

THE RECORDER

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FROM THE CENTER

Prices Are Rising

When inflation surges, the value of money decreases. Inflation hit a 40-year high in March and the costs of gas, food, labor, and everyday items have increased at the fastest rate in decades. When costs go up, so do prices. This includes the price of training municipal judges and court personnel.

Training provided by TMCEC is significantly subsidized by grant funds from the Texas Court of Criminal Appeals. These grant funds come from the Judicial Court Personnel Training Fund, which is funded by court costs, including those generated by municipal courts. For more than a decade, Class C Misdemeanor filings throughout Texas have been steadily declining and the gap between what state grant funding can provide and what things cost has continued to increase.

Recent economic upheaval stemming from COVID-19 combined with rapid inflation made it clear that TMCEC cannot sustain its present operations solely with grant funds and the current nominal fees assessed for tuition and housing. That is why in April, the TMCEC Board of Directors voted to charge a \$75 overhead fee for participants attending TMCEC seminars (effective September 1, 2022). The fee does not apply to webinars. Notably, the Board also voted to lower the registration fee from \$100 to \$75. This means the change in fees beginning in September is a rate increase of \$50 per seminar participant. Currently, there is no anticipated change to the housing fee or CLE fee. This additional voluntary fee will be used for expenses that exceed what is allowed under state grant guidelines, such as excess participant food and lodging costs and staff salaries and benefits. TMCEC has long been committed to training all judges and court personnel and has policies and procedures in place, including financial aid, to ensure that judges and court personnel have access to training if they are unable to pay.

Welcome Benjamin Gibbs

Benjamin Gibbs joined TMCEC as Program Attorney & Deputy Counsel on April 25, 2022. Mr. Gibbs, an active TMCEC faculty member, is no stranger to TMCEC or municipal courts in the Lone Star State. He is a graduate of Baylor Law School. For three summers during and after law school, he interned at TMCEC and is a past Texas Municipal Courts Fellow.

Prior to attending law school, he was a municipal court clerk and juvenile case manager for the Cities of Austin and Huntsville. For more than four years, he has been in private practice, first at McKamie-Krueger and then at Taylor, Olson, Adkins, Sralla, and Elam, where he represented multiple cities and prosecuted in municipal courts throughout North Texas.





TEXAS MUNICIPAL COURTS EDUCATION CENTER

2210 Hancock Drive
Austin, TX 78756
Phone: 512.320.8274 or 800.252.3718
Fax: 512.435.6118
www.tmcec.com

STAFF

Tayler Adams, Program Coordinator
Elizabeth De La Garza, TxDOT Grant Administrator
Crystal Ferguson, Executive Assistant
Benjamin Gibbs, Program Attorney & Deputy Counsel
Mark Goodner, General Counsel & Director of Education
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A Primer on P2P Payment Networks

Lily Pebworth, Program Director, TMCEC

In a technological age, government is increasingly tasked with keeping up with the public's growing demand for convenience in the form of online services. Courts are no exception. Just as Zoom and other video conference technologies reflect changes in how a person may "appear in court," other technologies have the potential to change our notion of what it means to make a payment to the court. An increasing number of court users want services that offer an alternative payment method to cash, credit card, or check. Venmo, Zelle, PayPal, and Cash App, to name just a few person-to-person (P2P) payment networks, are gaining significant momentum due to their widespread accessibility, ease of use, and low cost.

A P2P network is a system that allows two or more personal devices to connect and share information with each other without going through a separate server. Users can instantly transfer money between their accounts and another individual or business account with no fees. It is important that courts in Texas understand the basics of this emerging technology as well as the benefits and potential pitfalls of P2P payment networks.

P2P Payment Networks: A Comparison

PayPal was one of the first established and is one the most popular P2P payment networks. PayPal users can sign up for an account, enter their bank account information, and send or receive money at no cost. The money, until transferred, will remain in a third-party PayPal account, and these funds can go toward future PayPal transactions. To transfer money to a bank account or debit or credit card, it will take a few business days at no added fee, or for a one percent fee, the money can be deposited instantly. For debit or credit card users on PayPal, there is a 2.9% fee on every transaction, so, if possible, it is more economical to use a bank account for money transfers.

Zelle is utilized by nearly every bank and credit union in the United States. Zelle facilitates the sending and receiving of money quickly, easily, and at no fee—even if the person uses a different bank. Bank accounts are tied to a phone number and email address, and anyone wanting to send or receive money needs only look up the phone number or email address of the person that they wish to send money to or request money from. There is no third-party account where these funds are deposited; instead, they are deposited directly into the bank account.

The other various P2P payment networks are more or less the same with slightly different features and fees associated with each. They can be an extremely useful tool for individuals, small businesses, and corporations.

P2P Payment Networks Are Practical and Pervasive

P2P payment holds a great deal of practical use, like paying for goods and services, paying bills, or paying back a family member or friend. Additionally, P2P payment is becoming so pervasive in everyday life that the different platforms are being used as verbs. For example, one roommate can pay rent, and the other can simply "Venmo" them for half, or instead of everyone paying separate checks at a restaurant, one person can pay the total, and the rest can "Zelle" what they owe.

Is it Proper for Courts?

Many people consider the functionality of P2P technology invaluable. Government use has not quite taken off like individual or business use, but some cities are dabbling in the idea of this new norm, possibly expedited by the COVID-19 pandemic and the need for more online services. Austin, Texas is utilizing P2P technology by accepting PayPal and Venmo for utility

payments, while New York City accepts PayPal and Venmo to pay parking or red-light-camera violations. Even in the municipal court in the small City of Groves, Texas, a defendant used Cash App to satisfy a judgment.

Pitfalls Include Records Integrity and Security Risks

Regardless of its legal status in Texas, and despite its potential utility and convenience, there are potential drawbacks that could prove problematic for courts.

P2P networks use a decentralized system, meaning each device that is part of the network works independently of one another, and if one device crashes, the system will still maintain its functionality. Technology can be erratic, so this system is advantageous in that it does not rely on the performance of a single device. However, it also means that transactions may potentially be harder to locate.

Though accommodating, P2P payments have an inferior layer of security compared with typical bank transactions. The amount of protection for P2P networks is comparable to that of social media apps. That, on top of the fact that there is money tied to these accounts, makes them a vulnerable target for hackers. On most P2P payment apps, the user can set up notifications to alert them whenever a transaction is made so they may be alerted to any transactions they did not initiate.

Phishing is yet another matter to be aware of. Phishing happens when scammers attempt to trick people into falling for a scam, most likely with the intent to gain sensitive information. This can be an uneasy thought, especially when an account receives money. If a court decides to utilize P2P payments, it is imperative that the processes and procedures associated with the use of this technology are communicated clearly and effectively to all court users. The court should have cybersecurity protocols in place to ensure that employees can recognize the signs of phishing and avoid falling victim to this method of fraud. Court users will want to know that they have different options to pay. It would be helpful to emphasize the correct account for payment to avoid the money being deposited in the wrong account. Consider implementing an online chat option for court users that may have questions about where to send the money.

Any information offered will help those who have not yet made use of this technology.

Since P2P payment transactions do not involve a middleman, i.e., a bank or credit card company, once money is sent, it can be virtually impossible to get back. The court must consider how it will handle this situation. Will the court take the loss and consider the judgment satisfied, or will the court require the defendant to pay a second time? Presently, there is no insurance through P2P payment apps to cover losses. It is important to not only make sure all accounts are protected with strong passwords to avoid theft by hackers but also to ensure the money is being sent to the correct location. Humans are prone to errors. The sender should always verify the receiver before the money leaves the account.

Permitted or Prohibited?

P2P payment is fairly new technology. Presently, Texas law does not expressly permit or prohibit the use of P2P technology as a method of payment for fines or court costs. The more popular P2P payments become, however, new laws regarding governmental use could be on the horizon.

Potential for Promoting Procedural Fairness

In terms of procedural fairness (the public's perception that their treatment is fair while moving through the court process) there are potential benefits to using P2P payment. Specifically, P2P payments touch on the central procedural fairness ideas of respect, voice, and understanding. Adding methods like P2P payments options to satisfy judgments respects court users by offering a tool they likely understand in other contexts. Further, the option can give defendants a measure of control in choosing their method of payment. This voice in the process can make a difference in their perception of fair treatment. It also makes the court's job easier. More and more people are making P2P payments. If a court decides to accept P2P payments, the court might see an increase in satisfaction of judgments by defendants.

There are important factors for courts to consider before deciding whether to make use of this technology, but it has the potential to be mutually beneficial for defendants and courts.

WHAT NOW?

When a Defendant Withdraws a Jury Waiver

Hon. Eric Bayne, Presiding Judge, City of Del Rio



Before each bench trial, I “rearraign” the defendant, remind them that they waived a jury, and ask them if they still want a bench trial. Until recently, no defendant ever said “no.” The first time a defendant asked to withdraw his jury waiver, I was caught a bit flat-footed. In that instance, the State did not object so the motion was granted, and I avoided the embarrassment of not knowing the law. Concerned that I might never be as lucky again, I conducted the research which forms the basis for this article. Please keep in mind that this article pertains only to criminal cases.

The Right to Jury Trial and Waiver of the Right

Despite the robust due process offered those accused of crimes, including fine-only misdemeanors, it is common knowledge that the disposition of a vast majority of cases in Texas courts occurs before trial, and a vast *minority* of cases are ever placed on a jury docket. Yet, in most years, Texas municipal courts still conduct thousands of bench trials, so there are ample opportunities for municipal courts to consider a defendant’s request to withdraw their waiver of jury trial.

Before tackling the issue of when to allow a defendant to withdraw a jury waiver, we need to understand a bit more about the right to a jury trial, and how a jury trial is waived in the first place. The 6th Amendment to the United States Constitution guarantees a defendant in a criminal matter the right to trial before a jury of their peers. Likewise, the Texas Constitution declares this right to be “inviolable.”¹ In anything other than a death-penalty case, this right may be waived,² and there are procedural guardrails to ensure that a defendant’s right to a jury is not unlawfully abridged.³ As a matter of federal constitutional law, a waiver of jury trial must be express, knowing, and intelligent.⁴ In practice, this means that we must advise every defendant of their right to a trial by jury, and should they wish to waive that right, we must obtain, at minimum, a writing signed by the defendant. In all cases other than fine-only misdemeanors, Article 1.13 of the Code of Criminal Procedure requires a waiver to be in writing, made in open court, and accompanied by the written consent of the attorney for the state. Even then, it is subject to the discretion of the court. Article 45.025 of the Code of Criminal Procedure, which applies to fine-only misdemeanors, omits all requirements other than that the waiver be made “in writing.” Whether there is a converse right to a *bench* trial apparently depends upon the classification of the offense⁵ but there is no element of consent in Article 45.025. Rather, it states that upon the defendant’s written waiver, the judge “*shall* hear and determine the cause without a jury,” so that certainly seems to create just such a right.

Withdrawal of a Waiver: The *Marquez* Test

Assuming a valid waiver exists, what happens when a defendant asks to withdraw it? We start with *Marquez v. State*, 921 S.W.2d 217 (Tex. Crim. App. 1996), wherein the defendant, having previously been set for jury trial on six separate dates, waived his right to a

jury and was set for a bench trial to commence a few days later. On the morning of his bench trial, Marquez unsuccessfully sought to withdraw his waiver. The bench trial proceeded, Marquez lost, filed his appeal alleging a breach of his right to a jury trial, lost again, and the Court of Criminal Appeals (CCA) granted his Petition for Discretionary Review. Marquez lost again, as the CCA upheld his conviction, but in so doing it created a framework whereby a defendant *might* be able to withdraw a waiver.

Because of *Marquez*, Texas law on the issue is clear, even if the path to clarity was a bit serpentine.⁶ In its opinion, the Court announced a three-prong⁷ test:

Defendants should be permitted to withdraw their previously executed jury waiver if they establish on the record that their request to do so is made sufficiently in advance of trial such that granting their request will not: (1) interfere with the orderly administration of the business of the court, (2) result in unnecessary delay or inconvenience to witnesses, or (3) prejudice the State.

Note that the burden of proof is on the defendant. This was a point of contention with the dissenters, but Judge Keller likened a request to withdraw a jury waiver to a *Batson* challenge or a motion for change of venue, both of which place the burden on the moving party. Although the State bears the initial burden of establishing the existence and validity of the jury waiver in question,⁸ that fact may be established from the trial court's records.⁹ ¹⁰ No inference of a valid waiver can be drawn from a silent record,¹¹ and likewise none of the *Marquez* factors can be presumed from a silent record.¹² Many of the defendants who were unsuccessful on appeal made bare assertions that none of the *Marquez* factors applied in their cases but offered no evidence to support their arguments. Some have even tried (and failed) to convince appellate courts to shift the entire burden to the State—to prove both that there is a valid waiver and to either prove the existence of one or more *Marquez* factors, or to anticipate and rebut arguments never actually made by the defendant.¹³

Appeals from Denials of a Motion to Withdraw a Jury Waiver

Considering the multiple and conflicting theories presented by the *Marquez* plurality, concurrences,

dissents, and (presumably) Judge White's "ditto" (see endnote), one might have expected some judicial tinkering in the intervening quarter-century, but no. The case has been cited about 70 times (as recently as September 2021), but the *Marquez* standard remains firmly intact. Of the opinions that cite *Marquez*, most are either unrelated to jury waivers or cite *Marquez* for an entirely different proposition.¹⁴ The standard of review is "abuse of discretion," and in those opinions that do appeal the denial of a motion to withdraw a jury waiver, the trial court's ruling has very nearly always been upheld. This is unsurprising given the individualized facts the trial court must consider in each case, and the special deference given by appellate courts to the fact finder—especially when applying the abuse of discretion standard. Such denials are unlikely to be granted an interlocutory appeal,¹⁵ so most cases reach the appellate level only after a conviction.

Disruption of the court's business is oft cited as a sound justification to deny a withdrawal, but the other two *Marquez* factors have not been completely ignored. Some examples successfully argued by the State are: the differences inherent in preparing for a jury trial versus a bench trial,¹⁶ the difficulty in reassembling a group of witnesses,¹⁷ threats made against witnesses,¹⁸ the number of other pending felony cases on the State's plate,¹⁹ and the State's burdensome duplication of effort to prepare for the same trial multiple times.²⁰ Although few trial courts' decisions have been overturned on appeal, the most recent Court of Criminal Appeals case considering the issue was decided in favor of the defendant, so it is instructive to examine it.

In *Sanchez v. State*, 630 S.W.3d 88 (Tex. Crim. App. 2021), the court reversed the trial court and appeals court, finding that the trial court indeed abused its discretion in refusing to allow the defendant to withdraw his jury waiver. Defendant Sanchez was set for jury trial on July 10th. On the morning of June 29th he reached a tentative plea agreement with the State. The parties planned to present the plea agreement later that day, and in anticipation of that, Sanchez, with advice of counsel, signed the plea agreement and a written waiver of jury trial.²¹ Later that afternoon, Sanchez told the court that he did not wish to accept the plea agreement, that he wanted to go to trial, and that he still wanted a jury. The trial court informed Sanchez that he had waived his right to a jury and that

he would be tried before the bench. He lost his bench trial, appealed, lost again, and the Court of Criminal Appeals granted his Petition for Discretionary Review. The Court reversed and remanded the case back to the trial court. The Court's opinion worked through what it calls the "Hobbs factors"²² and concluded that Sanchez' waiver of a jury trial was part and parcel of a plea agreement that was never consummated, and that withdrawing his waiver mere hours after signing it posed no additional burden on the trial court or the State. The Court analogized the *Sanchez* facts to those cases where guilty pleas were entered but withdrawn, along with the jury waiver.²³ The *Sanchez* Court reasoned that a defendant who has never entered a plea should be given at least as much latitude as one who did. This opinion, and in fact all the other opinions considering this topic, illustrate the intensely fact-driven nature of the analysis. It remains to be seen whether this opinion portends a philosophical shift or is merely an outlier.

Conclusion: Protect the Right to Jury Trial

It cannot be overstated that each of the reported cases makes plain that a trial court is best positioned to determine whether a defendant has met the burden of proof. The thermonuclear intercontinental ballistic justification for denying a defendant's request to withdraw a waiver lies with the first prong of the *Marquez* test—whether such a withdrawal would interfere with the orderly administration of the business of the court—because appellate courts are loathe to insert themselves into the "business" of the court. Even though (or maybe even because) a trial court's reliance on the first prong is usually a slam dunk win for the State, it is important that courts be mindful of the foundational constitutional principle of the right to trial by jury. When presented with the opportunity to deny a defendant that right, courts should observe the general rule in *Marquez* to "permit withdrawal of the waiver so long as it is in good faith and there are no adverse consequences" because "such a rule is necessary to protect the 'inviolable' right to a jury trial."^{24 25}

¹ TEX. CONST. art. I, § 15.

² TEX. CODE CRIM. PROC. art. 1.13(a).

³ See, generally, 21 Tex. Jur. 3d Criminal Law: Rights of the Accused §§ 49-55.

⁴ *Guillett v. State*, 677 S.W.2d 46, 49 (Tex. Crim. App. 1984).

⁵ In cases other than fine only misdemeanors, the consent of both the State and court are required, and failure of the defendant to obtain such consent as specified is reversible error. *Thompson v. State*, 154 Tex. Crim. 273, 226 S.W.2d 872 (1950). Consent by the State, at least, is not ministerial or simply pro-forma. Texas courts have held that the State may have a legitimate, even compelling, reason to insist that a Defendant be tried by a jury of their peers. *Metts v. State*, 510 S.W.3d 1 (Tex. Crim. App. 2016), as corrected (Oct. 19, 2016). I can find no case that stands for the proposition that the consent of the court is any less material.

⁶ "Plurality" seems an inadequate term. The Texas Court of Criminal Appeals is served by one Presiding Judge and eight Judges. In *Marquez*, heard en banc, Presiding Judge Keller, writing for the court, was joined outright by three judges, one concurring opinion and one concurring "ditto" (Judge White writing: "I join the opinion of the Court. However, I also agree with the reasoning in J. MEYERS' concurring opinion."). Judge Meyer's concurrence did not subscribe to Judge Keller's reasoning, and in fact disputed that a defendant had any right at all to withdraw a jury waiver. There were three dissents and two dissenting opinions agreeing with Chief Judge Keller's reasoning that a defendant has at least a qualified right to withdraw a jury waiver but joining each other in suggesting that the burden of proof should lie with the State. Judge Baird would have added an unqualified right if the defendant didn't get the trial judge he expected.

⁷ What is it about three-prong tests? Are they inherently more stable than two-prong tests, or more efficient than four-prong tests? This question deserves its own article.

⁸ *Hobbs v. State*, 298 S.W.3d 193 (Tex. Crim. App. 2009).

⁹ *Guillett*, 677 S.W.2d 46.

¹⁰ In many smaller jurisdictions, most jury waivers are signed at the initial appearance without any involvement of the State, so it is hard to fathom how the State would be able to meet its burden any other way.

¹¹ *Samudio v. State*, 648 S.W.2d 312 (Tex. Crim. App. 1983).

¹² *Smith v. State*, 363 S.W.3d 761 (Tex. App.—Austin 2012, pet. ref’d).

¹³ E.g., *Ross v. State*, No. 06-14-00157-CR, 2015 WL 4594130 (Tex. App.—Texarkana July 31, 2015, no pet.).

¹⁴ *Marquez* is very popular with courts for its pithy holding that “the control of the business of the court is vested in the sound discretion of the trial judge.” *Marquez*, 921 S.W.2d at 223.

¹⁵ *In re Taylor*, No. 06-07-00097-CV, 2007 WL 2119209 (Tex. App.—Texarkana July 24, 2007, no pet.) (mem. op., not designated for publication); *In re Tennison*, 502 S.W.3d 821 (Tex. Crim. App. 2016).

¹⁶ *Granados-Guevara v. State*, No. 01-16-00547-CR, 2017 WL 2812501 (Tex. App.—Houston [1st Dist.] June 29, 2017, pet. ref’d).

¹⁷ *Id.*

¹⁸ *Hobbs*, 298 S.W.3d 193.

¹⁹ *Ramirez v. State*, No. 11-11-00077-CR, 2013 WL 600270 (Tex. App.—Eastland Feb. 17, 2013, pet. ref’d) (mem. op., not designated for publication).

²⁰ *Id.*

²¹ The Court acknowledged that the jury waiver had not been signed in open court as required by Article 11.13 of the Code of Criminal Procedure but accepted *arguendo* the existence of a valid waiver to reach the determinate analysis.

²² *Hobbs v. State*, 298 S.W.3d 193 (Tex. Crim. App. 2009). There is no meaningful difference between the *Hobbs* and *Marquez* factors.

²³ In such cases there are differences of opinion as to whether a trial court errs if it denies a defendant’s request to withdraw a jury waiver, although to be fair, the leading cases predate *Marquez*. The *Sanchez* court clearly adopts that principle that a withdrawn plea is sufficient justification to withdraw a contemporaneous jury waiver.

²⁴ *Marquez*, 921 S.W.2d at 222.

²⁵ The author gratefully acknowledges Suzanne West, former Del Rio City Attorney and present District Attorney for the 63rd and 83rd Judicial Districts, who was generous with her time in reviewing this article before publication.

Mental Health Conference

**August 18-19, 2022
Corpus Christi**

Held every two years since its inauguration in 2016, the 2022 Mental Health Conference is the fourth TMCEC conference to focus on mental health and its impact on municipal courts.

This event is open to municipal judges, court administrators, clerks, prosecutors, and juvenile case managers. Attendance at this conference counts for judicial education, clerk certification, and CLE credit.

Go to register.tmcec.com to register.

Registration is \$50



Kids in the Road

Educating Your Community on Traffic Safety Practices

Elizabeth De La Garza, TxDOT Grant Administrator, TMCEC

This article is brought to you by Driving on the Right Side of the Road (DRSR), a Texas Department of Transportation grant administered by TMCEC

With in-person events and community gatherings making a return, now is the time to remind the drivers in your communities about traffic safety around children and young drivers. DRSR would love to assist your efforts to educate your community on traffic safety. To this end, DRSR would like to offer its resources and educational materials to the municipal courts of Texas and join you in your efforts to save lives.

The mission of any traffic safety education event you might host should be two-fold: (1) to educate drivers to be on the lookout for children (in neighborhoods especially but also near schools or playgrounds) and (2) to educate children about being responsible for their own safety near roads. Below are traffic safety issues worthy of their own event that your court might choose to sponsor or be a part of.

Driver Safety Around Buses

School Bus Safety Week is the third full week of September. Students are about 70 times more likely to arrive to school safely while taking the school bus instead of traveling by car. In fact, many school bus injuries and fatalities happen while students are getting in or out of the bus. While many drivers know that they should stop when a school bus is loading or unloading student passengers, other drivers may have forgotten the law. Sections 545.066 and 547.701 of the Texas Transportation Code provide:

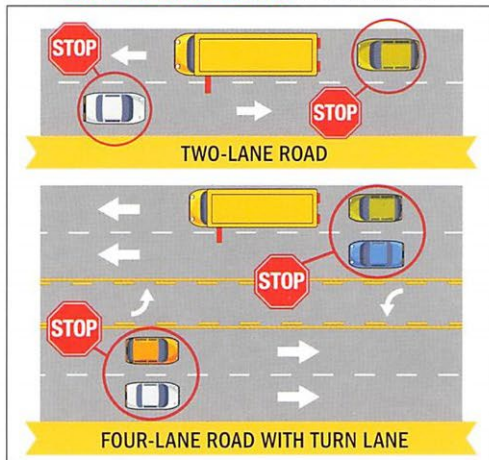
- If a bus has alternating flashing red signals visible from the front or rear, drivers **MUST** stop before reaching the bus.
 - Drivers can only proceed if the flashing lights are no longer activated, or the bus driver signals an operator to proceed, or the bus has resumed driving.
 - Approaching drivers do **NOT** have to stop for a school bus that is operating a visual signal if the road is separated by a physical barrier or an intervening space.
 - If a highway is only divided by a left-turn lane, it is not considered divided, and drivers must stop for school buses.
- Drivers who illegally pass a school bus face fines up to \$1,250 for the first offense. For people convicted of the offense more than once, the law allows for the person's driver license to be suspended for up to six months. A citation for this offense cannot be dismissed through a driving safety course. Enhanced criminal charges are possible if a driver causes someone serious bodily injury.

DRSR can provide school bus safety push cards (See Figure 1) to courts that would like to emphasize this issue. These push cards provide graphic representations of this important law.

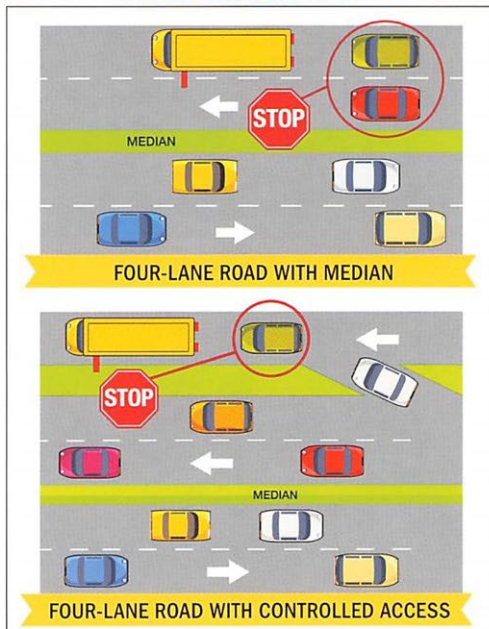
PROTECT OUR KIDS

Know the Texas school bus stop law.

BOTH DIRECTIONS MUST STOP



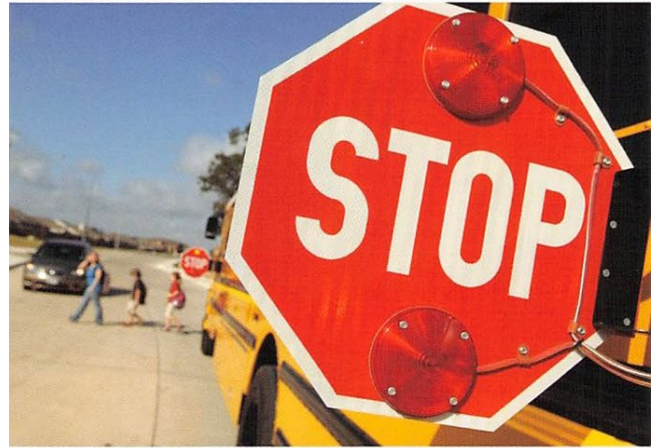
ONLY THE SAME DIRECTION MUST STOP



For more information, visit www.txdot.gov/safety.

PROTECT OUR KIDS

**Stop! Flashing Red...
Kids Ahead!**



Stop! It's the law.

Texas law requires that you stop for a stopped school bus with flashing red lights and stop arm extended. Children get on and off the bus and may cross the road. They count on you to stop!

You must remain stopped until the bus starts moving, the bus driver signals for you to go, or the flashing red lights are turned off.

If you break the law...

You can be charged with a misdemeanor and fined up to \$1,250.

For a second conviction, you can be fined up to \$2,000 and receive a 6-month driver license suspension.



Figure 1

Online resources to help you educate your community about safety on or around school buses:

- School Transportation News: <https://stnonline.com/>
- National Association for Pupil Transportation: <https://www.napt.org/>
- National School Transportation Association: <http://www.yellowbuses.org/>

-
- National Highway Transportation Safety Administration - School Bus Safety: <https://www.nhtsa.gov/road-safety/school-bus-safety>
 - TxDOT: <https://www.txdot.gov/driver/safety/school-bus-safety.html>
 - Texas DPS: <https://www.dps.texas.gov/section/highway-patrol/school-bus-transportation>

For drivers who always wonder why school buses stop and open their driver window and passenger doors at all railway crossings, this is the law for school bus drivers in response to a tragic school bus crash in Sandy, Utah. A bus filled with students from nearby Jordan High School was crossing a railway during a snowstorm early in the morning and was struck by a fast-moving freight train headed for nearby Salt Lake City. Twenty-four students and the bus driver were killed, initiating changes in existing law as to how all buses, including school buses, could approach rail crossings. Current law requires all vehicles carrying passengers for hire or school events to stop at every railroad crossing, including those with active warning devices. The operator of the bus must stop the vehicle not closer than 15 feet nor farther than 50 feet from the track. While stopped, the driver must listen and look in both directions for an approaching train or activation of the crossing signals (Section 545.2535 of the Texas Transportation Code). This law also applies to carriers of dangerous or flammable materials.

Railway Safety

Rail Safety Week is September 19-25, 2022. Below are basic safety facts about trains to share with your community, especially kids and teens.

- Freight trains do not travel at fixed times, and schedules for passenger trains often change. Always expect a train at each highway-rail intersection at any time.
- All train tracks are private property. Never walk on tracks; it is highly dangerous and may be criminal trespass. It takes the average freight train traveling at 55 mph more than a mile—the length of 18 football fields—to stop. Trains cannot stop quickly enough to avoid a collision.
- The average locomotive weighs about 400,000 pounds or 200 tons; it can weigh up to 6,000 tons. This makes the weight ratio of a car to a train proportional to that of a soda can to a car. We all know what happens to a soda can hit by a car.
- Trains have the right of way 100% of the time over emergency vehicles, cars, police vehicles, and pedestrians.
- A train can extend three feet or more beyond the steel rail, putting the safety zone for pedestrians well beyond the three-foot mark. If there are rails on the railroad ties, always assume the track is in use, even if there are weeds or the track looks unused.
- Trains can move in either direction at any time. Sometimes its cars are pushed by locomotives instead of being pulled, which is especially true in commuter and light rail passenger service.
- Today's trains are quieter than ever, producing no telltale “clackety-clack.” Any approaching train is always closer, moving faster, than you think.
- Remember to cross train tracks ONLY at designated pedestrian or roadway crossings and obey all warning signs and signals posted there.
- Stay alert around railroad tracks. Refrain from texting, headphones, or other distractions that would prevent you from hearing an approaching train; never mix rails and recreation.

From the Operation Lifesaver Rail Safety Education website (<https://oli.org/>) (See Figure 2).

Figure 2

KNOW THE SIGNS AND SIGNALS

MULTIPLE TRACKS

Multiple tracks are present. Multiple tracks may mean multiple trains. Wait until you can see clearly down the tracks in both directions before proceeding.

CROSSBUCK

YIELD if a train is approaching. Trains always have the right-of-way.

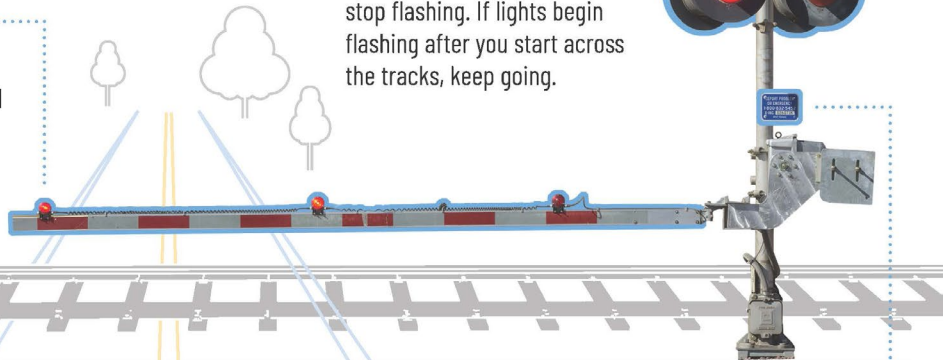


LOWERING GATES AND FLASHING RED LIGHTS

A train is approaching (even if you don't see it yet). Do not proceed until lights turn off and gates go up. It is illegal and dangerous to go around lowered gates.

FLASHING RED LIGHTS

STOP when flashing. DO NOT proceed until lights stop flashing. If lights begin flashing after you start across the tracks, keep going.



EMERGENCY NOTIFICATION SYSTEM (ENS)

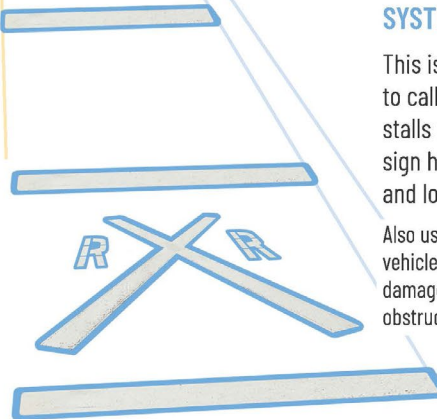
This is the first phone number to call if a vehicle is stuck or stalls on the tracks. NOTE: Each sign has a different phone number and location ID number.

Also use the ENS to report people, vehicles or debris on the tracks, damaged signs or signals and obstructed views.



PAVEMENT MARKINGS

RxR and a wide white line on the roadway mean you are approaching a railroad crossing. Stay behind the white stop line while waiting for a train to pass. No stop line? Stop at least 15 feet from the nearest rail.

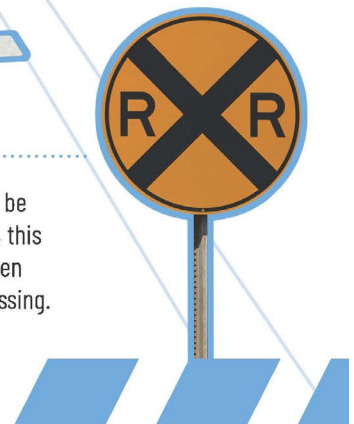


LOW GROUND CLEARANCE CROSSING

Raised crossing ahead. If you drive anything low to the ground — like a lowboy, bus, truck, sports car or trailer — you are at risk of getting hung up on the tracks. Do not proceed until you know your vehicle will clear the tracks.

ADVANCE WARNING

Slow down, look, listen and be prepared to stop. Typically, this is the first sign you see when approaching a railroad crossing.



In the United States, a person or vehicle is hit by a train every three hours, most often resulting in serious, life-altering injuries or death. If your car becomes disabled on a rail track, due to grade issues or engine trouble, get out of your vehicle immediately and get clear of the railway. Call the emergency number on the blue sign (Emergency Notification System or ENS) and share the crossing ID number with the answering dispatcher. If there is no sign, then call 911 immediately.

Resources to help you educate your communities about railway safety include:

- Texas Department of Transportation: <https://www.txdot.gov/driver/signs-and-signals/railroad-crossings.html>
- Texas Department of Motor Vehicles: <https://www.txdmv.gov/motor-carriers/railroad-crossing-safety>
- Texas Operation Lifesaver: <https://oli.org/>
- Texas Rail Advocates: <http://texasrailadvocates.org/2020/09/22/its-rail-safety-week-help-stop-track-tragedies/>
- Texas AAA: <http://tx-aaa.iprsoftware.com/news/aaa-texas-texas-ranks-1-for-train-collisions-reminds-drivers-and-pedestrians-to-review-best-practices-during-rail-safety-week>

For detailed information on railroad crossings in your area, go to the Federal Railroad Administration's webpage: <http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/crossing.aspx>. You will need the crossing number to access this information.

School Zones

October is National Pedestrian Safety Month. These traffic safety events for schools are often held in conjunction with Walk to School Day (the first Wednesday of this same month). Another school traffic safety event is Bicycle Safety Month and Bike to School Day which is held the first Wednesday of May.

School zones exist to protect students walking, riding their bikes, and riding in cars or buses. Laws designed to protect these students must be obeyed during certain times of the day, usually during school hours and the times before and after the school day begins and ends. These laws revolve around certain general basic safety practices outlined below.

Speed

Reduced speed limits are enforced in school zones during the hours when children are expected to be coming and going to school. Generally, the zones are active from approximately 45 minutes before school opens until classes begin, during lunch periods, and for a 30-minute period after the school day ends. Pedestrian crossing activity is the primary basis for reduced school speed zones, however, irregular traffic and pedestrian movement must also be considered when children are being dropped off or picked up from school. The reduced speed limit is usually determined by both the municipality (and sometimes the school district) and TxDOT recommendations, although TxDOT is responsible for signage. In school zones on or near roadways that allow motorists to travel at high speeds (such as Farm to Market roads), TxDOT and the municipality may establish a "buffer zone" that allows motorists to transition from the higher speed to the mandated school zone speed of 35 mph. This design improves public relations because drivers are encouraged to respect the law when driving through permanently fixed transition zones that are in effect 24 hours a day (outside of the established school zone hours). Convictions for speeding in an active school zone can cost a driver up to a \$200 fine. Many municipalities have higher fines.

Cell Phones

H.B. 347 (83rd Texas Legislature, 2013) prohibits the use of a wireless communication device while operating a motor vehicle on school property. Exempt from this law are vehicles that are stopped, drivers using hands-free devices, or drivers making emergency calls. The law reduces distractions to drivers as they drive through school zones. Using a phone in an unlawful manner in a school zone can result in fines up to \$200.

Crossing Guards

Drivers can also be cited for not following the directions of a crossing guard under Section 542.501 of the Texas Transportation Code. The guards must be properly trained by the school district. While the primary role of an adult crossing guard is to guide children safely across the street, they also act as role models, helping students develop the skills necessary to cross streets safely at all times. A well-trained adult crossing guard is the first defense against student misbehavior near busy streets, student safety when crossing streets, alerting motorists that pedestrians are using the crossing, and observing and reporting any unsafe incidents or conditions that present a potential safety hazard to pedestrians using the crossing, such as damaged street signs or unlawful parking. An adult crossing guard should not be directing traffic unless specifically trained as a traffic control officer.



Resources to help you educate your community about school zone laws and policies include:

- Texas A&M Transportation Institute: <https://tti.tamu.edu/researcher/school-zones-as-safety-zones/>
- Texas Department of Transportation: <https://www.txdot.gov/driver/safety/school-zone-safety.html>
- Texas Department of Public Safety: <https://www.dps.texas.gov/news/dps-reminds-drivers-watch-students-returning-class-fall>
- National Center for Safe Routes to School: <http://www.walkbiketoschool.org/>
- National Safe Route to School Guide: http://guide.saferoutesinfo.org/pdf/crossing_guard_guidelines_web.pdf

Hot Car Danger

Parents and other child caregivers must always remain vigilant about the ongoing danger of children, pets, and seniors dying in hot cars. Heatstroke is a four-season killer in Texas, happening during any time of the year. The United States averages about 38 pediatric deaths a year from vehicular heatstroke. Aside from crashes, vehicular heatstroke is the leading cause of deaths in vehicles for children 14 and younger. Last year, 38% of the 24 pediatric hot car deaths were children who gained access to the car on their own. Drivers need to be extra mindful to keep locked vehicles parked in garages or on driveways and streets even if they do not have children. Parents with missing children need to first check pools and then cars, including trunks.

Even on days with mild temperatures, closed cars can heat to dangerous levels in minutes posing major health risks to anyone left inside. The first pediatric heatstroke death of 2020 happened in Tomball, Texas. A 4-year-old boy was found dead inside the family car after sneaking outside and into the car. The temperature that day was only 74 degrees. Children are especially susceptible to the dangers of hot cars since young children cannot yet regulate their body temperature efficiently and dehydrate more quickly than adults. Court personnel can

help educate our communities about this preventable tragedy.

Tips to share with your community to help keep kids safe and avoid child heatstroke are:

- Always Look Before You Lock
 - Always check the back seats of your vehicle before you lock it and walk away.
 - Keep a stuffed animal or other memento in your child's car seat when it is empty and move it to the front seat as a visual reminder when your child is in the back seat.
 - If someone else is driving your child, or your daily routine has been altered, always check to make sure your child has arrived safely.
- Keep in Mind a Child's Sensitivity to Heat
 - In 10 minutes, a car's temperature can rise about 20 degrees.
 - Even at an outside temperature of 70 degrees, the temperature inside your car can reach over 115 degrees.
 - A child can die when his or her body temperature reaches 107 degrees.
- Understand the Potential Consequences of Kids in Hot Cars
 - Severe injury or death of the child
 - Being arrested and jailed
 - A lifetime of regret

Resources to help mount an education push on the dangers of hot cars and prevention are:

- National Highway Transportation Safety Administration: <https://www.nhtsa.gov/child-safety/you-can-help-prevent-hot-car-deaths>
- No Heat Stroke: <https://www.noheatstroke.org/index.htm>



Young Drivers and GDL

Crashes are the number one killer of young adults and teens. Texas began the Graduated Driver License (GDL) program in 2002 to help new drivers improve their driving skills by allowing young drivers to practice their skills in lower risk environments. There are multiple phases to the GDL, as the name implies:

Phase 1: Learner License

Between the ages of 15 and 17 a student will:

- Begin a driver education course, either taught by a commercial driving school or by a state-approved parent-taught course.
- After completing the first six hours of classroom instruction, students may apply for their learner license by providing evidence that they
 - Have completed High School or equivalent,

-
- Are a current student for at least 90% of the time in the semester previous to the date of application,
 - Or if applying in the summer and still enrolled in school, the last report card received by the applicant listing absences and complete listing of grades.
 - The young driver must also pass the written exam and eye test at the Texas Department of Public Safety.
 - After being approved to have the learner license, the driver
 - Must have a licensed adult 21 years or older in the front passenger seat when driving.
 - Must hold this license for at least six months, unless turning 18 in the meanwhile.
 - Is restricted from using a wireless communications device (including hands free) except in case of emergency.
 - If license is suspended at any time while holding a learner license, the initial six-month period increases by the number of days of this suspension.
 - The learner license expires on the holder's 18th birthday.

Phase 2: Provisional Driver License

The young driver in this phase must be between the ages of 16 and 17 and must have held their learner license for at least six months. During this same time, the driver must have completed the prescribed time of car observation hours for watching, demonstrating, and practicing driving. Also mandated is the completion of the Impact Texas Teen Driver Program (<https://www.dps.texas.gov/section/driver-license/impact-texas-drivers-itd-program>) within 90 days of taking the skills test. Finally, the driver must pass a skills test given by the Department of Public Safety. The provisional driver license expires on the driver's 18th birthday. While holding this license there are several restrictions on the driver:

- Driver may not drive with more than one passenger under the age of 21 who is not a family member.
- Driver is restricted from driving a vehicle between the hours of midnight and 5:00 a.m. unless driving is work related, school related, or due to a medical emergency.
- Driver is restricted from the use of a wireless communications device including hands free except in case of emergency.

Resources to help educate your community about how to get or help their young driver obtain their graduated driver license:

- Texas Department of Public Safety:
 - <https://www.dps.texas.gov/section/driver-license/graduated-driver-license-gdl-program>
 - <https://www.dps.texas.gov/section/driver-license/how-apply-texas-driver-license-teen>
- Texas Department of Transportation:
 - <https://ftp.txdot.gov/pub/txdot-info/trf/graduated-driver-licensing.pdf>
- Governors Highways Safety Association:
 - <https://www.ghsa.org/state-laws/issues/teen%20and%20novice%20drivers>
- TTI Youth Transportation Safety Program: <https://www.y-driver.com>

Contact Us!

While this article cannot cover every traffic safety issue surrounding children and young adults, DRSR hopes that we have put traffic safety education for your community, especially concerning kids, at the forefront of

your mind! Saving the lives of all road users, especially young adults and children, is the north star that guides DRSR. DRSR is always looking for great ideas to make traffic safety education more relevant for students and easier for courts. Do not hesitate to call DRSR with input! At DRSR, we strive to craft lessons and materials that are both useable and timely. DRSR will share your great ideas with other courts and use them to improve existing lessons and materials. Feedback from municipal courts is especially important in this time of rising traffic fatalities.

We are always just a phone call or email away! Contact us at (512) 320-8274, drsr@tmcec.com, or elizabeth@tmcec.com. We make every effort to return all calls or email in one day if possible.

Stay safe out there!

Magistrate Duties: Setting Bail in Criminal Cases (S.B. 6 Training)

S.B. 6 (2021) requires magistrates to complete an eight-hour initial training course on magistrate duties as a qualification for setting bail in criminal cases punishable by confinement. TMCEC, in conjunction with the Office of Court Administration, developed a course specifically for municipal judges serving as magistrates. This virtual event will be held live on June 15, 2022 and available on-demand after that date. It is open to judges and court personnel.

Magistrates serving on April 1, 2022 have until December 1, 2022 to complete the 8-hour training to be considered in compliance. Other magistrates have 90 days from the date they take office to complete the training.

Note that S.B. 6 also requires a two-hour continuing education course in each subsequent state fiscal biennium in which the magistrate serves.



**Virtual Event:
June 15, 2022**

There is no fee to register. Attendance counts for 8 hours of judicial education and clerk certification credit and 7 hours of CLE credit for licensed attorneys. Go to register.tmcec.com to register.

Remaining AY 22 TMCEC Academic Schedule

Seminar	Date(s)	City	Venue
Magistrate Duties: Setting Bail in Criminal Cases (S.B. 6 Training)	June 15, 2022	Virtual	Online
Court Administrators Conference	June 20-22, 2022	Houston	Omni Houston Hotel (Galleria)
Prosecutors Conference	June 20-22, 2022	Houston	Omni Houston Hotel (Galleria)
West Texas Regional Judges Seminar	June 27-29, 2022	Odessa	Odessa Marriott Hotel + Conference Center
West Texas Regional Clerks Seminar	June 27-29, 2022	Odessa	Odessa Marriott Hotel + Conference Center
C3 (Courts, Cities, & Councils) Ordinances Seminar	July 7-8, 2022	Georgetown	Sheraton Austin Georgetown Hotel + Conference Center
New Judges Seminar	July 25-29, 2022	Austin	Austin Southpark Hotel
New Clerks Seminar	July 25-29, 2022	Austin	Austin Southpark Hotel
Impaired Driving Symposium	August 15-16, 2022	Bee Cave	Sonesta Bee Cave
Mental Health Conference	August 18-19, 2022	Corpus Christi	Omni Corpus Christi Hotel

C3 Exposition & Showcase: Ordinances

July 7-8, 2022

Sheraton Austin Georgetown Hotel & Conference Center



C3



This seminar is part of the C3 Initiative (Councils, Courts, and Cities). C3 is a public information and education campaign created by TMCEC that aims to help fill the information gap between city halls and municipal courts in Texas. C3 highlights issues and increases awareness and understanding of municipal courts in Texas for mayors, city council members, city attorneys, and other local officials.

This TMCEC seminar is the first of its kind, taking a deep dive into the topic of city ordinances. **Registration is \$50.** Eligible participants will receive a private, single-occupancy hotel room at no additional charge. Limited spots are open to city officials (Registration is \$112 with no lodging, \$222 with one night of lodging, or \$332 with two nights of lodging). City officials must call TMCEC to register: 800.252.3718.

Attendance counts for judicial education, clerk certification, and CLE credit. For more information, visit the C3 page on the TMCEC website: <https://www.tmcec.com/cities/>.

**TEXAS MUNICIPAL COURTS
EDUCATION CENTER**

2210 Hancock Drive
AUSTIN, TX 78756
www.tmcec.com

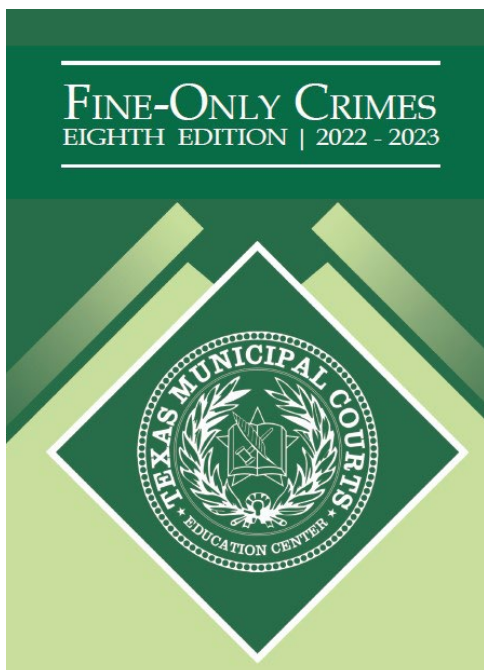
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TMCEC

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



Now Updated and Available!

The eighth edition of *Fine-Only Crimes* (Green Book) is now available to purchase at TMCEC's online store. The eighth edition was updated to reflect changes from the 87th legislative session.

Check out the TMCEC website for more updated publications as they become available. For physical copies of available books, go to the TMCEC online store (<https://texas-municipal-courts-education-center.myshopify.com/>).

www.tmcec.com/resources/books