p>	<p>Art. 45.0445, C.C.P.</p> <p>This reconsideration hearing was created by the Legislature in 2019, and judges may allow a defendant to appear by telephone or videoconference if a personal appearance would impose an undue hardship. Arts. 45.0201 and 45.0445, C.C.P.</p>

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| <p><input type="checkbox"/> 2. Default in payment of fines</p> <p><input type="checkbox"/> a. In no event, after conviction or plea of guilty and imposition of fine, may a child be committed to any jail in default of payment of any fine or costs.</p> <p><input type="checkbox"/> b. The court may consider contempt when a child fails to pay a fine or violates a court order. (These rules apply even if the child has turned age 17 before the contempt hearing is conducted, or if the child turned age 17 and then failed to pay.)</p> <p><input type="checkbox"/> c. Court must schedule a contempt hearing and give the child an opportunity to be heard.</p> <p><input type="checkbox"/> d. Court may waive payment of all or part of a fine imposed on a defendant who defaults in payment if the court determines that:</p> <p style="padding-left: 20px;"><input type="checkbox"/> (1) Defendant is indigent or was, at the time the offense was committed, a child; and</p> <p style="padding-left: 20px;"><input type="checkbox"/> (2) Discharging the fine through community service or tutoring would impose an undue hardship on the defendant.</p> <p><input type="checkbox"/> e. Court may waive of all or part of the costs imposed if the court determines that:</p> <p style="padding-left: 20px;"><input type="checkbox"/> (1) Defendant is indigent or does not have sufficient income to pay all or part of the costs; or</p> <p style="padding-left: 20px;"><input type="checkbox"/> (2) Defendant was a child (under 17) at the time the offense was committed.</p> | <p>Art. 45.050, C.C.P.</p> <p>Art. 45.050, C.C.P.</p> <p>Article 45.045(b)(3), C.C.P., requires courts to proceed under Article 45.050, C.C.P., to compel the person to discharge the judgment before issuing a <i>capias pro fine</i>. See Checklist 13-22.</p> <p>Art. 45.050(c), C.C.P.<br/>See Checklist 13-28 for contempt procedures.</p> <p>Art. 45.0491(a), C.C.P.</p> <p>Art. 45.0491(d), C.C.P.</p> |
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**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**17. Failure to Appear**

Checklist 13-17	Script/Notes
<p><input type="checkbox"/> 1. A justice or municipal court may not order the confinement of a child for the failure to appear for an offense committed by the child.</p>	<p>Art. 45.050, C.C.P.</p>
<p><input type="checkbox"/> 2. If the parent(s) does not appear:</p> <p><input type="checkbox"/> a. Determine if the parent(s) has been served with a summons. If not, reset the case.</p> <p><input type="checkbox"/> b. If the parent(s) has been served with a summons but failed to appear, the court may waive the requirement of the presence of the parents, guardian, or managing conservator if, after diligent effort, the court cannot locate them or compel their presence.</p> <p><input type="checkbox"/> c. If the parent(s) was served with a summons, the prosecutor may charge the parent(s) with a Class C misdemeanor for failure to appear in court with child. (Maximum fine \$500).</p>	<p>If the court waives this requirement, the court should document the actions taken in an effort to compel the parent’s presence in the defendant’s file.</p> <p>Arts 45.0215(d), C.C.P. and 45.057(g), C.C.P.</p>
<p><input type="checkbox"/> 3. If child does not appear for a traffic offense, the court shall:</p>	
<p><input type="checkbox"/> a. Report to the Department of Public Safety any minor charged with a traffic offense who does not appear.</p>	<p>Sec. 521.3452, T.C.</p>
<p><input type="checkbox"/> b. A court that has filed a report under this section shall report to the Department of Public Safety on final disposition of the case.</p>	<p>Sec. 521.3452, T.C.</p>
<p><input type="checkbox"/> 4. If a child fails to appear for any offense other than traffic, the court may:</p>	
<p><input type="checkbox"/> a. Report to the Department of Public Safety any minor charged with an offense other than traffic who does not appear.</p>	<p>Secs. 521.201 and 521.294, T.C.</p>

- b. A court that has filed a report under this section shall report to the Department of Public Safety on final disposition of the case.
- 5. General procedure when a child fails to appear:
  - a. A court should issue an order for nonsecure custody for the child.

Secs. 521.201 and 521.294, T.C

Arts. 45.058 and 45.059, C.C.P.

Article 45.060, C.C.P., requires the court to have used all available procedures in Chapter 45 to secure the appearance of the child before issuing a warrant of arrest when the child turns age 17.

See Checklist 13-19 for nonsecure custody.

See Checklist 13-21 for information regarding a juvenile who has failed to appear and then turns age 17.



- b. The child may be held in the nonsecure facility only long enough to accomplish the purpose of:
  - (1) Identification;
  - (2) Investigation;
  - (3) Processing;
  - (4) Release to parents; or
  - (5) The arranging of transportation to the appropriate juvenile court, juvenile detention facility, municipal court, or justice court.
- c. Residential use of the area is prohibited.
- d. The child shall be under continuous visual supervision by a law enforcement officer or facility staff person during the time the child is in nonsecure custody.
- e. The child may not be detained in a place of nonsecure custody for more than six hours.
- 4. A child taken into custody for an offense that a municipal court has jurisdiction of may be released to the child's parent, guardian, custodian, or other responsible adult as provided in Section 52.02(a) (1), F.C.
- 5. A child cannot be incarcerated for contempt. For details about contempt for juveniles see Checklists 13-17, 13-22, and 13-28.
- 6. If the judge sees the child, the judge may handle all charges against the child.

Art. 45.058, C.C.P.



- d. A juvenile curfew processing office may not be designated or intended for residential purposes.
  - e. The person must be under continuous visual supervision by a peace officer or other person during the time the person is in the juvenile curfew processing office.
  - f. A person may not be held in a juvenile curfew processing office for more than six hours.
3. A juvenile curfew office, if so designated, may also be used as a place of nonsecure custody for children taken into custody for:
- a. Traffic offenses;
  - b. Other fine-only misdemeanor offenses; or
  - c. A status offense.

Beware that Section 370.002, L.G.C., requires review, public hearings, and reenactment of curfew ordinances no less than every three years.



**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**20. Unadjudicated Children, Now Adults (No Appearance Made)**

Checklist 13-20	Script/Notes
<p><input type="checkbox"/> 1. Procedures when child turns age 17:</p> <p><input type="checkbox"/> a. Court issues a notice of continuing obligation to appear by personal service or by mail to the last known address and residence of the individual. Notice contains an order to appear.</p> <p><input type="checkbox"/> b. Court gives notice to a peace officer to serve either in person or by mail at the last known address on file with the court.</p> <p><input type="checkbox"/> c. If child now an adult appears:</p> <p><input type="checkbox"/> (1) Court proceeds to handle all cases filed against the 17 year old.</p> <p><input type="checkbox"/> (2) Court should explain charges, pleas, and rights.</p> <p><input type="checkbox"/> d. The child now an adult fails to appear in response to the notice and order to appear.</p> <p><input type="checkbox"/> (1) Prosecutor files a sworn complaint charging the offense of Violation of Continuing Obligation to Appear (VCOA) as ordered by the notice. (Not to be confused with Section 38.10, P.C., offense of Failure to Appear.)</p>	<p>An individual may not be taken into secured custody for offenses alleged to have occurred before the individual's 17th birthday except an individual under the age of 17 may be taken into nonsecure custody as allowed by Articles 45.058 and 45.059, C.C.P.</p> <p>Art. 45.060, C.C.P.</p> <p>Art. 45.202, C.C.P. If defendant is convicted and peace officer served notice, court must assess \$35 reimbursement fee under Art. 102.011, C.C.P.</p> <p>See Checklist 13-1. See Chapter 4 in this book.</p> <p>Sec. 45.060(c), C.C.P.</p>

- (2) Court orders a warrant prepared for issuance only for the VCOA as ordered by the notice. (Court must also have a probable cause affidavit before issuing the warrant.)
  
- 2. Procedures when child now an adult is arrested:
  - a. Court should explain charges, pleas, and rights.
  
  - b. Court proceeds to handle all cases filed against the 17 year old, including all the cases that were filed while the individual was under the age of 17.
  
  - c. For the penalties, see the applicable Checklist for that offense in this chapter.

Court may not issue warrants on the charges filed while the individual was under the age of 17. Art. 45.060, C.C.P.

When a warrant is processed or served by a peace officer, the court must assess a \$50 warrant reimbursement fee. Art. 102.011, C.C.P.

See Checklist 13-1.  
See Chapter 4 in this book.

It is an affirmative defense to prosecution for the charge of violation of continuing obligation to appear as ordered by the notice if the individual was not informed of the individual's obligation to notify the court of a current address within seven days of moving. Art. 45.060(d), C.C.P.

If the individual fails to pay, see Checklist 13-22.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**21. Children Now Adults Who Fail to Pay**

<b>Checklist 13-21</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. When a child now an adult (at least age 17) fails to pay:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. A capias pro fine may not be issued for an individual convicted for an offense committed before the individual’s 17th birthday unless:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) The individual is 17 years of age or older;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) The court finds that the issuance of the capias pro fine is justified after considering:</p> <p style="padding-left: 60px;"><input type="checkbox"/> (A) The sophistication and maturity of the individual;</p> <p style="padding-left: 60px;"><input type="checkbox"/> (B) The criminal record and history of the individual; and</p> <p style="padding-left: 60px;"><input type="checkbox"/> (C) The reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and</p> <p style="padding-left: 40px;"><input type="checkbox"/> (3) The court has proceeded under Article 45.050, C.C.P., to compel the individual to discharge the judgment.</p> <p><input type="checkbox"/> 2. If the court finds that the issuance of a capias pro fine is not justified, the court may still issue an order for nonsecure custody for the child who is now an adult.</p>	<p>Art.45.045(b), C.C.P.</p> <p>Art 45.045(b)(1), C.C.P.</p> <p>Art. 45.045(b)(2), C.C.P.</p> <p>Art. 45.045(3), C.C.P. See Checklist 13-17.</p> <p>Art. 45.045(c), C.C.P. See Checklist 13-19.</p>

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Expunction**

**22. Expunction Under Article 45.0216, C.C.P.**

<b>Checklist 13-22</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. Determine if the offense is covered by Article 45.0216, C.C.P.</p> <p><input type="checkbox"/> a. Article 45.0216, C.C.P., applies to offenses described by Sections 8.07(a)(4) and (5) and 43.261, P.C.</p> <p><input type="checkbox"/> b. These offenses include Penal Code offenses and Education Code offenses except failure to attend school, and penal ordinance offenses.</p>	<p>Art. 45.0216(b), C.C.P.</p> <p>Art. 45.0216(g)(1), C.C.P. Transportation Code offenses and traffic ordinances are an exception to this expunction provision.</p> <p>Article 45.0216, C.C.P., does not apply to status offenses under the Alcoholic Beverage Code. They have a separate provision in Section 106.12, A.B.C. See Checklist 13-24.</p> <p>Art. 45.0216, C.C.P., does not apply to status offenses under the Health and Safety Code. They have a separate provision in Section 161.252, H.S.C. See Checklist 13-25.</p> <p>Article 45.0216, C.C.P., does not apply to the Failure to Attend School offense. It has a separate provision in Article 45.0541, C.C.P. See Checklist 13-15.</p>
<p><input type="checkbox"/> 2. Article 45.0216, C.C.P., applies also to a conviction and dismissal pursuant to Article 45.051 (deferred disposition) or Article 45.052 (teen court) for defendants under the age of 17.</p>	<p>Art. 45.0216(h), C.C.P.</p>
<p><input type="checkbox"/> 3. All eligible defendants and any parents must be informed in open court of their rights and provided with a copy of Article 45.0216, C.C.P.</p>	<p>Art. 45.0216(e), C.C.P.                      “You have the right to request the court to expunge the offense of _____.”</p> <p>Here is a copy of the law regarding your right to expunction. Please take time to read this information.”</p>

- 4. Eligibility requirements:
  - a. Defendant must not have been convicted of more than one offense covered by these provisions;
  - b. Defendant must be at least 17 years of age; and
  - c. Offense must have been committed before turning 17.
  
- 5. Procedures are instigated by request of the defendant:
  - a. In writing;
  - b. Identifying the case to be expunged;
  - c. Stating that the person has not been convicted of another offense under these provisions; and
  - d. Made under oath.
  
- 6. The court shall require a person who requests expunction under this article to pay a reimbursement fee in the amount of \$30 to defray the cost of notifying state agencies of orders of expunction.
  
- 7. The provisions do not require notice or a hearing.
  
- 8. If the court finds the person was not convicted of any other covered offense while the person was a child, the court shall order the following items expunged:
  - a. Conviction;
  - b. Complaints;
  - c. Verdicts;
  - d. Sentences;
  - e. Prosecutorial records;

Art. 45.0216(i), C.C.P.

Art. 45.0216(f), C.C.P.

- f. Law enforcement records; and
- g. Any other documents related to the offense.
- 9. Order the appropriate entities to return the relevant records to the court or to destroy them.
  
- 10. Give the order to the clerk to serve on the appropriate entities.
- 11. Destroy the records and delete computer references.
- 12. Further order that the person is released from all disabilities resulting from the conviction and that the conviction may not be shown or made known.
- 13. Provide a copy of the order to the movant/defendant.
- 14. Seal the order and make no computer or index reference to it.

The order should contain a list of agencies, officials, and persons who are subject to the order. The clerk sends by certified mail/return receipt a copy of the order to all that are subject to the order.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Expunction**

**23. Expunction for State Offenses Under the Alcoholic Beverage Code**

Alcoholic Beverage Code offenses have their own expunction provision and are specifically excluded from the general juvenile expunction procedures in Article 45.0216, C.C.P.

Checklist 13-23	Script/Notes
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Eligibility requirements:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Must be at least 21 years of age;</li> <li><input type="checkbox"/> b. Must have been convicted of or arrested for (and not convicted) only one Alcoholic Beverage Code Offense; and</li> <li><input type="checkbox"/> c. Must pay a reimbursement fee in the amount of \$30 to defray the cost of notifying state agencies of orders of expunction.</li> </ul> </li> <li><input type="checkbox"/> 2. Must file an application with the court requesting expunction.                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The application shall contain the applicant’s sworn statement that he or she was not convicted of any violation of this code except for the one that he or she seeks to have expunged; or</li> <li><input type="checkbox"/> b. The application must contain the applicant’s sworn statement that the applicant was not arrested for a violation of this code other than the arrest the applicant seeks to expunge.</li> </ul> </li> <li><input type="checkbox"/> 3. The court may, but does not have to, conduct a hearing in open court. The court, upon finding that the applicant’s statement is true (statement that they had only one conviction or arrest), shall prepare an order that requires all disabilities resulting from the conviction be removed from the applicant’s record.</li> </ul>	<p>Sec. 106.12, A.B.C.</p>

- 4. Order the appropriate entities to return the relevant records to the court or to destroy them.
- 5. Give the clerk the order to serve.
- 6. Destroy the records and delete computer references.
- 7. Further order that the person is released from all disabilities resulting from the conviction and that the conviction may not be shown or made known.
- 8. Provide a copy of the order to the movant/defendant.
- 9. Seal the order and make no computer or index reference to it.

The order should contain a list of agencies, officials, and persons who are subject to the order. The clerk sends by certified mail/return receipt a copy of the order to all that are subject to the order.



**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Expunction**

**24. Expunction of Status Tobacco Offenses**

<b>Checklist 13-24</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. An individual convicted for an offense under Section 161.252, H.S.C., may apply to court to have conviction expunged.</p> <p><input type="checkbox"/> a. Defendant must apply to court on or after the individual's 21st Birthday;</p> <p><input type="checkbox"/> b. Court must find defendant satisfactorily completed tobacco awareness program or tobacco-related community service ordered by the court; and</p> <p><input type="checkbox"/> c. The court shall require a person who requests expunction under this article to pay a fee in the amount of \$30 to defray the cost of notifying state agencies of orders of expunction.</p> <p><input type="checkbox"/> 2. If above satisfied, court shall order that the conviction may not be shown or made known for any purpose and order the following expunged from the record:</p> <p><input type="checkbox"/> a. Conviction;</p> <p><input type="checkbox"/> b. Complaint;</p> <p><input type="checkbox"/> c. Verdict;</p> <p><input type="checkbox"/> d. Sentence; and</p> <p><input type="checkbox"/> e. Any other document relating to the offense.</p> <p><input type="checkbox"/> 3. Mail certified copies of order to:</p> <p><input type="checkbox"/> a. Alcohol awareness course provider; or</p>	<p>Sec. 161.255, H.S.C.</p> <p>There is no requirement that defendant have only one conviction under Section 161.252 to qualify for expunction.</p> <p>General expunction procedures found in Article 45.0216, C.C.P., do not apply to tobacco violations</p>

- b. Community services provider; and
- c. Chief of your city's police department.

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Expunction**

**25. Expunction Procedures for Truancy Offenses**

H.B. 2398 (84th Legislature) repealed the offense of Failure to Attend School along with former Articles 45.054 and 45.055 of the Code of Criminal Procedure related the expunction of Failure to Attend School offenses. Article 45.0541, C.C.P., provides that an individual who has been convicted of the former offense of Failure to Attend School, or who has had a complaint dismissed, is entitled to an expunction, regardless whether the person petitions for the expunction. No expunction fee authorized.

Checklist 13-25	Script/Notes
<p><input type="checkbox"/> 1. An individual who has been convicted of a truancy offense or has had a complaint for a truancy offense dismissed is entitled to have the conviction or complaint and records relating to the conviction or complaint expunged.</p>	<p>A “truancy offense” means a Failure to Attend School offense. Art. 45.0451(a), C.C.P.</p>
<p><input type="checkbox"/> 2. A petition for expunction is not required.</p>	<p>Art. 45.0541(c), C.C.P.</p>
<p><input type="checkbox"/> 3. A court in which an individual was convicted or a complaint for a truancy offense was filed shall order the following related to the offense to be expunged from the person’s record:</p> <p><input type="checkbox"/> a. Convictions;</p> <p><input type="checkbox"/> b. Complaints;</p> <p><input type="checkbox"/> c. Verdicts;</p> <p><input type="checkbox"/> d. Sentences;</p> <p><input type="checkbox"/> e. Prosecutorial records;</p> <p><input type="checkbox"/> f. School Records;</p> <p><input type="checkbox"/> g. Any other documents relating to the offense.</p>	<p>Art. 45.0541(c), C.C.P.</p>
<p><input type="checkbox"/> 4. After entry of the order, the individual is released from all disabilities resulting from the conviction or complaint, and the conviction or complaint may not be shown or made known for any purpose.</p>	<p>Art. 45.0541(c), C.C.P.</p>

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

The criminal records of children have traditionally been handled in municipal courts in the same manner as the criminal records of adults. Juvenile records in juvenile courts, however, have long been confidential. H.B. 961, enacted in 2011, created procedures that conditionally made particular criminal case records confidential. S.B. 393, enacted in 2013, expanded conditional confidentiality to those children that successfully completed a form of “probation” (e.g., DSC, deferred disposition, or teen court.). This was intended to provide parity to children in the juvenile justice system by extending the confidentiality of juvenile courts to criminal court records. H.B. 528 was also enacted in 2013, and it supported confidentiality for the criminal records of children upon charging. This approach, called total confidentiality, appeared to be incompatible with conditional confidentiality under S.B. 393.

Conflicting versions of Art. 15.27 of the Code of Criminal Procedure remained enacted for eight years. Finally, in 2021, H.B. 2669 repealed conditional confidentiality in favor of confidentiality for children accused of Class C misdemeanors, other than traffic offenses, from the moment of charging. Now, in such cases, the public has no access to inspect these criminal records.

**26. Confidentiality**

Checklist 13-26	Script/Notes
<p><input type="checkbox"/> 1. Except as authorized to notify schools under Art. 15.27 of the Code of Criminal Procedure and the exceptions below, all records and files, including those held by law enforcement and information stored by electronic means or otherwise from which a record or file could be generated relating to a child who is (1) charged with, (2) convicted of, (3) found not guilty of, (4) had a charge dismissed for, or (5) is granted deferred disposition for a fine-only offense other than a traffic offense, are confidential and may not be disclosed to the public.</p>	Art. 45.0217(a), C.C.P.
<p><input type="checkbox"/> 2. Information subject to confidentiality may be open to inspection only by:</p> <p><input type="checkbox"/> a. Judges or court staff;</p> <p><input type="checkbox"/> b. A criminal justice agency for criminal justice purposes;</p> <p><input type="checkbox"/> c. The Department of Public Safety;</p> <p><input type="checkbox"/> d. An attorney for a party to the proceeding;</p> <p><input type="checkbox"/> e. The child defendant; or</p> <p><input type="checkbox"/> f. The defendant’s parent, guardian, or managing conservator.</p>	<p>Art. 45.0217(b), C.C.P.</p> <p>See Sec. 411.082, G.C.</p>

**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**27. Juvenile Contempt**

Article 45.050, C.C.P. gives municipal and justice courts two distinct options when dealing with children who do not comply with court orders. The first option is to refer the child to juvenile court for delinquent conduct. Art. 45.050(c)(1). The second option is to retain the matter and proceed to conduct a contempt hearing. Art. 45.050(c)(2).

Checklist 13-27	Script/Notes
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Court gives the child notice of the hearing.</li> <li><input type="checkbox"/> 2. Court issues a summons for the parent(s) to appear with the child.                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. If the child appears, court conducts a hearing; and</li> <li><input type="checkbox"/> b. Parent(s) must appear with child. If summons has been served and parent fails to appear, court may waive presence of parent; if summons has not been served, reset hearing.</li> </ul> </li> <li><input type="checkbox"/> 3. Hearing is informal. Explain to the child why the court is conducting the hearing, the consequences of waiving jurisdiction, and the consequences of retaining jurisdiction.</li> <li><input type="checkbox"/> 4. Court decides whether to transfer the child to juvenile court or to retain jurisdiction.</li> </ul>	<p>Art. 45.050(c), C.C.P.</p> <p>Art. 45.0215(a)(2)(B), C.C.P.</p> <p>“If I determine that your actions constitute contempt and I decide to keep jurisdiction over you, I can assess a fine of up to \$500. This is in addition to the fines that you still owe this court. Also, I can order the Texas Department of Public Safety to suspend or deny issuance of your driver’s license until you have completely complied with all of this court’s orders.”</p> <p>“If I decide to transfer you to the juvenile court, this conduct is considered delinquent conduct by the juvenile court.”</p> <p>Art. 45.050(c)(1), C.C.P.</p>

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| <p><input type="checkbox"/> a. If the court transfers the child to juvenile court, further action against the child ceases in municipal court. (The child is still liable for payment of the fine on the original charge(s).)</p> <p><input type="checkbox"/> b. If the court retains jurisdiction, the court may:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) Find the child in contempt and order the child to pay a fine of up to \$500; and/or</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) Order DPS to suspend or deny issuance of the child's driver's license.</p> <p><input type="checkbox"/> 5. If the child turns age 17 before paying the fine, see Checklist 13-22.</p> | <p>Art. 45.050(c)(1), C.C.P.<br/>The court may not refer to the juvenile court a child who has turned age 17 by the time that the municipal court conducts the contempt hearing. Art. 45.050(g), C.C.P.</p> <p>Art. 45.050(c)(2)(A), C.C.P.<br/>Court may not find a child in contempt of another court's order.</p> <p>Art. 45.050(c)(2)(B), C.C.P.</p> <p>Art. 45.045, C.C.P.</p> |
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**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Magistrate’s Warning for a Written or Oral Juvenile Confession of a Child, Section 51.095, F.C.**

**28. Written Confession**

<b>Checklist 13-28</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. Identify yourself to the child.</p>	<p>“My name is _____. I am the Judge of _____ Court.”</p>
<p><input type="checkbox"/> 2. Determine if the child sufficiently understands the English language or possesses any impairments.</p>	
<p><input type="checkbox"/> 3. If necessary, swear a person to act as an interpreter.</p>	<p>Art. 38.30, C.C.P.</p>
<p><input type="checkbox"/> 4. If the child is deaf, obtain the services of an interpreter as provided by Article 38.31, C.C.P., to interpret the warning.</p>	<p>Art. 15.17(c), C.C.P. See Checklist 12-5.</p>
<p><input type="checkbox"/> 5. All activities must take place in a setting approved by the juvenile board. This means the juvenile processing office, or the office or official designated by the juvenile court as required in Section 52.02, F.C.</p>	<p>A “juvenile processing office” should not be confused with the “juvenile curfew processing office” found in Article 45.059, C.C.P., or a “place of nonsecure custody” described in Article 45.058, C.C.P.</p>
<p><input type="checkbox"/> a. Be sure that you know the policy set out by your local juvenile court or juvenile board as to where a child might be taken for receipt of a statement.</p>	
<p><input type="checkbox"/> 6. Advise the child of the following warning:</p>	<p>Sec. 51.095(a)(1)(A), F.C.</p>
<p><input type="checkbox"/> a. “You may remain silent and not make any statement at all and that any statement that you make may be used in evidence against you.”</p>	
<p><input type="checkbox"/> b. “You have the right to have an attorney present to advise you either prior to any questioning or during the questioning.”</p>	

- c. “If you are unable to employ an attorney, you have the right to have an attorney appointed to counsel with you before or during any interviews with peace officers or attorneys representing the State.”
  
- d. “You have the right to terminate the interview at any time.”
  
- 7. Advise the child as follows:
  - a. “You will not be penalized for not making a statement.”
  - b. “Any prior oral statements made by you are not admissible except if the statement contains assertions of facts or circumstances that are found to be true, and which tends to establish your guilt.”
  
- 8. Sign the written warning noting the date and time.
  
- 9. After the statement is reduced to writing, a magistrate must again give a proper warning to the child before the written statement is signed by the juvenile in the presence of the magistrate.
  
- 10. No law enforcement official or prosecuting attorney can be present except that a magistrate may require a bailiff or law enforcement officer to be present to ensure the safety of the magistrate and other court personnel. The bailiff or law enforcement officer may not carry a weapon in the presence of the child.
  
- 11. The magistrate must certify in writing that he or she is convinced that the child understands the nature and contents of the statement and signs it voluntarily.

When an attorney is requested, a police officer must stop asking the accused questions until he is provided with an attorney. However, a request for counsel must be sufficiently clear that a reasonable police officer would understand the statement to be a request for an attorney. *Stanley v. State*, 2015 Tex. App. LEXIS 767 (Tex. App.--San Antonio Jan. 28, 2015, no pet.).



**CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS**

**Magistrate’s Warning for a Written or Oral Juvenile Confession of a Child, Section 51.095, Family Code**

**29. Oral Confession**

Checklist 13-29	Script/Notes
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Comply with items 1–7 in Checklist 13-28.</li> <li><input type="checkbox"/> 2. The warning must be part of the recording.</li> <li><input type="checkbox"/> 3. At the time of the warning, the magistrate may require that the officer return the child and the recording to the magistrate at the conclusion of questioning.                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The magistrate may then view the recording with the child or have the child view the recording in order to determine whether the child’s statement was given voluntarily.</li> <li><input type="checkbox"/> b. The magistrate’s determination of voluntariness must be reduced to writing and signed and dated by the magistrate.</li> <li><input type="checkbox"/> c. If a magistrate invokes Section 51.095(f), F.C., a child’s confession is not admissible unless the magistrate determines that statement was given voluntarily.</li> </ul> </li> <li><input type="checkbox"/> 4. The child must knowingly and voluntarily waive each right stated in the warning.</li> <li><input type="checkbox"/> 5. The recording device must be capable of making an accurate recording.</li> <li><input type="checkbox"/> 6. The operator of the device must be competent to use the device.</li> </ul>	<p>Sec. 51.095(a)(5)(A), F.C.</p> <p>Sec. 51.095(f), F.C.</p> <p>Note: While subsection (f) is discretionary, magistrates should be prepared to explain why they did or did not invoke the option.</p> <p>See <i>TMCEC 2022 Forms Book: Magistrate’s Determination of Voluntariness – Recorded Statement of Child.</i></p>

