2

Municipal Court Processes

Table of Contents

INTRODUCTION

The municipal court clerk is responsible for creating and maintaining court records, processing cases, preparing for and coordinating trials, and assisting court users. As cases progress through the judicial system, clerks are required to perform many technical and detailed procedures. This chapter provides an overview of the authority behind these procedures, and how they relate to processing cases.

PART 1
MUNICIPAL COURT JURISDICTION

The Legislature provided for municipal court jurisdiction in Article 4.14 of the Code of Criminal Procedure and Section 29.003 of the Government Code. Both statutes give a municipal court criminal jurisdiction over offenses that have a fine-only penalty that includes sanctions but does not consist of confinement in jail or in prison. As explored in Level I, municipal courts have geographic and subject matter jurisdiction that is, with limited exceptions, almost exclusively criminal in nature. Part 1 reviews this area from Level I with particular attention paid to court processes.

A. Types of Criminal Jurisdiction

1. Original Jurisdiction

Original jurisdiction means that a court has authority to try a case and pass judgment on the law and facts as distinguished from appellate jurisdiction. Courts with appellate jurisdiction generally review the transcript of a case appealed to determine if any error has occurred. The exception to this rule is county courts (and occasionally district courts) that handle appeals from non-record municipal courts. These courts conduct a new trial as if the first trial in municipal court never occurred. This trial is a trial de novo.

2. Exclusive Original Jurisdiction

Exclusive jurisdiction means that a court's authority to try certain cases is not shared with another court. Original jurisdiction means that a court has authority to try a case and pass judgment on the law and facts as distinguished from appellate jurisdiction. Therefore, exclusive original jurisdiction means that the court in which a case is filed has sole jurisdiction (authority) and no other court has jurisdiction to hear and determine the case. Municipal courts have exclusive original jurisdiction over violations of city ordinances and the rules, resolutions, or orders of a joint airport board under Section 22.074, T.C., Sec. 29.003, G.C., and Art. 4.14., C.C.P. These cases, however, can be appealed.

There is one exception to municipal courts' exclusive original jurisdiction over city ordinance violations—city ordinances involving signs in the city's extraterritorial jurisdiction. A justice court has concurrent jurisdiction with a municipal court in criminal cases and arising in the municipality's extraterritorial jurisdiction and that arise under an ordinance of the municipality applicable to the extraterritorial jurisdiction under Section 216.902, L.G.C., regarding sign violations. Art. 4.11(c), C.C.P.

3. Concurrent Jurisdiction

Municipal courts share some of their jurisdiction with other courts—justice courts, district courts, and county courts. This type of jurisdiction is called concurrent jurisdiction and means that cases may be filed in any of the courts that have authority over certain types of offenses.

a. Justice Courts

The municipal court has concurrent jurisdiction with the justice court of a precinct in which the municipality is located. This applies to all criminal cases arising under state law within the territorial limits of the city and property owned by the city in the city's extraterritorial limits punishable by fine-only and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. These cases may be filed in either the justice court or municipal court. Art. 4.14, C.C.P. and Sec. 29.003, G.C.

b. District Courts or County Courts

The governing body of a municipality may, by ordinance, provide that the municipal court of record has civil jurisdiction within the territorial limits and the extraterritorial limits for the purpose of enforcing dangerous structures and junked vehicle ordinances. This jurisdiction is concurrent with a district court or a county court at law for the purpose of enforcing health and safety or nuisance abatement ordinances. Sec. 30.00005, G.C.

B. Types of Geographic Jurisdiction

Both municipal courts of record and municipal courts of non-record have geographic jurisdiction that is within the territorial limits of the municipality and property owned by the municipality in the municipality's extraterritorial jurisdiction. Sec. 29.003, G.C., and Art. 4.14, C.C.P.

1. Municipal Courts of Record

Municipal courts of record have additional exclusive original jurisdiction in their territorial limits and their extraterritorial limits. Section 30.00005, G.C. provides that municipal courts of record have jurisdiction, as authorized by Sections 215.072, 217.042, 341.903, and 401.002, L.G.C., over city ordinance violations. These sections, in some instances, also require that the city be a home-rule city in order for the municipal court of record to have jurisdiction. A home-rule city is one that is governed by a charter, which gives it some measure of self-government. Generally, a city must have a population of at least 5,000 and have adopted a charter in order to become a home-rule city.

Sections 215.072, 217.042, 341.903, and 401.002, L.G.C., provide the regulations listed below.

Regulation	Cite
A municipality is permitted to inspect dairies, slaughterhouses, or slaughter pens inside or outside the municipal limits from which milk or meat is furnished to the residents of the municipality.	Section 215.072, L.G.C.
A home-rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits and may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.	Section 217.042, L.G.C.
A home-rule municipality may police the following areas owned by and located outside the municipality: (1) parks and grounds; (2) lakes and land contiguous to and used in connection with a lake; and (3) speedways and boulevards.	Section 341.903, L.G.C.
A home-rule municipality may prohibit the pollution or degradation of the city's water supply and provide protection of and police watersheds. The statute further provides that the authority granted by this statute may be exercised inside the city boundaries and in the extraterritorial jurisdiction only if the city is required to meet certain other state or federal requirements. The authority granted under this statute regarding the protection of recharge areas may be exercised outside the city boundaries within the extraterritorial limits provided that the city has a population greater than 750,000 and the groundwater constitutes more than 75 percent of the city's water supply.	Section 401.002, L.G.C.

2. Municipal Courts of Non-Record

There is no statute that gives municipal courts of non-record jurisdiction over city ordinance violations that occur anywhere in the municipality's extraterritorial jurisdiction. For non-record municipal courts, statutes only provide authority for jurisdiction on property owned by the municipality in the municipality's exterritorial jurisdiction.

There is, however, an Attorney General Opinion that addresses the issue of jurisdiction of nuisance violations in a municipality's extraterritorial jurisdiction when the municipal court is a court of non-record. The Opinion states that when a municipality is authorized to adopt a nuisance ordinance applicable to conduct occurring outside city limits and where the municipality has adopted such an ordinance, a municipal court has implied jurisdiction over cases arising from the violations of the ordinance that occur outside city limits. Tex. Atty. Gen. Op. JC-0025, March (1999).

Practice Note

Looking to become a municipal court of record? There is more to it than simply calling the court a "court of record." Clerks are well advised to research the costs and consequences of making a change. Required changes include passing an ordinance authorizing the court of record, appointing an attorney as presiding judge, providing an accurate recording device, and even changing the court seal. The biggest change following a transition may be that appeals generally stay in the municipal court, rather than going to county court de novo. Not a lot of trials in your court? Remember to do your due diligence and cost benefit analysis.

C. Subject Matter Jurisdiction

Subject matter jurisdiction refers to the types of cases over which a court has jurisdiction. Municipal courts have subject matter jurisdiction over criminal fine-only offenses. Art. 4.14, C.C.P. and Sec. 29.003, G.C. A fine-only offense is defined as punishable by fine and any sanctions authorized by statute not consisting of confinement in jail or imprisonment. The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court. Art. 4.14, C.C.P. and Sec. 29.003, G.C.

Sometimes a fine-only misdemeanor offense is generically referred to as a Class C misdemeanor. The Penal Code defines a Class C misdemeanor offense as a misdemeanor punishable by a fine not to exceed $500. Sec. 12.23, P.C. Section 12.41, P.C., defines a Class C misdemeanor outside of the Penal Code as any offense punishable by a fine only. Hence, any fine-only offense is considered a Class C misdemeanor regardless of the amount of fine.

1. Violations of Ordinances, Resolutions, Rules, and Orders

City councils may establish penalties for city ordinance violations, and joint airport boards may establish penalties for violations of a resolution, rule, or order. The types of penalties that a city or joint airport board may create are regulated by statute. The penalties must conform to the definition of fine-only offenses that a municipality has been given jurisdiction over by Article 4.14, C.C.P. and Section 29.003, G.C. These two statutes have similar provisions, except that Section 29.003 also provides for jurisdiction over resolutions, rules, and orders adopted by the joint airport board. City councils and joint airport boards may establish the following penalties:

- a fine of up to $2,000 in all cases arising under the ordinances, resolutions, rules, or orders that govern:
  - fire safety,
  - zoning,
  - public health, and
  - sanitation (including dumping of refuse); and
- a fine of up to $500 for all other city ordinance violations or violations of a resolution, rule, or order of a joint board.

2. Violations of Statutes

Municipal courts have concurrent jurisdiction over statutory fine-only offenses as defined by Section 29.003, G.C. and Article 4.14, C.C.P., within the territorial limits of the city and property owned by the city located in the city's extraterritorial jurisdiction with a justice court of a precinct in which the municipality or property is located.

D. Jurisdiction over Juveniles and Minors

Municipal courts have jurisdiction over children under the age of 17 charged with Class C misdemeanor offenses. The authority over children includes jurisdiction over city ordinance offenses and traffic and non-traffic state law offenses. Sec. 8.07, P.C. Under Section 51.08 of the Family Code, the court may waive its jurisdiction over juveniles charged with state law non-traffic and non-tobacco violations on the first and second offense, and it must be waived after there are two previous convictions of state law violations unless the city has a juvenile case manager under Article 45.056, C.C.P. Section 51.08 provides that municipal courts must also waive jurisdiction over sexting offenses and subsequent offenses committed for a child who has previously had a case dismissed under Section 8.08, P.C. for a lack of capacity.

True or False

1. Original jurisdiction means that a court has authority to adjudicate a case. ____
2. Municipal courts have exclusive original jurisdiction over all offenses filed in their court. ____
3. Municipal courts have concurrent jurisdiction with justice courts over state law violations that occur in the geographic jurisdiction of the city. ____
4. Municipal courts of record automatically have concurrent jurisdiction with district and county courts for the purpose of enforcing junked vehicle ordinances. ____
5. Municipal courts have geographic jurisdiction over fine-only offenses that occur within the territorial limits of the county. ____
6. Municipal courts have jurisdiction over fine-only offenses that occur on city-owned property in the city's extraterritorial jurisdiction. ____
7. Municipal courts of record in home-rule cities have some jurisdiction over city ordinance offenses which abate nuisances that occur within any part of the extraterritorial jurisdiction of the city. ____
8. Municipal courts do not have jurisdiction over offenses that include as part of the sanctions suspension of the driver's license. ____
9. State statutes specify maximum amounts of penalties that cities may establish for city ordinance violations. ____
10. The maximum amount of fine jurisdiction of municipal courts is $500. ____
11. Municipal courts may waive their jurisdiction over persons under the age of 17 for all Class C misdemeanor offenses. ____

PART 2
CHARGING INSTRUMENTS

A. Purpose

1. Notifies Defendant of Charge

One of the fundamental rights afforded defendants is notice of the specific charges filed against them. Art. 1.05, C.C.P. In the case of *Kindley v. State*, 879 S.W.2d 261 (Tex. App.—Austin 1982, pet. ref.), the court said that a charging instrument must notify a person of the offense so that he or she may prepare a defense. In many municipal court cases, this notice is initially provided by a citation.

2. Initiates Proceedings

Following a citation, a formal complaint is typically filed. If no citation was issued, a complaint must be filed to initiate a case. The complaint is drafted by the prosecuting attorney and lays out the elements of the offense for which the defendant is charged. When a court accepts a complaint, a court proceeding is officially initiated. As a general rule, a sworn complaint must be filed with the municipal court to vest jurisdiction of the court. *Ex parte Greenwood*, 307 S.W.2d 586 (Tex. Crim. App. 1957). The exception to this rule is when a citation is filed with the court and the defendant has been given a legible duplicate copy. The citation serves as the complaint to which the defendant may plead. If the defendant pleads not guilty, a sworn complaint must be filed. The law allows the case to proceed under only the citation if the defense and prosecution agree in writing to go to trial on the citation and file the agreement with the court.

B. Complaint

The complaint is a sworn allegation charging an individual with the commission of an offense. Art. 45.018, C.C.P. The complaint must show that the accused committed an offense against the laws of this state and must assert that the affiant has good reason to believe and does believe that the accused committed an offense against the law of this state. Art. 45.019(a)(4), C.C.P. The complaint will allege an offense, the elements of that offense which the state must prove, and a culpable mental state, if any. The affiant does not have to have personal knowledge of the facts. Article 45.019 of the Code of Criminal Procedure lists the requirements, or requisites, to which a complaint must "substantially conform." This means that the complaint must meet the requirements but does not necessarily have to match the language of the code verbatim.

1. Requirements

a. Beginning and Ending

All municipal court complaints, including complaints for city ordinance violations, must begin with the words, "In the name and by the authority of the State of Texas." The complaint must also end with the words, "Against the peace and dignity of the State." If the offense is an ordinance, it may also conclude with the words "Contrary to the said ordinance." Art. 45.019, C.C.P.

b. Elements of Offense

All the elements necessary to constitute an offense must be alleged in the complaint. *Villareal v. State*, 729 S.W.2d 348 (Tex. App.—El Paso 1987, no pet.). Therefore, it is generally sufficient to list in the complaint all the elements required by statute to constitute the criminal offense. In addition, if there is an exception in the statute which the State must negate, the complaint must also negate the exception. *Bird v. State*, 927 S.W.2d 136 (Tex. App.—Houston [1st Dist.] 1996, no pet.). A charging instrument must plead with sufficient particularity to allow the defendant to plead the judgment as a bar to a second prosecution for the same offense. *Kirk v. State*, 643 S.W.2d 190 (Tex. App.—Austin 1982, pet. ref.).

c. Location

All complaints filed in municipal courts must allege that the violation occurred within the territorial limits of the city. Art. 45.019(c), C.C.P. The particular location within the court's jurisdiction at which a violation was committed need not be alleged if the violation is one that could occur at any place within the municipality's jurisdiction. *Bedwell v. State*, 155 S.W.2d 930 (Tex. 1941). For example, the offense of assault by threat does not require that it only be charged if it occurs in a certain place such as a public place. Thus, the specific location of the offense does not need to be stated in the complaint. Speeding is an example of an offense in which the specific location needs to be stated in the complaint. The complaint should state that the defendant violated a certain speed limit on a particular street. However, in *State v. Lang*, 916 S.W.2d 63 (Tex. App.—Houston [1st Dist.]), the court held that if a defendant had received a ticket that specified the location of the offense, it was not error to deny a motion to set aside the complaint for failure to state the location.

d. Culpable Mental States

The complaint must also allege a culpable mental state if the particular offense requires one. The states of mind that a complaint could allege are found in Section 6.02, P.C. These mental states are intentionally, knowingly, recklessly, and with criminal negligence.

A person commits an offense only if he or she voluntarily engages in conduct including an act, omission, or possession. Sec. 6.01(a), P.C. A person does not commit an offense unless he or she engages in conduct as the definition of an offense requires with a culpable mental state. If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. Sec. 6.02(b), P.C. If a statute (or ordinance) does not say which culpable mental state is required, Section 6.02(c), P.C., states it must be one of the first three and proof of one establishes criminal responsibility. A culpable mental state is required for city ordinance offenses punishable by a fine exceeding $500. Sec. 6.02(f), P.C.

The same rules that apply to complaints filed for state law violations apply when the offense is a city ordinance violation. When charging a city ordinance offense, the prosecution may not create new culpable mental states. *Honeycutt v. State*, 627 S.W.2d 417 (Tex. Crim. App. 1982). Notwithstanding the requirement of a culpable mental state, there are some offenses, such as most traffic offenses, that do not require a culpable mental state.

Significantly, offenses charged under the Transportation Code generally do not require pleading a culpable mental state in the complaint. *Zulauf v. State*, 591 S.W.2d 869 (Tex. Crim. App. 1979).

These offenses are thus comparable to strict liability offenses. This means that the criminal offense is committed simply by doing something that is prohibited, or not doing something that is required, regardless of the defendant's mental state.

e. Property

- Ownership - In crimes such as criminal mischief, trespass, or theft, the complaint must indicate who owns the property. *Talamantez v. State*, 59 S.W.2d 1084 (Tex. Crim. App. 1933). If the owner is an entity such as a trust, corporation, or partnership, the better practice is to allege a natural person who is an agent or employee of the entity. *Eaton v. State,* 533 S.W.2d 33 (Tex. Crim. App. 1976). Typically, this may be a store manager or security person employed by the entity.
- Identification - Article 21.09, C.C.P. provides that personal property shall be identified, if known, by the name, kind, number, and ownership of the property. If the property is not described at all, the complaint is defective. *Willis v. State*, 544 S.W.2d 151 (Tex. Crim. App. 1976). Failure to fully describe property does not give adequate notice to the defendant, making the complaint defective. *Rhodes v. State*, 560 S.W.2d 665 (Tex. Crim. App. 1978).
- Value of property - The value of property must be pled in the complaint with enough sufficiency to show that the amount falls within the jurisdiction of the court. *McKnight v. State*, 387 S.W.2d 662 (Tex. Crim. App. 1965).

f. Name of Victim

The victim of an alleged crime must be named or the complaint is defective. *Ex Parte Lewis*, 544 S.W.2d 430 (Tex. Crim. App. 1976). A name need only consist of a surname and one or more initials of names other than a surname. Art. 21.07, C.C.P. If the name of the victim is incorrect in the complaint, the evidence is insufficient unless the names sound the same. This is the doctrine of *idem sonans*. Two names are *idem sonans* if they can be sounded the same despite a variance in spelling. *Grant v. State*, 568 S.W.2d 353 (Tex. Crim. App. 1978) and *McDonald v. State,* 699 S.W. 2d 325 (Tex. App.—San Antonio 1985, no pet.). There are instances where certain victims, such as victims of trafficking of persons, are entitled to designate pseudonyms instead of their own names in court documents. It is the prosecuting attorney's duty, as the representative of the state, to determine the proper name, alias, or pseudonym to allege.

g. Manner and Means

"Manner" is the method of doing something. "Means" is how the end is achieved. For example, in assault cases, the complaint must allege striking the victim (the manner) with his or her hands (the means). If the complaint does not allege the manner and means, it is defective because the defendant does not have proper notice of how the offense was committed. *Haecker v. State*, 571 S.W.2d 920 (Tex. Crim. App. 1978) and *State v. Jackson*, 571 S.W.2d (Tex. Crim. App. 1978).

h. Date of Offense

The complaint must state the date that the offense was committed as definitely as possible. Art 45.019(a)(5), C.C.P. Additionally, a misdemeanor complaint must be filed within two years from

the date of the commission of the offense, and not afterward. Art. 12.02, C.C.P. This is the statute of limitations.

i. Sworn and Signed

- Affiant - The person swearing to the complaint is the affiant. The affiant makes and subscribes an affidavit, which is a sworn statement. Subscribe means to sign a document. When an affiant swears to the complaint, he or she must do so in front of the person administering the oath. Any credible person acquainted with the facts of the alleged offense either by personal knowledge or hearsay may be an affiant. *Cisco v. State*, 411 S.W.2d 547 (Tex. Crim. App. 1968). An example of an affiant with personal knowledge is a peace officer who personally observed a person speeding and swears to the complaint. An example of a hearsay affiant is a person who has not observed the offense but reviews an arrest report and then swears to the complaint. This person has good reason to believe, based upon information provided by the officer who personally observed the offense, that the offense was committed. In determining the validity of a complaint, a court does not need to ask about the nature of knowledge on which an affiant bases his or her statements. *Naff v. State*, 946 S.W.2d 529 (Tex. App.—Fort Worth 1997). The complaint must say that the affiant "does believe" the allegations in the complaint, not just merely that the affiant "has reason to believe." *Ex Parte Luehr*, 266 S.W.2d 375 (Tex. Crim. App. 1954) and *Barnes v. State*, 363 S.W.2d 471 (Tex. Crim. App. 1963).

- Oath - Statutes do not provide specific wording for the oath administered to an affiant swearing to a complaint. The following is a sample oath a court may consider using: "Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?" A judge, clerk, deputy clerk, city secretary, city attorney, or deputy city attorney may administer the oath to an affiant swearing to a complaint. Art. 45.019, C.C.P.

- Signed - A complaint must be signed. Art. 45.019, C.C.P. A complaint not signed by the affiant is defective. *State v. Bender,* 353 S.W.2d 39 (Tex. Crim. App. 1962). A signature on the complaint may be rubber-stamped. *Parsons v. State*, 429 S.W.2d 476 (Tex. Crim. App. 1968); *Murray v. State*, 438 S.W.2d 916 (Tex. Crim. App. 1969). A complaint may also contain an electronic signature. Art. 45.021, C.C.P. The name of the affiant need not appear in the body of the complaint. *Parsons v. State*, 429 S.W.2d 476 (Tex. Crim. App. 1968).

- Jurat - The certificate of the person before whom the complaint is being sworn is called a jurat. It is the clause written at the foot of an affidavit, such as a complaint, stating when and before whom the affidavit was sworn. Article 45.019, C.C.P. provides that a complaint may be sworn to before any officer authorized to administer oaths. Art. 45.019(d), C.C.P. Article 45.019(e) further provides that a complaint in municipal court may be sworn to before: (1) the municipal judge; (2) the clerk of the court or a deputy clerk; (3) the city secretary; or (4) the city attorney or a deputy city attorney. If a complaint does not contain a jurat, it is insufficient to constitute a basis for a valid conviction. If the jurat shows that the affidavit was sworn before someone who had no authority to administer the oath, the complaint is invalid. If the jurat is not signed, the complaint is invalid. *State v. Pierce*, 816 S.W.2d 824 (Tex. App.—Austin 1991, no

pet.) An undated jurat renders a complaint defective. *Shackelford v. State*, 516 S.W.2d 180 (Tex. Crim. App. 1974) Where a jurat states "Sworn to before or about" instead of a specific date, the complaint is defective. *Brown v. State*, 294 S.W.2d 722 (Tex. Crim. App. 1956).

j. Municipal Court Seal

Municipal court complaints are required to have a court seal. Article 45.012, C.C.P. requires municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. This statute is a general statute that applies only to non-record municipal courts. Municipal courts of record have a specific statute, Section 30.000125, G.C., regarding their seal. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012 does not provide for the wording of the seal for non-record courts, but Section 30.000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: "Municipal Court of/in_____, Texas." Non-record municipal courts may want to consider using the same or similar wording on their seal.

Unfortunately, neither of the two statutes provides for the appearance of the seal. Before 1999, Article 45.02, C.C.P. required the municipal court seal for both record and non-record municipal courts to contain a five-point star, but that statute was repealed. Although the courts now have no guidance on the appearance of the seal, most courts have retained the appearance that was once required by Article 45.02.

2. Defects in the Complaint

If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date of the trial on the merits of the case, the defendant waives and forfeits the right to object to the defect, error, or irregularity. The court may require an objection to the charging instrument be made at an earlier time. Art. 45.019(f), C.C.P.

3. Motions to Quash Complaint

A motion to set aside the complaint, commonly called a motion to quash, is a defendant's challenge to a complaint and a request of the court to enter an order setting aside the complaint because of defects in the complaint or an exception to the complaint. A motion to set aside may be in writing or may be oral. Art. 45.021, C.C.P. If the court has set a pre-trial hearing pursuant to Article 28.01, C.C.P., the motion to set aside must be filed seven days before the date of the hearing, except by permission of the court for good cause. If the court grants the motion to set aside the complaint, the court should enter an order setting aside the complaint. The State can refile the charge by a new complaint as long as the statute of limitations has not run out.

Practice Note

Do not confuse procedure in county court on appeal with the procedure authorized in municipal court at trial. A county court conducting a trial de novo on an appeal from a non-record municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the municipal court. Art. 44.181(a), C.C.P. The attorney representing the State, however, may move to amend a defective complaint before the trial de novo begins. Art. 44.181(b), C.C.P.

4. Amendment to Complaint

Complaints cannot be amended because they are sworn statements and, if amended, the complaint would no longer be the sworn statement of the affiant. *Givens v. State*, 235 S.W.2d 899 (Tex. Crim. App. 1951). Even if a defendant agrees to an amendment, the complaint still cannot be amended. *Franklyn v. State*, 762 S.W.2d 228 (Tex. App.—El Paso 1988, no pet.). If a complaint, however, is amended and the affiant "re-swears" to the amended complaint, the complaint is valid. *Cannon v. State*, 925 S.W.2d 126 (Tex. App.—Amarillo 1996, pet. ref'd). Only the prosecutor may decide how to handle any problems with a complaint.

5. Enhancements

Enhancements are allegations of prior convictions that may be used to increase the punishment in the event of a conviction. The prosecutor is responsible for deciding whether to pursue an enhancement. If a complaint does not include the allegations of a prior conviction, the court cannot consider the higher punishment. The enhancements should be pled in the complaint immediately after the paragraph that charges the offense. There are many statutes that contain enhancement provisions to offenses, including alcohol offenses committed by minors in Chapter 106 of the Alcoholic Beverage Code and Driving While License Invalid in Section 521.457 of the Transportation Code.

In some instances, the enhancement changes the offense from a Class C misdemeanor to a higher class offense, which would remove the case from municipal court jurisdiction.

Practice Note

A common practice is for the prosecutor to read the complaint aloud in court prior to the commencement of trial. Should the prosecutor also read the enhancement paragraph in the complaint? In felony and Class A and B misdemeanor prosecutions, enhancement allegations are not read to the jury during the guilt stage of the trial. If the defendant is convicted, then there is a hearing on punishment under Article 37.07 of the Code of Criminal Procedure and prior convictions may be admitted. Art. 36.01, C.C.P. This process is not defined for trial in municipal court as there are no provisions for a bifurcated trial. Additionally, there is no case law that tells municipal courts how to handle enhancements in the single-stage municipal court trial. Generally, if the prosecutor does not include an enhancement in a municipal court complaint, enhancement is precluded.

C. Citation

1. Authority of Peace Officer to Issue

Section 543.003, T.C. authorizes peace officers to issue written notices to appear in lieu of arrest for Subtitle C, Title 7, Transportation Code offenses. Article 14.06(b), C.C.P. provides authority for a peace officer to issue a citation for a Class C misdemeanor offense except public intoxication. Generally, peace officers may not issue a citation for public intoxication, with the notable exceptions of children upon release to parent, guardian, custodian, or other responsible adult; if the person voluntarily consents to treatment for substance abuse; or if the person voluntarily consents to admission to a facility that provides a place for individuals to become sober. Art. 14.031(a), C.C.P. This means that a sworn complaint generally must be filed to initiate the proceedings for that offense. Also, any time a person is arrested in lieu of the citation being issued, the charges filed must be initiated by sworn complaint.

Article 14.06(c), C.C.P. provides authority for peace officers to issue citations for the following Class A and B misdemeanors:

- Possession of four ounces or less of marihuana. Sec. 481.121(b)(1)-(2), H.S.C.;
- Criminal mischief, where the value of damage done was $100 or more, but less than $750. (Sec. 28.03(b)(2), P.C.);
- Graffiti, where the amount of pecuniary loss is $100 or more, but less than $2,500 (Sec. 28.08(b)(2)-(3), P.C.);
- Theft, where the value of the property stolen was $100 or more, but less than $750. (Sec. 31.03(e)(2)(A), P.C.);
- Theft of service, where the value of the service stolen was $100 or more, but less than $750. (Sec. 31.04(e)(2), P.C.);
- Possession of contraband in a correctional facility, if the offense was punishable as a Class B misdemeanor. Sec. 38.114, P.C.; or
- Driving with an invalid license. Sec. 521.457, T.C.

2. When Citation Serves as the Complaint

Article 27.14(d), C.C.P. provides that a written notice to appear for fine-only misdemeanor offenses may serve as a complaint for defendants to plead guilty, not guilty, or nolo contendere. A legible duplicate copy must have been given to the defendant. Art. 27.14(d), C.C.P. Tex. Atty. Gen. Op. JM-869 (1988) and JM-876 (1988). A peace officer may obtain the signature of a person arrested on an electronic device capable of creating a copy of the signed notice. The officer retains the original paper or electronic copy of the notice and delivers a copy to the person arrested. Sec. 543.005, T.C.

3. When Defendant Pleads Not Guilty

When a defendant pleads not guilty after a written notice to appear has been filed with the court, generally the court is required to file a complaint that complies with the requirements of Chapter 45, C.C.P. The sworn complaint serves as an original complaint. If a defendant wants the

prosecution to proceed on the written notice to appear, the defendant may waive the filing of a sworn complaint. If the prosecutor agrees with the defendant's waiving the filing of the sworn complaint, the agreement must be in writing with both the prosecutor and the defendant signing the agreement. Then the agreement must be filed with the court. Art. 27.14(d), C.C.P.

If an agreement is not signed and filed with the court, a sworn complaint must be filed. Any person acquainted with the facts may swear to the complaint. Since this complaint now serves as the complaint, the clerk enters the date this complaint was filed with the court on the same docket as the written notice to appear that initiated the case. Both the written notice to appear and the sworn complaint have the same docket number. If for some reason the prosecutor wants to file this as a new case, then the clerk would enter the sworn complaint on a new docket.

4. When Defendant Fails to Appear

When a defendant fails to appear after having been issued a citation, the court must file a complaint. Art. 27.14, C.C.P.

True or False

12. Defendants in municipal courts are entitled to 10 days notice of a complaint filed against them. ____
13. The filing of a complaint in municipal courts initiates the proceedings in municipal courts. ____
14. Only peace officers, not citizens, may be affiants for complaints filed in municipal courts. ____
15. All complaints must begin with the words, "In the name and by the authority of the State of Texas." ____
16. State statutes require that all complaints end with the words, "Against the peace and dignity of the State," including complaints for city ordinance offenses. ____
17. Failure to allege all the elements of an offense in the complaint makes the complaint defective. ____
18. All complaints must allege a specific location in the complaint. ____
19. A complaint must allege that the offense occurred within the city. ____
20. City ordinance offenses punishable by a fine of more than $500 are not required to allege a culpable mental state. ____
21. A culpable mental state must be alleged in a complaint for all traffic offenses. ____
22. If an abbreviation is well-defined and well-understood, it can be used in the complaint without rendering the complaint defective. ____
23. Grammatical and spelling errors always make a complaint defective. ____
24. The owner of stolen property does not have to be identified in the complaint. ____
25. The complaint charging the offense of theft must describe the property stolen. ____

26. It is not necessary to allege the specific value of stolen property in a complaint. ____

27. The prosecutor is not allowed to allege the name of a victim in a complaint because the names of all victims are confidential. ____

28. The doctrine of *idem sonans* means that a name in a complaint may be amended. ____

29. The manner of committing an assault must be alleged in a complaint. ____

30. A complaint must allege the date of the offense on or about as definitely as the affiant can provide. ____

31. A complaint must be filed within two years of the commission of the offense. ____

32. A person swearing to a complaint must do so in front of the person administering the oath. ____

33. An affiant is required to have personal knowledge of an offense before swearing to a complaint. ____

34. Complaints must state that an affiant has reason to believe and does believe. ____

35. A jurat is the signature of the person swearing to a complaint. ____

36. If the person administering the oath to an affiant does not have authority to do so, the complaint is still valid. ____

37. If a jurat does not state a specific date, the complaint is defective. ____

38. Municipal court complaints are required to have a court seal. ____

39. A motion to quash a complaint means that the defendant is asking the court to set aside the complaint because of some defect in the complaint. ____

40. When a court grants a motion to set aside a complaint, the prosecutor cannot file a new complaint in the case. ____

41. If a complaint is amended, the affiant can "re-swear" to the amended complaint so that the complaint will not be defective. ____

42. Court clerks may enhance charges filed by citation if there are prior convictions. ____

43. A complaint must be enhanced to increase the second or subsequent punishment. ____

44. All Class C misdemeanor charges can be filed by a citation. ____

45. A citation may serve as a complaint only when the defendant has been given a legible duplicate copy. ____

46. The citation may never serve as a complaint at trial. ____

47. A sworn complaint based on probable cause or a probable cause affidavit must be on file with the court before a warrant may be issued. ____

PART 3
DISMISSALS

A. General Authority to Dismiss

Who has the power and the authority to dismiss a criminal case? The common law rule is that prosecutors have the power to dismiss, absent specific statutory authority to the contrary. Texas law has generally followed that rule, although Texas law also includes judges in the dismissal process. Arts. 32.02 and 45.201, C.C.P.

Article 32.02, C.C.P., the general statute, requires the prosecutor to file a written statement of the reasons for dismissal. The statement must be filed with the other papers in the case and the reasons incorporated into the judgment of dismissal. Both Article 32.02 and Article 45.201, C.C.P. require judicial consent or approval. The general rule is that a judge may not dismiss a case except by consenting to and approving a prosecutor's motion and the grounds presented, except in certain situations. *Flores v. State*, 487 S.W.2d (Tex. Crim. App. 1972). Unless there is constitutional or statutory authority vesting a trial court with dismissal power, criminal prosecutions may be dismissed only on the motion of the prosecuting attorney. *State v. Morales*, 804 S.W.2d 331 (Tex. App.—Austin 1991, no pet.). Also, prosecutors may not dismiss without the court's consent. *State v. Johnson*, 821 S.W.2d 609 (Tex. Crim. App. 1991).

B. Duty to Dismiss

Some statutes create a mandatory judicial duty to dismiss criminal charges, which creates an exception to the usual rule about dismissals. In those cases, there is specific statutory authority for the case to be dismissed by the court.

Examples of this type of dismissal include:

- When a defendant completes a driving safety course for certain traffic violations and the defendant presents the court with a completion certificate and the other required evidence, the judge must dismiss the traffic charge. Art. 45.0511, C.C.P.
- When a person presents satisfactory evidence of compliance with conditions of deferred disposition, the judge must dismiss the complaint, note the dismissal in the docket, and record no final conviction. Art. 45.051, C.C.P.
- When a person presents satisfactory evidence of completion of a teen court program, the court must dismiss the charge. Art. 45.052, C.C.P.
- When evidence is presented that a person was committed for and completed court-ordered treatment for chemical dependency, the court must dismiss the charge, note the dismissal in the docket, and record no final conviction. Art. 45.053, C.C.P.

C. Discretion to Dismiss

These are typically referred to as compliance dismissals. A specific statute typically allows the court to dismiss the case upon the defendant remedying the offense. For examples of laws that grant the court discretion to dismiss a charge but do not create a legal duty to dismiss, see the TMCEC compliance dismissal chart.

D. Defense to Prosecution

In some instances, statutes create a defense to the prosecution for certain actions. The following are examples of defenses to the prosecution:

- When a defendant is charged with the offense of failure to display driver's license, the defendant is presumed to have operated the vehicle without a driver's license unless the person produces evidence of a valid driver's license for the type of vehicle the person was driving at the time of the offense. If the defendant can produce such proof, it is a defense to the prosecution. The court, however, may charge a fee not to exceed $10 upon dismissal. Sec. 521.025(f), T.C.
- When a defendant is charged with the offense of failure to maintain financial responsibility, the defendant is presumed to have operated the vehicle without financial responsibility unless the person produces evidence of financial responsibility that was valid at the time the citation was issued. If the defendant can produce such proof, it is a defense to the prosecution. After the court verifies a document produced as evidence of valid financial responsibility that was valid at the time the citation was issued, the court must dismiss the case. Sec. 601.193, T.C.

True or False

48. Because some statutes create a mandatory judicial duty to dismiss cases in certain instances, judges are allowed to dismiss without a prosecutor motion. ____

49. Municipal judges do not have any discretionary authority to dismiss cases. ____

PART 4
DOCKET

A docket is a formal record with brief entries of all the important acts in each case. The judge of each court or, if directed by the justice or judge, the clerk of the court must keep a docket. Art. 45.017, C.C.P.

A. Format

The docket may be kept manually (in a physical book) or, at the discretion of the judge, electronically. Article 45.017(b), C.C.P.

Article 45.017, C.C.P. requires that the following information be entered in the docket:

- the style and file number of each criminal action;
- the nature of the offense charged;
- the plea offered by the defendant and the date the plea was entered;
- the date the warrant, if any, was issued and the return made thereon;
- the date the examination or trial was held, and if a trial was held, whether it was by a jury or by the justice or judge;

- the verdict of the jury, if any, and the date of the verdict;
- the judgment and sentence of the court, and the date each was given;
- the motion for new trial, if any, and the decision thereon; and
- whether an appeal was taken and the date of that action.

B. Judgment

1. Entered

A judgment is the official decision of a court showing the conviction, acquittal, or dismissal of charges against the defendant. Art. 42.01, C.C.P. It is written and must be signed by the trial judge and entered on the docket. Arts. 42.01 and 45.017(a)(7), C.C.P. All judgments and sentences must be rendered in open court. Art. 45.041(d), C.C.P. Article 42.01, C.C.P. lists information that is required in judgments, while Article 45.041 deals specifically with municipal and justice court judgments in which there is a conviction. Courts should look to both statutes to confirm that the legal requirements for a judgment have been met.

2. Electronically Recorded Judgment

An electronically recorded judgment has the same force and effect as a written signed judgment. Art. 45.012, C.C.P. Article 45.021, C.C.P. provides that a statutory requirement for a document to contain a signature of any person, including a judge, clerk of the court, or defendant is satisfied if the document contains the signature as captured on an electronic device. This means that judges may sign documents with a digital signature and that it has the same effect as the written signature. Thus, an electronically recorded judgment (must still be signed either manually or electronically) is the same as a written judgment.

True or False

50. A docket is a formal record of each case in the court. ____
51. If a court maintains and stores a docket electronically, the court must also maintain a paper copy of the docket. ____
52. A judgment is the official decision of a judge showing the conviction, acquittal, or dismissal of charges against a defendant. ____
53. A judgment may be signed electronically and then entered in the docket. ____

PART 5
NON-CONTESTED PROCEEDINGS

Defendants who do not want to contest the charges against them by going to trial can waive their right to a jury trial and plead either guilty or nolo contendere and pay a fine. In some instances, the court may also require the defendant to comply with other conditions. Adult defendants can plead guilty or nolo contendere without appearing in open court. They can do this by mailing or delivering to the court a plea and waiver of jury trial or payment of the fine and costs. Persons under the age of 17, commonly called juveniles, are required to appear in open court with a parent

or guardian. Defendants who do not contest charges against them may still present evidence that may mitigate the fine. Article 45.023, C.C.P. provides that proof as to the offense may be heard upon a plea of guilty or nolo contendere and the punishment assessed by the court.

A. Pleas of Guilty or Nolo Contendere

A plea of guilty is a formal admission of guilt. Defendants are stating that they committed the crime as charged. A plea of nolo contendere (often referred to as "no contest") means that defendants are not contesting the charges filed against them. Literally, nolo contendere is a Latin phrase meaning, "I will not contest it." Although this plea has a similar legal effect as pleading guilty, the defendant does not admit or deny the charges, but a fine and court costs are assessed and imposed. The principal difference between a plea of guilty and a plea of nolo contendere is that the nolo contendere plea may not be used against the defendant in a civil action based upon the same acts. Both pleas of guilty and nolo contendere must be made intelligently and voluntarily.

Defendants who plead guilty or nolo contendere also waive their right to a jury trial. When a defendant waives a trial by jury, the judge hears and determines the cause without a jury. Art. 45.025, C.C.P. If a defendant mails or delivers payment of a fine to the court, the payment constitutes a plea of nolo contendere and a written waiver of jury trial. Art. 27.14(c), C.C.P.

Practice Note

It is important for court clerks to give thought to how options are presented to defendants at the window. This is one of the primary differences between being an "order taker" in the private sector and being an officer of the court in the public sector. A court clerk should be careful not to present bias, provide legal advice, or unconsciously sway the defendant to pick one option over another. One practice is instead of asking the defendant for a plea, ask: "How do you want to handle your case?" Another way is to state in some manner, "These are the options from which you can decide what you want to do."

B. Appearances

Appearance is a formal proceeding by which a defendant submits himself or herself to the authority and jurisdiction of the court. This means that the defendant is appearing, in accordance with notice that he or she has received, to address the criminal offense. In municipal court, defendants may hire an attorney to represent them or they may represent themselves. Art. 1, Section 10, Tex. Const. and Art. 1.05, C.C.P.

Family members or friends cannot make an appearance for a defendant unless the family member or friend is authorized to practice law in Texas. Only persons authorized to practice law can appear on behalf of a defendant since appearing in court on behalf of another is the practice of law. Sec. 81.102, G.C. A list of active Texas attorneys may be searched on the State Bar of Texas website at http://www.texasbar.com. The confusingly named "power of attorney" does not, by itself, authorize a person to act as an attorney at law in a court proceeding. *Harkins v. Murphy & Bolanz*, 112 S.W. 136 (Tex. Civ. App. – Dallas 1908, writ dism'd). A "power of attorney" generally bestows authorities that are irrelevant to criminal court proceedings.

1. Open Court

Adult defendants may appear in person or by counsel in open court to plead guilty or nolo contendere. Art. 27.14(a), C.C.P. In county and district courts, this procedure is called arraignment. Article 26.02, C.C.P. defines arraignment as a proceeding in which a defendant appears in open court and a judge identifies the defendant, explains the charge, and requests a plea. At arraignment, if the defendant pleads guilty or nolo contendere, the judge can listen to mitigating circumstances before setting the fine. Even after a defendant pleads not guilty at an arraignment and is scheduled for a jury trial, the defendant may change his or her mind and plead guilty or nolo contendere before the trial commences.

2. Delivery of Plea in Person

Adult defendants may make an appearance by delivering in person to the court a plea of guilty or nolo contendere and a waiver of jury trial. Art. 27.14(b), C.C.P. If the court receives the plea and waiver before the defendant is scheduled to appear, the court must dispose of the case without requiring a court appearance by the defendant. The clerk typically processes defendant communications and sends the plea and waiver to the judge to accept and enter judgment. Only the judge has authority to request and accept a plea. No authority exists for a judge to perform these duties by delegation. Tex. Atty. Gen. Op., H-386 (1974).

3. Mailed Plea

Adult defendants may make an appearance by mailing to the court a plea of guilty or nolo contendere and a waiver of jury trial. If the court receives the plea and waiver before the defendant is scheduled to appear, the court shall dispose of the case without requiring a court appearance by the defendant. Art. 27.14(b), C.C.P. Article 45.013, C.C.P. provides that a document is considered timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk and the clerk receives the document not later than the 10th day after the date the document is required to be filed with the clerk. Day is defined to not include Saturday, Sunday, or legal holidays.

Practice Note

Article 27.14(b) of the Code of Criminal Procedure provides that for both a plea delivered by mail or in person, the court is required to notify the defendant of the amount of any fine or costs assessed in the case, information regarding the alternatives to full payment if the defendant is unable to pay the amount, and if requested by the defendant, the amount of an appeal bond. The notice may be delivered in person or by *regular* mail. This is a significant change to court processes from the law prior to September 1, 2017, which required the notice to be sent by certified mail, return receipt requested, and did not require notice of the alternatives to pay if the defendant was unable to pay.

4. Payment of Fine Without Plea

A defendant may be found guilty without entering a plea if he or she pays the fine and costs. Art. 27.14(c), C.C.P. This is a process unique to fine-only offenses. The amount accepted by the court

constitutes a written waiver of a jury trial and a finding of guilty in open court, as though a plea of nolo contendere had been entered by the defendant. After a clerk receives the payment, the clerk must give the case to the judge to accept the payment. After the judge signs a judgment, the clerk notes the judgment on the docket. The clerk then files the judgment with the case papers and notes the date of judgment in the docket.

C. Sentencing

If a defendant does not want to contest a charge, he or she can request a driving safety course, teen court, or deferred disposition. Each of these alternatives requires the defendant to pay court costs and plead guilty or nolo contendere. Additionally, these alternatives may only be granted in certain types of cases.

True or False

54. A plea is only valid if it is given intelligently and voluntarily. ____
55. When defendants do not want to contest the charges filed against them, they must plead either guilty or nolo contendere and waive their right to a jury trial in writing. ____
56. When defendants appear in municipal courts, they are submitting themselves to the authority and jurisdiction of the court. ____
57. A family member of the defendant who is not an attorney may deliver to the court a signed nolo contendere plea to the court. ____
58. Adult defendants may appear by counsel in open court to plead guilty or nolo contendere. ____
59. If an adult defendant delivers a plea to the court on or before his or her scheduled appearance date, the court must dispose of the case without requiring a court appearance. ____
60. A defendant is considered to have made an appearance when he or she mails in a plea and/or fine payment. ____
61. Clerks may ask defendants who appear in their office for a plea to determine how to process the defendant's case. ____
62. Clerks have the authority to accept or reject a mail-in payment if it is an incorrect amount. ____
63. When clerks receive fine payment from defendants who either deliver or mail the payment to the court, there is not a conviction until the judge accepts the payment and signs a judgment. ____

PART 6
FAILING TO APPEAR

A. Failure to Appear (FTA)

When a defendant lawfully released from custody with or without bail intentionally and knowingly fails to appear in accordance with the term of the release, the defendant may be charged with a

new, separate criminal offense of failure to appear under Section 38.10 of the Penal Code. This is a Class C misdemeanor, which carries a fine up to $500.

B. Violation of Promise to Appear (VPTA)

A person who willfully violates a written promise to appear in court commits a misdemeanor regardless of the disposition of the charge on which the person was arrested. Sec. 543.009, T.C. The offense of violation of promise to appear may be charged only when the underlying offense is an offense in Subtitle C, Rules of the Road, Transportation Code (Chapters 541-600). The general penalty under Section 542.401 of the Transportation Code provides that the fine amount is not less than one dollar or more than $200.

Practice Note

The decision to charge either of these new offenses, based on the defendant's failure to appear as promised on the underlying offense, is entirely up to the prosecuting attorney. Clerks must have direction from the prosecutor on when and how to file failure to appear and violation of promise to appear. A common misconception is that the new charge is automatic on defendant's failure to appear. The prosecutor may review these on a case-by-case basis or file a standing motion for the new criminal charge to be filed within specific parameters.

C. Contracts

1. Contract with the Department of Public Safety (DPS)

A city may contract with DPS to provide information necessary for DPS to deny renewal of a person's driver's license for most fine-only offenses when a defendant fails to appear. Ch. 706, T.C. In this program, DPS contracts with a third party to administer the program. Presently, DPS has contracted with OmniBase, and the program is commonly referred to as "Omni."

2. Contract with the County or Texas Department of Motor Vehicles (TxDMV)

A city may contract with the county or TxDMV to deny renewal of vehicle registration of a person who fails to appear on a complaint that involves the violation of a traffic law. Ch. 702, T.C. This program is commonly referred to as "Scofflaw."

D. Nonresident Violator Compact

The State of Texas is a member of the *Nonresident Violator Compact*, a reciprocal agreement between 44 states and the District of Columbia. The compact assures that nonresident motorists receiving citations for minor traffic violations in a member state receive the same treatment as resident motorists. A nonresident receiving a traffic citation in a member state must fulfill the terms of that citation or face license suspension in the motorist's home state until the terms are met. Under the terms of the agreement, DPS will request the suspension of the driver's license of any resident of a member state who receives a citation and fails to respond. In cases where a defendant fails to appear, the court should first notify the defendant of the failure to appear. The court should use the *Notice of Failure to Comply* form (available in the TMCEC *Forms Book*). If a non-resident defendant cited in Texas does not respond within 15 days, the court forwards the

second and third copies of the notice to DPS. If at any time the defendant resolves the case with the court, the court must send the fifth and sixth copies of the notice to DPS. Ch. 703, T.C.

True or False

64. All defendants who fail to appear can be charged with the Penal Code offense of failure to appear. ____

65. The offense of violation of promise to appear may be charged when a defendant fails to appear for any traffic offense. ____

66. Courts can contract with DPS to deny driver's license renewal to defendants who fail to appear. ____

67. Cities can contract with the Texas Department of Motor Vehicles for denial of vehicle registration renewal for defendant's failure to appear. ____

68. The purpose of the *Nonresident Violator Compact* is to assure that nonresident motorists receiving traffic citations in member states will receive the same treatment accorded resident motorists. ____

PART 7
WARRANTS, CAPIASES, AND SUMMONSES

Although municipal court clerks have no authority to determine probable cause, they typically process affidavits of probable cause. After the affidavits are sworn, they are presented to a judge or magistrate who determines if the information in the affidavit is sufficient probable cause to issue an arrest warrant. After a judge issues a warrant, the clerk's role as custodian of the records is to coordinate with the police department for the handling of the warrant. Some courts give the police department a copy of the warrant, others give them the original, and some courts are connected electronically with the police department so that the peace officers have access to a list of defendants with outstanding warrants.

A. Probable Cause

No warrant shall issue, but upon probable cause. Amendment IV, U.S. Constitution; Article I, Section 9, Texas Constitution; and Article 1.06, C.C.P. Probable cause has been defined as the amount of evidence necessary to cause a person to believe someone has committed a crime. An arrest warrant, a capias, and a summons each require probable cause before being issued.

A municipal court clerk lacks authority to determine probable cause. Only a judge or magistrate may determine probable cause. *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984). Probable cause can be presented to a judge or magistrate by an affidavit or be contained in a complaint. A complaint is not sufficient to issue a warrant unless it contains probable cause. The test in determining if a complaint shows probable cause is whether it provides a neutral and detached magistrate with sufficient information to support an independent judgment that probable cause exists for the issuance of a warrant. *Rumsey v. State*, 675 S.W.2d 517 (Tex. Crim. App. 1984).

B. Service of Process

Process refers to written orders issued by a judge or magistrate and includes warrants of arrest, capiases, capias pro fines, and summonses. City police officers and marshals serve municipal court process under the same rules and laws governing the service of process by sheriffs and constables. Art. 45.202, C.C.P. A city police officer or marshal may serve all process issuing out of municipal court anywhere in the county in which the municipality is situated. If the municipality is situated in more than one county, the police officer or marshal may serve the process throughout those counties. Art. 45.202(b), C.C.P. The officer or person executing a warrant of arrest shall, without unnecessary delay, but no later than 48 hours after the person is arrested, take the person or have him or her taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which the person was arrested. Arts. 15.16 and 15.17, C.C.P.

C. Warrant of Arrest

Warrants of arrest may be issued by a judge with jurisdiction over a case to try the case or by any magistrate in the county. An arrest warrant is a written order from a judge or magistrate ordering a peace officer to arrest an accused person. Arts. 15.01 and 45.014, C.C.P. A judge may issue a warrant of arrest when either a sworn complaint or an affidavit based on probable cause is filed with the judge. Art. 45.014(a), C.C.P. The requirements of a warrant of arrest are outlined in Article 45.014(b), C.C.P.

Practice Note

It is important to not only maintain the integrity of the case file on a case pending warrant, but also to implement the correct legal process before the warrant issues. Recent changes to Article 45.014(e) of the Code of Criminal Procedure now require that before a warrant of arrest under Chapter 45 may issue for the defendant's failure to appear at the initial court setting, the court must provide by telephone or regular mail notice that includes:

- a date and time, within a 30-day period following the date notice is provided, when the defendant must appear;
- name and address of the court with jurisdiction;
- information regarding alternatives to full payment of fine or costs if the defendant is unable to pay that amount;
- a statement that the defendant may be entitled to jail credit if the defendant was confined in jail or prison after the commission of the offense for which the notice is given; and
- an explanation of the consequences if the defendant fails to appear.

D. Capias

A capias is a writ issued by the court having jurisdiction of a case after commitment or bail and before trial, or by a clerk at the direction of the judge, and directed "[T]o any peace officer of the

State of Texas," commanding the officer to arrest a person accused of an offense and bring the arrested person before that court immediately or on a day or at a term stated in the writ. Art. 23.01, C.C.P. In misdemeanor cases, the capias or summons issues from a court having jurisdiction of the case. Art. 23.04, C.C.P. Additionally, where a forfeiture of bail is declared, a capias shall be immediately issued for the arrest of the defendant. Art. 23.05, C.C.P. The requirements of a capias are outlined in Article 23.02 of the Code of Criminal Procedure.

A return of the capias shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find him or her, and what information the officer has as to the defendant's whereabouts. Art. 23.18, C.C.P. The clerk is responsible for coordinating the handling of the capias between the court and police department. If a peace officer is unable to serve the capias and returns it to the court, the clerk should bring this information to the attention of the judge and the prosecutor.

E. Summons

A summons gives notice to a person, an association, or a corporation that a charge has been filed in court. It provides the address of the court and a date and time requiring the defendant to appear. In a misdemeanor case, the summons is issued by a court having jurisdiction in the case. Art. 23.04, C.C.P. This summons should not be confused with a jury summons, which is a notice a clerk sends to a prospective juror to appear for jury service. The summons may be issued only upon request of the attorney representing the State. Art. 23.04, C.C.P. There is, however, no requirement in Chapter 17A, C.C.P. that a prosecutor make a request for issuance of a summons to a corporation or association.

1. For a Defendant

A summons issued by a judge for a misdemeanor follows the same form and procedure as in a felony case. Art. 23.04, C.C.P. The summons is in the same form as a capias, except it summons a defendant to appear before the proper court at a stated time and place. Art. 23.03(b), C.C.P. Article 23.03(d), C.C.P. requires that a summons issued for a felony must include the following notice, clearly and prominently stated in English and in Spanish: "It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on account of the service of the person as a witness or to prevent or delay a person's service as a witness to a crime." Clerks should review the form of the summons. If it is not proper or the information that should be in English and Spanish is not on it, the clerk should discuss with the judge or city attorney the proper wording. When a defendant fails to respond to a summons issued by a judge who has jurisdiction over the case, the judge enforces the summons by issuing a capias. Art. 23.03(b), C.C.P.

Practice Note

Court clerks often ask whether a summons can be placed in the mail. The short answer is yes. Articles 23.03(c) and 15.03(b) of the Code of Criminal Procedure provide the process for how a peace officer serves a summons on a defendant. They are:

- delivering a copy to the defendant personally;
- leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or
- mailing it to the defendant's last known address.

2. For a Corporation or Association

If the court is issuing a summons for a corporation or association, the form of the summons is different. It shall be in the form of a capias and shall provide that the corporation or association appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served. If service is upon the Texas Secretary of State or the Commissioner of Insurance, the summons shall provide that the corporation or association appear at or before 10 a.m. of the Monday next after the expiration of 30 days after service. A certified copy of the complaint must be attached to the summons. Art. 17A.03, C.C.P.

A peace officer shall serve a summons on a corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or the officer cannot locate the agent after diligent effort, the officer shall personally serve the president or a vice president of the corporation. If the attempt to effect service is unsuccessful, then the officer shall serve the summons on the Secretary of State by personally delivering a copy of it to the Secretary or the Assistant Secretary of State or to any clerk in charge of the corporation department at the Secretary of State's Office. Art. 17A.04, C.C.P. Section 5.201 of the Business Organizations Code allows for process to be served on a corporation through the corporation's registered agent. An employee is required to be available at the registered office during normal business hours to receive service of process, notice, or demand. For associations, a peace officer shall personally deliver a copy of a summons to a high managerial agent at any place where business of the association is regularly conducted, or if the officer certifies on the return that diligence was used to attempt service but failed to serve a high managerial agent or employee of suitable age and discretion, then the officer may serve it to any member of the association. Art. 17A.05, C.C.P.

If counsel fails to appear for a corporation or association, the corporation or association is deemed to be present in person for all purposes, and the court shall enter a plea of not guilty and proceed with trial, judgment, and sentencing. Art. 17A.07, C.C.P. No individual may be arrested upon a complaint, judgment, or sentence against a corporation or association. Art. 17A.03(b), C.C.P.

F. Warrant for Seizure of Animals

A municipal judge may issue a warrant to order the seizure of an animal being cruelly treated. Sec. 821.022, H.S.C. On a showing of probable cause to believe that an animal has been or is being cruelly treated, the court shall issue the warrant and set a time within 10 calendar days of the date

of issuance for a hearing to determine whether the animal has been cruelly treated. The officer executing the warrant must impound the animal and give written notice to the owner of the animal of the time and place of the hearing.

G. Warrant for Nuisance Abatement

Magistrates have authority to issue search warrants for fire, health, and code inspections. The procedures for this type of warrant are outlined in Article 18.05 of the Code of Criminal Procedure. Of note, a search warrant may not be issued to a code enforcement official of a county with a population of 3.3 million or more for the purpose of allowing the inspection of specified premises to determine the presence of an unsafe building condition or a violation of a building regulation, statute, or ordinance. Art. 18.05(e), C.C.P.

Practice Note

The judge of a municipal court of record may have expanded authority to issue certain warrants for nuisance abatement if the city passes an ordinance providing for that jurisdiction. With an ordinance in place, a judge of a municipal court of record may issue a search warrant for the purpose of investigating a health and safety or nuisance abatement ordinance violation and a seizure warrant for the purpose of securing, removing, or demolishing property that is a nuisance. Sec. 30.00005(d)(3), G.C.

True or False

69. Before a warrant or capias may be issued, the judge must have probable cause. ____

70. In some instances, court clerks may determine probable cause. ____

71. A complaint is not sufficient to issue a warrant unless it contains probable cause. ____

72. City police officers have countywide authority to serve municipal court warrants. ____

73. A municipal judge has authority as a judge and as a magistrate to issue arrest warrants. ____

74. The judge's authority, under Art. 45.014, C.C.P., to issue warrants of arrest is for fine-only misdemeanors filed in the judge's court. ____

75. When a bond forfeiture is declared, the court is required to issue a capias. ____

76. A capias may be issued by either a municipal court clerk or a municipal judge. ____

77. Since a summons does not order an arrest but gives notice to a defendant to appear in court, clerks may issue and serve it. ____

78. Before a court can issue a summons, the prosecutor must request the issuance. ____

79. When a corporation or an association has been served with a summons, they have until the Monday next after the expiration of 20 days after service of the summons to appear.____

80. Since a summons does not command a peace officer to arrest the defendant, clerks can serve the summons by mailing it. ____

81. Service of summons on a corporation must first be attempted on the registered agent for service. ____

82. Defendants who fail to appear in response to a summons can be arrested on a capias. ____

83. Municipal judges can order the seizure of animals being cruelly treated. ____

84. All municipal judges have the authority to issue a search warrant for the purpose of investigating a health and safety or nuisance abatement ordinance violation. ____

85. Only municipal judges of municipal courts of record, after an ordinance is adopted by the city, may issue a seizure warrant for the purpose of securing, removing, or demolishing property that is a nuisance. ____

PART 8
TRIAL PROCESSES

A. Rights

Defendants in municipal court have the same rights as those afforded defendants by state and federal law in any criminal court. Municipal court procedures and practices, however, are specifically governed by Chapter 45 of the Code of Criminal Procedure.

1. Trial by Jury

The right to trial by jury is guaranteed by the 6th and 7th Amendments to the U.S. Constitution. Also, Article I, Section 10 of the Texas Constitution and Article 1.05, C.C.P. provide that in all criminal prosecutions, defendants have the right to:

- a speedy public trial by an impartial jury;
- know the nature and cause of the accusation;
- receive a copy of the charging instrument;
- represent themselves;
- be represented by an attorney;
- be confronted by witnesses against them;
- compel witnesses to come to court and testify on their behalf; and
- not be compelled to testify against themselves.

Article I, Section 15 of the Texas Constitution, provides that the right to a jury is inviolate. That means that the right to a jury trial is absolute. If a defendant does not want a jury trial, he or she must waive that right. In municipal court, Article 45.025 of the Code of Criminal Procedure requires that the judge hear the case without a jury only if the defendant waives a jury trial in writing.

2. Public Trial

The proceedings and trials in all courts must be public. Art. 1.24, C.C.P. Municipal courts may not exclude anyone from attending trials. The only exception is when "The Rule" is invoked by either the defense or the prosecution asking that witnesses who are not parties be excluded from hearing each other's testimony. In this instance, witnesses must wait in a room outside the courtroom and may not discuss the case together or with others. Rule 614, Tex. R. Evid. Specific processes under "The Rule" are listed in Chapter 36 of the Code of Criminal Procedure. In that chapter, Article 36.03(a) allows for the exclusion of victims only if the victim will testify and the court finds that the victim's presence would materially affect his or her testimony. Additionally, the judge has discretion to exclude any witness from the courtroom on the judge's own motion in order to maintain decorum in the courtroom. Art. 36.03(c), C.C.P. A public trial is an important right, and judges should give the exclusion of any witness careful consideration.

3. Speedy Trial

The right to a speedy trial arises from the time the defendant is formally accused or arrested. In *Chapman v. Evans*, 744 S.W.2d 133 (Tex. Crim. App. 1988), the Court of Criminal Appeals stated, "The primary burden is on the prosecution and the courts to ensure that defendants are speedily brought to trial . . . Both the trial court and prosecution are under a positive duty to prevent unreasonable delay . . . [O]vercrowded trial dockets alone cannot justify the diminution of the criminal defendant's right to a speedy trial." Thus, the management of the trial docket is important. Courts must decide each speedy trial issue raised on its own merits. When a defendant comes before a judge and claims that his or her right to a speedy trial has been violated, the judge must consider the individual circumstances.

Practice Note

Does your court have a backlog of cases? The law once placed a 60-day time limit on cases from time of filing to trial. A violation of the statute would result in a dismissal by the court. That statute was ultimately repealed in 2005. There is still a right to a speedy trial, but no specific timeline is attached. Courts should be cognizant how quickly cases are moving though the court's dockets. The age of a case often affects the reliability of witness testimony, availability of witnesses, and even the quality of certain physical evidence. Additionally, defendants may have legal consequences hanging over their heads for the duration of the life of a case through disposition. Justice deferred too long could be justice denied.

4. Right to Counsel

A defendant in municipal court facing criminal charges has the right to be represented by counsel, just as he or she would in any other criminal court. Article I, Section 10, Texas Constitution; Article 1.051(a), C.C.P. This right, and the appointment of counsel, has been the subject of much litigation over the years. One way to understand the issue is to break the right to counsel into two parts: the right to an attorney and the right to an appointed attorney. In municipal court, as in any criminal court, there is a right to an attorney. This means that a defendant may retain an attorney to represent him or her. A defendant in municipal court may not be sentenced to confinement, however, so there is not generally a right to an appointed attorney in municipal court. *Scott v. Illinois*, 440 U.S. 367 (1979).

Additionally, a defendant has the right to self-representation, acting as his or her own attorney. This is only limited to representing oneself. There is no right for a non-attorney to represent another person. *U.S. v. Wilhelm*, 570 F.2d 461 (3d Cir. 1978). This means that a non-attorney, even if that person is the defendant's parent, cannot represent a person. To do otherwise would be the unauthorized practice of law. For an extended discussion on the right to counsel, see Chapter 5 of the *Level I Municipal Court Guide*.

Practice Note

It is important to make sure that the court has a process in place to admonish defendants of their rights upon that person's first appearance in court. A judge, acting as a magistrate, is required to make the admonishments listed under Article 15.17 of the Code of Criminal Procedure if the defendant is appearing after receiving a citation. This includes the right to counsel. For those wishing to proceed without an attorney, particularly to trial, there is often misunderstanding as to whether the judge will provide help to the pro se defendant because that person is without a licensed attorney. These admonishments are an important part of providing for the fair administration of justice.

True or False

86. Defendants must ask for a jury trial if they want one. ____

87. All trials, including trials involving juveniles, are required to be open in municipal court. ____

88. Since municipal courts cannot assess confinement in jail as a punishment, municipal courts are not required to provide speedy trials. ____

89. Defendants have a right to be represented by an attorney in municipal court cases. ____

90. Defendants have a constitutional right to represent themselves. ____

91. A non-attorney parent may represent his or her child in court if the child is charged with a crime. ____

B. Scheduling

Trial dockets are a listing of cases set for a particular date. These dockets usually include defendants' names; docket numbers; bonds posted with the court, if any; attorneys representing defendants; and any other information that courts find helpful to manage trials. Article 17.085 of the Code of Criminal Procedure provides that that a clerk of a court that does not provide online internet access to the court's criminal case records must post notice of the criminal docket "as soon as the court notifies the clerk of the setting."

C. Subpoenas

A subpoena is a writ requiring that a person appear in court as a witness. Art. 24.01, C.C.P. Both the defense and prosecution are entitled to subpoena witnesses necessary to the presentation of their respective cases in court. Art. 1.05, C.C.P. Courts and clerks may issue a subpoena and must sign it and indicate date it was issued. Arts. 24.01(d) and 24.03(a), C.C.P. It does not need to be under court seal. Arts. 24.01(d) and 45.012(g), C.C.P.

Practice Note

Although applications for subpoenas in district court must be in writing and sworn to, the Code of Criminal Procedure is silent on whether the application for subpoenas issued out of municipal courts must be in writing. A best practice, however, is for the subpoena request to be in writing and added to the case file to document the request. One way to do this is for the requesting party, either prosecution or defense, to provide a list of those that the party intends to subpoena. Two pieces of information are essential on this list: the name and the location of each witness. It may appear as:

DOCKET NO. 123456789

STATE OF TEXAS	**§**	**IN THE MUNICIPAL COURT**
	§	
V	**§**	**ANYTOWN, TEXAS**
	§	
DEBBIE DEFENDANT	**§**	**ANY COUNTY, TEXAS**

STATE'S REQUEST FOR WITNESS SUBPOENAS

NOW COMES, the State of Texas, by and through its attorney of record, Paul Prosecutor, Assistant City Attorney for the City of Anytown, Any County, Texas, and asks that a subpoena issue for each of the following material witnesses for the State of Texas:

Witness	**Address**
Ofc. J. Speedy	Anytown Police Department
Dr. Jane Doe	Mercy Hospital 1000 East Main Street Big City, USA
Howard Johnson	500 Hotel Drive Anytown, USA

1. Types of Subpoenas

a. For Out-of-County Witnesses

The Code of Criminal Procedure has specific provisions regarding enforcement of subpoenas for out-of-county witnesses in felonies and misdemeanor cases that include confinement as part of the punishment. The Code of Criminal Procedures is silent regarding whether a defendant charged with a fine-only misdemeanor is entitled to a subpoena for an out-of-county witness or the

enforcement of such a subpoena. Municipal court defendants, however, are entitled to a type of compulsory process compelling the attendance of witnesses. Art. 1.05, C.C.P. Municipal courts are not prohibited from issuing a subpoena for any witness regardless of where the witness resides, but the court may not be able to enforce the subpoena if the witness resides outside the county.

b. For Child Witnesses

When a witness is younger than 18 years old, the court may issue a subpoena directing a person having custody, care, or control of the child to produce the child in court. Art. 24.011, C.C.P.

c. Subpoena Duces Tecum

A subpoena duces tecum is a subpoena that directs a witness to bring with him or her any instrument of writing or other tangible thing desired as evidence. Art. 24.02, C.C.P. The subpoena should give a reasonably accurate description of the document or item desired, such as the date, title, substance, or subject. A police officer, for example, may be requested to bring the drug paraphernalia as evidence for trial.

2. Service of the Subpoena

A subpoena can be served by reading it to the witness, by delivering a copy to the witness, or by mailing the subpoena certified with return receipt requested to the last known address of the witness. A subpoena may not be mailed if the applicant requests in writing that the subpoena not be served by certified mail or the witness is set to appear within seven business days after the date the subpoena would be mailed. Art. 24.04(a), C.C.P.

The person serving the subpoena must be at least 18 years old or a peace officer. The person serving the subpoena may not be involved or be a participant in the proceedings for which the appearance is sought. Art. 24.01(b), C.C.P.

A peace officer can be compelled by the court to serve a subpoena. A person who is at least 18 and who is not a peace officer may not be compelled to serve the subpoena unless the person agrees in writing to accept that duty and should the person neglect or refuse to serve or return the subpoena, he or she may be fined not less than $10 or more than $200 for contempt at the discretion of the court. Art. 24.01(c), C.C.P. The person serving the subpoena must show the time and manner of service if served. If he or she fails to serve the subpoena, the officer's return must state the reason for not serving it, the diligence used to find the witness, and information regarding the whereabouts of the witness. Arts. 24.04 and 24.17, C.C.P.

3. Refusal to Obey Subpoena

If a witness refuses to obey a subpoena in a misdemeanor case, the court may fine the witness in an amount of up to $100. Art. 24.05, C.C.P.

4. Bail for the Witness

Witnesses may be required to post bail. The amount is set by the judge. If it appears to the court that the witness is unable to post bail, he or she must be released without security. Art. 24.24, C.C.P.

True or False

92. Clerks have the authority to issue subpoenas. ____

93. The municipal courts have specific authority to issue subpoenas for out-of-county witnesses. ____

94. If a witness is younger than 18, the court may subpoena his or her parents to produce the witness in court. ____

95. A subpoena duces tecum is a subpoena that orders the witness to bring other witnesses with him or her. ____

96. If a peace officer serves a subpoena by mail, the subpoena can be mailed regular mail. ____

97. A defendant can request in writing that a subpoena be served in person rather than by mail. ____

D. Court Reporter

A municipal court is only required to provide a court reporter to make a record of the proceedings if it is a court of record. The court reporter must meet the qualifications provided by law for official court reporters. Sec. 30.00010(a), G.C. An official court reporter must take the oath of office required of other officers of this state. In addition to the official oath, each official court reporter must sign an oath administered by the district clerk. Sec. 52.045, G.C.

The court reporter may use written notes, transcribing equipment, video or audio recording equipment, or a combination of these methods to record the proceedings in the court. The reporter shall keep the record for the 20-day period beginning after the last day of the proceeding, trial, denial of motion for new trial, or until any appeal is final, whichever occurs last. Sec. 30.00010(b), G.C. The court reporter is not required to record testimony unless the judge or one of the parties requests a record. Sec. 30.00010(c), G.C.

Instead of providing a court reporter, the governing body may provide for the proceedings to be recorded by a good quality electronic recording device. If the governing body authorizes the electronic recording, the court reporter is not required to be present to certify the statement of facts. The recording shall be kept for the 20-day period beginning the day after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last. If a case is appealed, the proceedings shall be transcribed from the recording by an official court reporter. Sec. 30.00010(d), G.C.

True or False

98. All municipal courts are required to have a court reporter. ____

99. Court reporters must take the oath of office required of other officers of the State of Texas. ____

100. Court reporters are required to sign an oath administered by the district clerk. ____

101. Court reporters may use a combination of transcribing equipment, video or audio recording equipment, and written notes to record court proceedings. ____

102. If a court reporter uses a recording device, the recording must be kept for 20 days, beginning after the last day of proceeding, trial, denial of motion for new trial, or until any appeal is final, whichever occurs last. ____

E. Appearance and Plea

An adult defendant may generally appear either in person or through his or her attorney. It is not common, but the law also provides that an adult defendant may, with the consent of the prosecutor, appear by his or her attorney for trial without being in court personally. Art. 33.04, C.C.P. This tends to rarely occur, however, as prosecutors typically do not agree to this arrangement absent extraordinary circumstances. Additionally, courts often have local rules requiring both the defendant's and the attorney's appearance at certain settings. If a defendant is not represented by an attorney and fails to appear, the court may not try the case in the defendant's absence. A plea of not guilty may be made orally by the defendant or by his or her counsel in open court. If the defendant refuses to plead, a plea of not guilty shall be entered for him or her by the court. Arts. 27.16(a) and 45.024, C.C.P.

F. Pre-Trial

The court may set any criminal case for a pre-trial hearing before it is set for trial and direct the defendant and his or her attorney and the prosecutor to appear for the pre-trial. Art. 28.01, Section 1, C.C.P. There is no motion required by either party to schedule a pre-trial, and most courts include the pre-trial "conference" or "hearing" in the local rules of the municipal court. Pre-trial hearings promote efficiency, including addressing contested motions from either party prior to the trial date, disposing of issues that do not relate to the merits of the case, and allowing both parties to discuss potential plea agreements before summoning jurors.

To expedite the pre-trial process, courts might want to establish procedures that include:

- deadlines for notifying parties of the pre-trial setting;
- establishing a process for notifying the parties;
- date stamping the motion and noting the cause number on the motion; and
- providing all parties with a copy of the filed motion;

Additionally, from a process standpoint, the law permits a court to require all motions be on file at least seven days prior to the date of the pre-trial hearing, provided that the defendant has sufficient notice of such a hearing to allow him or her not less than 10 days in which to raise or file such preliminary matters. Art. 28.01, Sec. 2, C.C.P.

Practice Note

Most municipal courts typically send notice of a pre-trial through the mail or provide notice in court upon receiving a not guilty plea. When evaluating court processes, however, it is important to remember that Article 28.01 of the Code of Criminal Procedure provides a list of ways that notice of a pre-trial may be provided. These include:

- in open court in the presence of the defendant or his or her attorney;
- by personal service upon the defendant or his or her attorney;
- By mail at least six business days prior to the date of the hearing; or
- If the defendant has no attorney, but has a bond, addressed to the defendant at the address shown on the bond.

True or False

103. Before the court can schedule a pre-trial, the court must have a motion from either the prosecutor or the defense. ____

104. Pre-trial is for the purpose of determining the merits of the case. ____

105. Generally, pre-trial procedures help expedite the trial process. ____

106. Notice of a pre-trial hearing must be given to the defendant in person. ____

107. The court may require all motions filed with the court before a pre-trial to be filed at least seven days prior to the date of the pre-trial hearing. ____

G. Continuances

A continuance is a postponement of a hearing, trial, or other court proceeding to a later date or time. Continuances may be at the court's discretion based on local rules and are also authorized by specific statutes. Courts may establish a policy requiring a motion for continuance to be submitted to the court a certain number of days before trial. Once the court establishes the policy, the clerk should make a copy of the policy available to the defendant and the prosecutor. When clerks receive a request for a continuance, the clerk typically passes it to the judge to make a decision. After the judge decides whether to grant the motion, the clerk notifies the prosecutor and the defendant of the decision.

1. Operation of Law

Article 29.01, C.C.P. provides for continuances that come under operation of law. These continuances are for the following reasons:

- a defendant has not been arrested;
- a corporation or association has not been served with the summons; or
- insufficient time for trial at that term of court.

2. Agreement

A criminal case may be continued by consent and agreement of both the defense and the prosecutor in open court. When a continuance by agreement is granted, it may be only for as long as is necessary. Art. 29.02, C.C.P.

3. Sufficient Cause

A criminal action may be continued on the written motion of the State or of the defendant upon sufficient cause shown, which shall be fully set forth in the motion. Art. 29.03, C.C.P. This is the most common type of continuance in municipal courts. Ruling on motions for continuance may not be delegated to court clerks. This means that only the judge can decide if the moving party has presented sufficient cause. Though clerks may not grant continuances, they should, nevertheless, work with their judges to establish policy on how to handle continuances.

4. Religious Holy Days

A continuance may be requested for a religious holy day, a day on which the tenets of a religious organization prohibit its members from participating in secular activities, such as court proceedings. A religious organization means an organization that meets the standards for qualifying as a religious organization under Section 11.20, Tax Code.

A continuance for a religious holy day may be requested by a defendant, defense attorney, the prosecutor, or juror. An affidavit filed under this law is proof of the facts stated and need not be corroborated. Arts. 29.011 and 29.0112, C.C.P. A person seeking the continuance must file with the court an affidavit stating the:

- grounds for the continuance; and
- person holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.

An affidavit filed under this law is proof of the facts stated and need not be corroborated. When a clerk receives this affidavit, the clerk presents it to the judge and notifies the prosecutor or defense, whichever the case may be, of the continuance.

Practice Note

What is the process after the continuance is granted? If the judge grants a continuance, the court clerk should show the case as continued on the trial docket. The case is then reset and a new notice is sent to both the defendant and prosecutor. In paper heavy courts, this information may be entered on the case file or jacket; in paper light courts, this information may be entered in electronic docket notes.

True or False

108. Continuances by operation of law can be because a defendant has not been arrested. ____

109. Continuance by agreement is by consent of both parties in open court. ____

110. Clerks have the authority to grant a continuance and reset a case when a defendant calls the court. ____

111. A request for a continuance for cause is required to be in writing. ____

112. Only the defendant can request a continuance for a religious holy day. ____

H. Jury Trials

Jury trials are one of the most important processes that municipal courts perform. There are many moving parts and processes that court clerks need to be familiar with prior to the arrival of jurors on trial day.

1. Prospective Jurors

a. Jury Summons

Typically, clerks summon prospective jurors approximately three weeks prior to the date of the trial. Jurors may be selected from tax rolls, utility rolls, voter registration rolls, or in any other non-discriminatory manner. State law requires that a prospective juror live within the city. Sec. 62.501, G.C. Usually a minimum of 30 persons is summoned so that there are adequate qualified persons after exemptions, excuses, and challenges. All prospective jurors must remain in attendance until discharged by the court. Art. 45.027(b), C.C.P.

Courts usually notify prospective jurors by mail. The notice typically includes the date, time, and location at which prospective jurors are to report for jury duty. The summons must also include a notice that a person claiming a disqualification or exemption based on lack of citizenship in the county may cause the person to be ineligible to vote in the county. Sec. 62.0142, G.C.

To help clerks better manage the jury selection process, the notice should state the qualifications and exemptions for jury duty. Either included on the notice itself or on a separate sheet is a request for personal information that will be used to help the defense and prosecution select jurors. The court can require prospective jurors to either mail in this personal information or bring it in with them on the day of the trial.

b. Qualifications

Sections 62.102 through 62.105, 62.1031, and 62.501 of the Government Code provide guidelines and qualifications for prospective jurors. The potential juror must:

- be a qualified voter in the state and county but does not have to be registered to vote;
- not have been convicted of misdemeanor theft or a felony;
- not be under indictment or other legal accusation for misdemeanor theft or felony;
- not be insane;

- not be deemed physically unfit by the court (such as for legal blindness) or a mental disease or defect making him or her unfit for jury service;
- not be a witness in the case;
- not have served on the grand jury that issued the indictment, which only applies to felony cases;
- not have served on the jury in a former trial of the same case;
- not have a bias or prejudice, either in favor of or against the defendant or the State;
- not have already formed an opinion or conclusion as to the guilt or innocence of the defendant which would influence the finding of a verdict in the case; and
- be able to read and write the English language.

People who are deaf or hard of hearing are still qualified to be prospective jurors. Deaf or hard of hearing means having a hearing impairment, regardless of whether the individual also has a speech impairment that inhibits the individual's comprehension of an examination, or proceeding, or communication with others. Sec. 62.1041(f), G.C. Courts are required to make reasonable accommodations for a deaf or hard of hearing individual in accordance with the Americans with Disabilities Act. Sec. 62.1041(c). This may include a qualified interpreter for deaf or hearing-impaired jurors or an auxiliary aid or service for a municipal court proceeding. Sec. 62.1041(e).

c. Exemptions

Section 62.106 of the Government Code provides for legal juror exemptions. The potential juror may claim an exemption for a number of statutory reasons, such as the person is over 70 years of age, has legal custody of a child or children under the age of 12 years and the jury service would cause the child or children to be left without adequate supervision, he or she is a student of a public or private secondary school or is enrolled in an institution of higher education, or the person is a primary caretaker of an invalid who is unable to care for himself or herself. Court clerks should be familiar with the full list of exemptions when evaluating court processes. For the entire list, see Section 62.106(a) of the Government Code.

A prospective juror may establish an exemption without appearing in person by filing a signed statement of the ground of the exemption with the clerk of the court at any time before the date of trial. Art. 35.04, C.C.P. Additionally, Section 62.0142, G.C. lets prospective jurors request a postponement of the initial appearance for jury service by contacting the clerk of the court in person, in writing, or by telephone before the date on which the person is summoned to appear. The clerk is required to grant the postponement if:

- the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and
- the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

The clerk may approve a subsequent request for postponement only for an extreme emergency that could not have been anticipated, such as death in the person's family, sudden serious illness

suffered by the person, or a natural disaster or national emergency in which the person is personally involved.

Practice Note

Action is required on the part of the court clerk when a person files for a permanent exemption from jury duty. The law provides that a person who is at least 70 years of age may file a statement for permanent exemption from jury duty with the court clerk. Upon receipt of this statement, the court clerk is required to promptly have a copy of the exemption delivered to the voter registrar of the county. Section 62.107(c), G.C. The name of the person may then not be placed in the jury wheel or otherwise used when preparing the record of names from which a jury is selected. Section 62.108(d), G.C.

d. Providing False Information and Failing to Appear

If a person answering a jury summons knowingly provides false information in a request for an exemption or excuse from jury service, he or she is subject to a contempt action punishable by a fine of not less than $100 or more than $1,000. Sec. 62.0141, G.C. In addition, any person summoned for jury duty who fails to attend may be fined up to $100 for contempt. Art. 45.027(c), C.C.P.

e. Personal Information

Information, collected by the court or by a prosecuting attorney during the jury selection process, about a person who may serve or who does serve as a juror is confidential. This information, listed in Article 35.29 of the Code of Criminal Procedure, includes home address, telephone number, driver's license number, occupation, spouse's name, and more. The information may not be disclosed by the court, by the prosecuting attorney, by defense counsel, or by court personnel. Exceptions exist, however, for one of the parties to the case or a bona fide member of the news media on a showing of good cause. Art. 35.29(b), C.C.P.

f. Compensation

Section 61.001, G.C., provides that each grand juror or petit juror in a court is entitled to receive reimbursement for travel and other expenses. The law provides, however that municipal court jurors are not entitled to this compensation unless the municipality specifically provides for it. Section 61.001(c), G.C. This means that jurors in municipal court are not required to be paid unless the city specifically authorizes it.

2. Day of Trial

a. Jury Selection

The clerk should have copies of the jury list and juror information sheets for the judge, prosecutor, and defendant. The prosecution and defense will use this information during voir dire in order to make decisions on potential jurors. When the trial is over, the juror information sheets should be left on the defense and prosecution tables. Neither the prosecutor nor the defendant should be

allowed to remove them from the courtroom since the information is confidential. Art. 35.29, C.C.P.

After voir dire and any challenges to jurors, the prosecutor and defense give their lists to the court clerk who writes or prints the names of the first six persons not stricken off either list. Then the clerk gives a copy of the final list to the prosecutor, defense, and judge and calls the jurors selected. Art. 35.26, C.C.P. These six persons form the municipal court jury.

In some courts, if the court has more than one jury trial scheduled that day, the six jurors selected to hear the first case are placed back into the jury pool and go through the voir dire process for the other trials. Other courts conduct voir dire for all the trials scheduled on a certain day before starting jury trials. If clerks are uncertain about how their judges want this process handled, they should work with their judges to establish procedures. If from challenges, strikes, or legal exemptions, a sufficient number of jurors is not in attendance, the judge shall order the proper officer, usually a peace officer, to summon a sufficient number of qualified persons to form a new jury panel. Art. 45.028, C.C.P. This is commonly called a pick-up jury. This process prevents the court from having to cancel or reschedule the jury trial if too many jurors are struck.

b. Jury Shuffle

A jury shuffle is required when either the prosecution or defense demands that the order of the jury be changed. When a request is made, the judge will have the clerk shuffle the list of jurors. If the court is computerized, the computer may be able to randomly change the order of the prospective jurors. If the court does not have a computer, the clerk should write the names of the jury panel on separate pieces of paper and place them in a receptacle so that they can be mixed and drawn randomly. Regardless of how the names are shuffled, the names are recorded in the order that they are drawn or selected. The prospective jurors are then reseated in the order selected. A copy of the new jury list is given to the prosecutor, defendant, and judge. Only one shuffle is allowed under the law. Art. 35.11, C.C.P.

c. Challenge to the Array

The prosecution and the defense may challenge the array. A challenge may be that the officer summoning the jury willfully summoned prejudiced or biased persons. Art. 35.07, C.C.P. All challenges must be in writing stating distinctly the ground for such a challenge. The challenge must be supported by a sworn affidavit from the defendant or a credible person. A judge shall hear the evidence and decide without delay whether or not the challenge should be sustained. A challenge to the array must be heard prior to questioning jurors regarding their qualifications. Art. 35.06, C.C.P. If a challenge is made and sustained, the judge will order a new jury panel to be summoned by someone other than the person who summoned the original panel. Because court clerks are the ones who usually summon prospective jurors, they should develop a procedure for the random selection. Art. 35.08, C.C.P.

Practice Note

The law provides that the jury shall retire when the case is submitted to them and be kept together until they agree on a verdict or are discharged. Art. 45.034, C.C.P. When establishing processes for jurors, consider the following:

- No person shall be permitted to converse with a juror about the case on trial except in the presence and by the permission of the court. Art. 36.22, C.C.P.
- Should the jury have any questions, they should be addressed to the judge in writing. The judge in the presence of the attorneys may answer proper questions.
- Judges who sequester a jury are required to provide jurors a reasonable time to vote on election day. A court may provide the jurors with transportation to and from their polling places. Sec. 276.009, Election Code.

True or False

113. Defendants must waive their right to a jury trial in order to have a bench trial. ____
114. Before the court summons prospective jurors, the judge must issue a writ of venire. ____
115. A venire is a list of prospective jurors to be summoned for a particular term of court. ____
116. State statutes require that municipal court jurors reside in the city in which the city is located. ____
117. A person must be a registered voter before he or she can serve on a jury. ____
118. A person who is enrolled in college can be required to sit on a jury if the trial is scheduled at a time when the person is not in class. ____
119. To request a permanent exemption from jury service, a person must be at least 70 years of age. ____
120. A clerk who receives a request for permanent exemption from jury service must deliver a copy of the exemption to the voter registrar of the county. ____
121. A prospective juror may establish an exemption by filing a written statement of the ground of the exemption with the clerk. ____
122. The clerk may never grant a postponement of jury service.____
123. A person who provides false information in a request for exemption is subject to contempt and can be fined up to $1,000. ____
124. Since personal information on jurors collected by the court is confidential, it cannot be released for any reason. ____
125. State law does not require municipal courts to pay their jurors. ____
126. A person who fails to appear for jury service can be charged with the offense of failure to appear and assessed a $100 fine. ____

127. Only the defense can ask for a jury shuffle since the statutes only allow one shuffle in a trial. ____

128. If a challenge to the array of a jury is made, the clerk must reseat the jury in random order. ____

129. If after voir dire there are not enough jurors, the trial must be rescheduled for another trial date. ____

130. Since clerks are court officers, they may converse with jurors after the case has been submitted to the jury for a decision. ____

d. Bench Trials

Defendants in municipal court, like defendants in all other courts with criminal jurisdiction, have the right to a jury trial. Defendants, however, may waive that right and request that a judge hear and decide the case. Arts. 1.05, 1.14, and 45.025, C.C.P. As in jury trials, a defendant in municipal court may, with the consent of the prosecutor, appear by his or her attorney and the trial may proceed without the defendant being present in court. Art. 33.04, C.C.P. However, if a defendant is not represented by an attorney and fails to appear, the court may not try the case in the defendant's absence.

e. Administrative Considerations

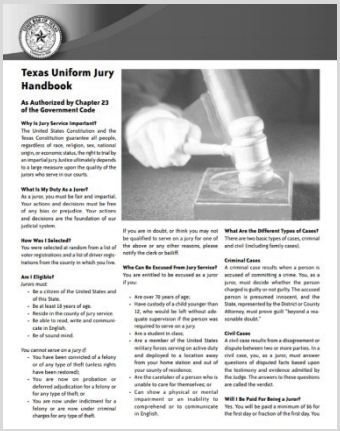
Generally, the overall process for jury trials and trials before the judge is similar, but there are some differences. The opening announcement is typically the same and the order of proceedings starting after the jury selection is the same. The biggest difference is that in a jury trial, the jury decides whether a defendant is guilty or not guilty and can determine punishment if the defendant elected so before trial. In a trial before the judge, the judge hears the evidence, makes a decision of guiltyy or not guilty, and if guilty, decides the punishment.

Whether the trials scheduled are bench or jury, the clerk is responsible for coordinating the movement of people in the court facility. The following is a list of suggestions to help clerks provide guidance to court participants.

- Remember to advise jurors where they can and cannot park on trial day. Many of the jurors may not be familiar with the municipal court.
- Provide signs throughout the court facility to enable participants to find their way.
- Provide signs or pamphlets about the rules of the court including proper dress, no smoking, courtroom decorum, and the prohibition of weapons in the court facility.
- If possible, have a deputy clerk available to not only direct people, but to make certain that jurors are not coming into contact with the prosecutor, defense, or witnesses prior to or during trial.
- Wear nametags so court participants know who to go to for assistance.
- Make sure that the court has made all required accommodations for those with mobility, visual, hearing, and other impairments.

- Some court participants may need a letter, or written excuse, for the person's employer. One practice is to have forms readily available for either the judge or clerk to sign.

Practice Note


Texas Uniform Jury Handbook

As Authorized by Chapter 23 of the Government Code

Why Is Jury Service Important?

What Is My Duty As a Juror?

How Was I Selected?

Am I Eligible?

Who Can Be Excused From Jury Service?

What Are the Different Types of Cases?

Criminal Cases

Civil Cases

Will I Be Paid For Being a Juror?

Chapter 23 of the Government Code requires the State Bar of Texas to publish and distribute to courts a uniform jury handbook in both English and Spanish. The handbook informs jurors of their duties and responsibilities, explains trial procedure, and provides practical information relating to jury service. Courts may also make the handbook available to the public in order to promote the public's understanding of the trial process. The current handbook is available online through the State Bar of Texas website. Go to www.texasbar.com, select For Lawyers, select Judiciary, then select *Texas Uniform Jury Handbook*.

3. Defendant's Appearance

a. Appears for Trial

When a defendant appears for trial, the clerk should show the defendant where to sit in the courtroom and, if the trial is a jury trial, provide the defendant with a copy of the list of jurors and a copy of the juror information form.

b. Failure to Appear for Trial

If a defendant fails to appear for trial and filed a bond with the court, the prosecutor can request that the court forfeit the bond. The forfeiture process is initiated by a judgment nisi (a temporary order that will become final unless the defendant and/or surety show good cause why the judgment should be set aside). If a cash bond if filed with the court and the defendant has also signed a conditional plea of nolo contendere, the court can forfeit the bond for the fine and costs.

If the defendant did not waive a jury trial and fails to appear for the jury trial, the judge may also order a defendant to pay the costs incurred for impaneling the jury. The court may release the defendant from the obligation for good cause. The court should conduct some type of show cause hearing before releasing a particular party from these expenses. An order to pay may be enforced by contempt as provided in Section 21.002(c), G.C. Art. 45.026, C.C.P. Clerks should do an analysis of the costs of summoning a jury. Items to include in the analysis are:

- clerk's time to select jurors and prepare and mail jury summons;
- costs of jury summons and envelopes;
- costs of postage or peace officer's costs if peace officer summoned jury; and
- any other applicable costs.

4. Opening Announcement

The bailiff or court clerk should precede the judge into the courtroom and request that all rise. When the judge enters the courtroom, all court participants should stand during the opening announcement. After the judge sits, the bailiff or clerk should direct that all be seated. An opening announcement impresses upon all participants the formality of the proceedings, but each judge may have difference preferences regarding this announcement. A standard format is below:

- Bailiff announces: "All rise!"
- Bailiff states: "The Municipal Court of the City of_____ is now in session."
- Bailiff states: "The Honorable Judge _____ presiding."

5. Explanation of Rights, Options, and Court Proceedings

After the announcement that court is in session, the judge typically explains the defendant's rights, options, and court procedures. At this time, some defendants might decide not to go to trial. Some request to take a driving safety course or ask the judge to grant deferred disposition. After the introductory statement by the judge and processing defendants who change their mind about trial, the court is ready to proceed.

6. Docket Call in Non-Jury Trials

Usually several cases are set on non-jury trial dockets. After an introductory statement by the judge, the judge may call, or instruct the bailiff or clerk to call, the names of defendants scheduled for trial on that docket. This process is commonly called a docket call. The judge instructs defendants in what manner the judge wants the defendants to respond when their name is called. If defendants do not answer, the judge may ask the clerk or bailiff to step outside the courtroom and call those names outside the courthouse door. After the clerk or bailiff completes the docket call, he or she prepares a certificate or attestation indicating the call and files it with the case. This certificate or attestation may be used later to document non-appearance when issuing warrants or, if the defendant has a bond posted, it is documentation that the name was called outside the courtroom for bond forfeiture proceedings.

7. Jury Selection in Jury Trials

The case set for jury trial is called and both the defendant and the State are asked if they are ready to proceed. The judge then reviews qualifications and exemptions with the jurors. If any prospective juror wishes to claim an exemption or explain to the judge why he or she is not qualified, he or she may do so at this time. After that, jury selection can be done on the same day as the trial. A defendant has the right to request a jury trial as well as to withdraw the request.

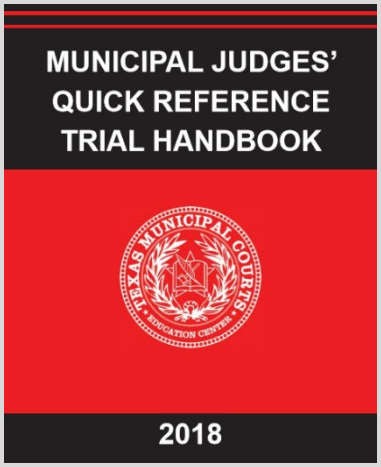
8. The Trial

Trial can sometimes be a complicated process, but clerks should have an overall familiarity with the processes and procedures. A general summary of the steps for a criminal trial are listed below:

- The prosecutor reads the complaint aloud in the courtroom.

- After opening statements from the prosecutor and the defense, the prosecutor presents the State's case by calling the State's witnesses to testify on what is called direct examination.
- After the prosecution witnesses testify, the defense is given the opportunity to cross-examine the witness. Cross-examining means that the defendant may ask the witness questions about his or her testimony or other facts relevant to the case. Cross-examination must be in the form of questions only.
- After the prosecution presents its case-in-chief, the State rests and the defendant may present his or her case by calling defense witnesses.
- The prosecutor may cross-examine the witnesses called by the defense.
- The defendant may testify on his or her own behalf, but he or she cannot be compelled to testify. The defendant's silence cannot be used against him or her, but if the defendant testifies, the State may also cross-examine the defendant.
- Both sides may put on rebuttal evidence, if they so choose, to dispute the other side's evidence presented earlier in the trial.
- In a jury trial, the judge reads a charge to the jury before closing arguments containing the law that applies to the case. This is called the jury charge. Many judges prepare the charge in advance and give a copy of it to the prosecutor and defense before trial for review.
- Finally, the defense and prosecution can present a closing argument on behalf of their case. The State has the right to present the first and last arguments.

Practice Note



Court clerks should try to observe both a jury trial and bench trial. There are several formalities and processes that are probably best understood when seeing them in action. This would not only benefit a court clerk from an educational standpoint, but also help the court clerk when he or she is called upon to assist in the trial process. Among other things, a court clerk during trial may be required to mark evidence, record officer overtime, or assist the judge with forms. In addition, the TMCEC *Trial Handbook* may be a helpful resource for both the judge and the court clerk. The handbook provides quick reference to juror qualifications, the language of required oaths, and an overview of the trial process, among other important trial steps.

9. Judgment in Bench Trial

In a trial before the judge, the judge hears the evidence and decides whether the defendant is guilty or not guilty based solely upon the evidence presented. If the defendant is guilty, the judge renders a judgment of guilty and assesses punishment according to the penalty allowed for the particular

offense. If the judge finds the defendant not guilty, the judge enters a judgment of not guilty, and releases the defendant.

10. Verdict in Jury Trial

The decision of the jury can be based only on the testimony of witnesses and evidence admitted during the trial. The jury then returns to the courtroom to announce its verdict in open court. After a verdict is announced, the judge renders a judgment. If the defendant elected that the jury determine punishment, the jury also sets the punishment. If the defendant did not elect that the jury make the decision of punishment, the judge does so.

Article 45.041(d), C.C.P., requires all judgments, sentences, and final orders of the judge to be rendered in open court. If a defendant is found not guilty by the jury or the judge, the judge enters a finding of not guilty and discharges the defendant without any liability. Upon acquittal, the trial court is also required to advise the defendant of the right to expunction. Art. 55.02, Sec.1, C.C.P.

If the jury cannot reach a decision on the guilt or innocence of a defendant, the court must declare a mistrial. Statutes require the judge to discharge a jury if it fails to agree to a verdict. If a jury is discharged without having rendered a verdict, the case may be tried again as soon as practicable. Art. 45.035, C.C.P.

If a defendant is found guilty, the defendant is ordered to pay the fine and costs. The clerk's responsibility is to prepare the judgment for the judge's signature, to properly maintain the records, and to ensure that the financial accounting of the transactions is accurate and properly recorded.

11. New Trial

a. Municipal Court of Non-Record

A motion for a new trial in a non-record court must be made within five days after the rendition of judgment and sentence and not afterward. Art. 45.037, C.C.P. In no case shall the State be entitled to a new trial. Art. 45.040, C.C.P. Not more than one new trial may be granted the defendant in the same case. Art. 45.039, C.C.P.

When a clerk of a non-record municipal court receives a motion for new trial, the clerk should notify the judge immediately. The judge must decide whether to grant or deny the motion not later than the 10th day after the date that the judgment was entered. If a motion for a new trial is not granted before the 11th day after the date that the judgment was entered, the motion is considered denied. Art. 45.038, C.C.P. As soon as the judge decides, the clerk should immediately notify the defendant of the decision.

According to the mailbox rule, a document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first-class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk and the clerk receives the document not later than the 10th working day after the date the document is required to be filed with the clerk. Art. 45.013, C.C.P. If a motion was mailed to the court and received according to the time limits in the mailbox rule, the document would be timely filed. However, since a judge must rule on the motion for new trial by the 10th calendar day after the judgment, the motion for new trial would be overruled by operation of law if the court received the motion after the 10th working day.

In a non-record court, when a new trial has been granted, the justice or judge shall proceed as soon as practicable to try the case again. Art. 45.039, C.C.P.

b. Municipal Court of Record

If the trial is in a court of record, a written motion for new trial must be filed with the municipal court clerk not later than the 10th day after the date on which judgment was rendered. The motion must set forth the points of error of which the appellant complains. Sec. 30.00014(c), G.C. The motion for new trial may be amended by leave of the court at any time before action on the motion is taken, but not later than the 20th day after the date on which original or amended motion is filed. The court may for good cause extend the time for filing or amending, but the extension may not exceed 90 days from the original filing deadline. If the court does not act on the motion before the expiration of 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.

In a record court, the judge decides whether to grant a motion for new trial based on the briefs submitted with the written motion for new trial. The court may grant a new trial any time before the record of the case is filed with the appellate court for an appeal. Sec. 30.00022, G.C.

True or False

131. If a defendant wants a jury to decide punishment, the defendant must have elected before the trial for the jury to do so. ____

132. Clerks should provide guidance about proper conduct and dress to court participants during the day of trial. ____

133. A defendant who has been in custody and then failed to appear for trial, may be charged with the Penal Code offense of failure to appear. ____

134. When a defendant who has a bond filed with the court fails to appear, the prosecutor can request the court forfeit the bond. ____

135. If a defendant fails to appear for a jury trial, the court may assess the defendant the costs for impaneling a jury. ____

136. Docket call is when the court determines if all the prospective jurors appeared. ____

137. Municipal courts may close a trial to the public if it is in the best interest of the defendant. ____

138. The court may, upon request of either the prosecution or the defense, exclude witnesses from hearing each other's testimony. ____

139. In a bench trial, the judge renders judgment. ____

140. The jury's decision is called a verdict. ____

141. If a mistrial is declared, the case must be tried within two days. ____

142. If a jury finds a defendant not guilty, the defendant is still liable for the costs of the trial. ____

143. The judge may require defendants to pay the entire fine and costs when sentence is pronounced. ____

144. Defendants convicted in non-record municipal courts must request a new trial within one day of the judgment. ____

145. When a motion for a new trial is filed with the court, the judge has 10 days to decide whether to grant or deny the motion. ____

146. If a defendant makes a motion for new trial by mail, the motion must be received by the court within 10 business days from the date of judgment to be properly filed. ____

147. If a new trial is granted, the court must try the case within 10 days of granting the motion. ____

148. If a defendant in a municipal court of record wants a new trial, the defendant must submit a written motion to the court not later than 10 days after the judgment. ____

149. Defendants in a municipal court of record may not file an amended motion for new trial. ____

PART 9
CONTEMPT

A. Types of Contempt

1. Direct and Indirect Contempt

Direct contempt occurs in the judge's presence under circumstances that require the judge to act immediately to quell disruption, violence, disrespect, or physical abuse. Indirect contempt occurs outside the court's presence and includes such acts as failure to comply with a valid court order, failure to appear in court, attorney being late for trial, and filing offensive papers with the court. Indirect contempt requires that the person be notified of the charges, have a hearing in open court, and the right to counsel.

2. Civil and Criminal Contempt

Direct and indirect contempt may also be classified civil or criminal. Civil contempt includes willfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings or obstruct justice and are directed against the dignity of the court or bring the court into disrepute.

B. Penalty

1. General Penalty

Contempt in municipal courts is punishable by up to three days confinement in jail and/or a fine up to $100. Sec. 21.002(c), G.C.

2. Against Sheriff or Officer

Failure by a sheriff or peace officer to execute summons, subpoena, or attachment is punishable for contempt by a fine of $10 to $200. Art. 2.16, C.C.P.

3. Failure to Appear for Jury Duty

Failure to appear for jury duty in municipal court is contempt punishable by a maximum fine of $100. Art. 45.027(c), C.C.P.

4. Juvenile's Failure to Obey a Municipal Court Order

If a defendant under the age of 17 fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court may hold the child in contempt. Art. 45.050, C.C.P. That section provides that a municipal court may hold a child in contempt for failing to obey an order and assess a fine against the child not to exceed $500. No person under 17 may be confined in jail for contempt.

5. Failure to Pay Costs of Impaneling Jury

Article 45.026, C.C.P., provides that the judge may order a party who demands a jury trial and fails to appear to pay the costs incurred for impaneling the jury. The court may release the party from the obligation for good cause. The court should conduct some type of show cause hearing before releasing a particular party from these expenses. An order to pay may be enforced by contempt as provided in Section 21.002(c), G.C.

True or False

150. Direct contempt means that an act occurred in the judge's presence. ____

151. Indirect contempt is an act that occurs outside the court's presence. ____

152. If a person is charged with either indirect or direct contempt, the person is not entitled to a hearing. ____

153. Civil contempt includes willfully disobeying a court order. ____

154. Criminal contempt means that a person disrupted court proceedings or obstructed justice. ____

155. If a peace officer fails to execute a summons, subpoena, or attachment, the officer may be punished by contempt. ____

156. Failure to appear for jury duty includes three days in jail as a punishment. ____

PART 10
POST-TRIAL PROCEDURES

A. Penalties

The judgment and sentence in municipal court cases is that the defendant pay the amount of the fine and costs as ordered. Art. 45.041(a), C.C.P. During or immediately after imposing this

sentence, the judge is required to ask whether the defendant has sufficient resources to immediately pay all or part of the fine and costs. Art. 45.041(a-1), C.C.P. If the defendant indicates inability to immediately pay, then at this point, the judge could consider installment payments or other legal alternatives to discharge the fine and costs.

Practice Note

Sometimes the penalties include more than the fine and costs. There are certain offenses that carry additional punishments or remedial classes based on the defendant's age. It is important to include forms or information regarding these classes when planning for trial processes. A conviction for an offense punished under the Alcoholic Beverage Code, for example, carries required community service, an alcohol or drug awareness course, and a potential license suspension for minors. An order should include these requirements to document compliance with the law. In addition, one practice is to have a list of community service options or resources for classes available following the court's order.

B. Restitution

When the court requires restitution, the court clerk should keep records of the restitution transactions and coordinate the payment to the victim. Restitution is generally defined as compensation for a loss. Article 45.041(b)(2) of the Code of Criminal Procedure authorizes the court to order a defendant to pay restitution to a victim of the offense following conviction. This means, for example, that if the offense was criminal mischief, the defendant could be ordered to pay the victim for the actual financial loss resulting from the criminal mischief. There are no limits on the amount of restitution possible listed in the statute, except for the offense of issuance of a bad check, which is capped at $5,000. For this reason, judges should be cautious not to exceed the court's authority or order excessive restitution. There must be a factual basis for the amount of restitution ordered. *Cartwright v. State*, 605 S.W.2d 287 (Tex. Crim. App. 1980). Additionally, restitution is not intended to address civil damages such as emotional distress or pain and suffering. These types of damages are sought in a separate personal injury case in a higher court.

C. Payment of Fine and Costs

1. Jail-Time Credit

As custodian of the records, court clerks should properly record jail-time credit. In some instances, jail-time credit may have been the method of discharging the total fine; in other instances, it may be just a partial discharge. If a defendant does not pay any money to the court because he or she had sufficient jail-time credit for both fine and court costs, the State Comptroller does not require the court to remit court costs that were not collected in money. Jail-time credit includes time served in jail from the time of arrest to conviction and time served after conviction. Art. 45.041(c), C.C.P. It also includes time confined in jail or prison while serving a sentence for another offense if that confinement occurred after the commission of the misdemeanor before the municipal court. Art. 45.041(c-1). The rate of credit is not less than $150 for a period of time specified in the judgment. "Period of time" is defined to be not less than eight hours or more than 24 hours. Arts. 45.041 and 45.048, C.C.P. When a judge enters judgment, he or she must specify the amount of time that the defendant must serve to receive jail credit.

2. Payment by Credit Card

If the governing body of a municipality has authorized collection of fines and costs by a credit card or electronic means, the court can allow defendants to pay by this means. Payment by electronic means is defined as payment by telephone or computer but does not include payment in person or by mail. Secs. 132.002(b)-132.004, L.G.C.

Chapter 132, L.G.C. also authorizes a municipality to provide, through the internet, access to information or collection of payments for taxes, fines, fees, court costs, or other charges. A fee to recover costs for providing access may be charged only if providing the access through the internet would not be feasible without the imposition of the charge. If the city contracts with a vendor to provide the service, any fee charged by the vendor must be approved by the city. Payments collected by a vendor are to be promptly submitted to the city. Sec. 132.007, L.G.C. Currently, Chapter 552, G.C., the Public Information Act, makes an exception to public information for debit and credit card numbers of private individuals collected by the city or corporations or associations that do business with the city using a debit or credit card.

Before a court can collect payments by credit card or through the internet, the governing body of a municipality must authorize the collection. If the governing body authorizes the court to collect payments by credit card, the municipality may authorize:

- collection of a fee for processing the payment by credit card; or
- collection without requiring collection of a fee.

The governing body of a municipality must set the processing fee in an amount that is reasonably related to the expense incurred by the municipal official in processing the payment by credit card. However, the governing body may not set the processing fee in an amount that exceeds five percent of the amount of the fee, fine, court cost, or other charge being paid. Sec. 132.003(b), L.G.C.

If, for any reason, a payment by credit card is not honored by the credit card company on which the funds are drawn, the county or municipality may collect a service charge from the person who owes the fee, fine, court costs, or other charge. The service charge is in addition to the original fee, fine, court cost, or other charge and is for the collection of that original amount. The amount of the service charge is the same amount as the fee charged for the collection of a check drawn on an account with insufficient funds. Sec. 132.004, L.G.C.

3. Ability to Pay and Required Hearing

An important area for courts to consider is what happens to a case if the defendant informs the court that he or she is now unable to pay previously ordered fines or costs. A number of factors could impact an individual's ability to pay between the court's order to pay and the issuance of a capias pro fine. These might include a change in job status, sudden increase in personal debt, and unforeseen medical issues, among others things. Although any determinations are up to the judge, the court clerk's role is to implement a process to get that information before the judge. This process is handled differently throughout the state, with many courts utilizing devices such as appearance dockets or walk in dockets to discuss ability to pay and alternatives to payment. These give the defendant an opportunity to provide any information concerning ability to pay to the judge and to discuss options or alternatives to payment in open court with the judge. This is an important step in the process as commitment of the indigent is unconstitutional, barring certain written determinations.

If the defendant reaches out and notifies the court of a hardship, however, it is important to remember that a hearing to determine whether the judgment imposes an undue hardship is required by law by Article 45.0445 of the Code of Criminal Procedure. This hearing is named a "Reconsideration of Satisfaction of Fine or Costs." It is not a reconsideration of the judgment and sentence; rather, it is an opportunity for the defendant to appear in court to discuss alternatives to discharge the fine or costs ordered. This hearing functions in much the same way as the walk-in dockets, indigency hearings, and show cause hearings that have existed in Texas municipal courts for some time. The difference, however, other than the fact that this hearing is specifically required by statute, is that there is additional authority to hold this hearing by telephone or videoconference if the judge determines that it would be an undue hardship for the defendant to appear in court in person. Art. 45.0201, C.C.P.

Practice Note

One consideration when setting up a process for the judge to evaluate ability to pay is documentation of the defendant's current financial resources. Notice would need to be provided to the defendant to bring any documentation to the court date. This may include paycheck stubs, tax statements, current medical bills, or other items that would help the judge make a determination of the defendant's ability to pay. As these items contain personal information, it is important to consider whether the process includes returning the items to the defendant in court once the judge has reviewed them. In this case, the judge should document in some manner that he or she has reviewed additional items in making a determination.

4. Payment by Community Service

Community service is one alternative means to satisfy a judgment. Generally, court clerks are responsible for coordinating the community service for the court. Coordination includes developing a method of keeping track of defendants performing community service and when their service is to be completed, making certain that the defendant returns proper documentation of completion of community service, and properly recording community service orders and completion of the service.

A judge may require a defendant to discharge all or part of his or her fine or costs by performing community service if the defendant:

- fails to pay a previously assessed fine or costs; or
- is determined by the court to have insufficient resources or income to pay a fine or costs; or
- is younger than 17 and assessed fine or costs for an offense occurring in a building or on the grounds of a school at which the defendant was enrolled.

A judge may not order more than 16 hours per week of community service unless the judge determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant's dependents. A defendant is considered to have discharged not less than $100 of fines or costs for each eight hours of community service performed.

Finally, a municipal judge, officer, or employee of the city is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant if the act or failure to act was performed pursuant to court order; and not intentional, willfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others. Art. 45.049(f), C.C.P.

Practice Note

Courts should periodically review which community service providers are acceptable to the court. This is a common question asked by defendants when ordered to complete community service. The judge may want to create a list of providers that the court clerk can provide to the defendant. Current law is fairly broad on what qualifies for community service. It may include attendance at any number of self-improvement programs or may be for a government entity, a non-profit, or another organization that provides services to the general public. Article 45.049(c) of the Code of Criminal Procedure includes more examples. Once the judge decides what is acceptable, the court clerk can put together a potential list for defendants and include this step in the community service process.

5. Waiver of Fine or Costs

A municipal court may waive payment of all or part of a fine or costs if the judge determines that the defendant is indigent, does not have sufficient resources to pay, or at the time of the offense was a child and discharging through community service would be a hardship. Art. 45.0491, C.C.P. This authorization is broad, and the judge could decide to waive any part of the fine or any cost depending on the judge's determination of sufficient resources or indigency. The decision on what to waive and whether to waive is the judge's; however, court clerks will generally be responsible for processing the paperwork associated with waiver. The process may include an order waiving all or part of the fine or costs and any documentation that the judge may want to see related to ability to pay.

True or False

157. When a defendant is entitled to jail credit, the clerk should properly record jail credit. ____

158. If a defendant discharges a fine and costs by jail credit, the city is liable for payment of the court costs to the State Comptroller. ____

159. Only the judge may authorize defendants to pay fines and costs by credit card. ____

160. Clerks are not allowed to collect payments through the internet unless the judge authorizes that method of payment. ____

161. If payment is not honored by a credit card company, the municipality may collect a service charge from the defendant. ____

162. Defendants may discharge a fine, but not the costs by community service. ____

163. The court may require an indigent defendant to discharge a fine by community service. ____

164. The court must credit the defendant with not less than $50 for every eight hours of community service performed. ____

165. A municipal judge may waive a fine and court costs for those determined to be indigent by law, but not for those that simply do not have sufficient resources to pay. ____

Short Answer

166. Describe the judge's authorization to waive fine or costs under state law._____

_____

PART 11
FINE ENFORCEMENT AND COLLECTION

A. Default in Payments

1. Capias Pro Fine

A capias pro fine is a writ issued, after a required hearing, for failure to satisfy the judgment and sentence according to its terms. The writ directs a peace officer to bring the person before the court immediately or place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately. Art. 45.045, C.C.P.

Typically, the court clerk's role in the capias pro fine process is to maintain the case file integrity and make certain the required steps in the process have been documented. The case file should include, at a minimum, a written judgment and sentence, proper documentation of any payments or community service ordered, and any notices sent to the defendant. In addition, the law is clear that a hearing must be set prior to the judge issuing the capias pro fine. Notice is required to have been provided through regular mail with the date and time of that hearing. This notice is incredibly important, as the judge can issue the capias pro fine if the defendant fails to appear at that hearing. Art. 45.045(a-2)(2), C.C.P.

Practice Note

The required hearing prior to issuance of a capias pro fine is often referred to as a "Show Cause Hearing" even though Article 45.045(a-2)(1)(B) of the Code of Criminal Procedure simply refers to it as a "hearing on the defendant's failure to satisfy the judgment according to its terms." This is partly due to a best practice listed on a TMCEC chart, prior to the legal requirement becoming law, that suggested municipal courts set potential capias pro fines for a "Show Cause Hearing." This language has also been incorporated by the OCA for reporting purposes, though, so clerks should remember this in the reporting process when documenting show cause hearings held.

> Line 13. SHOW CAUSE AND OTHER REQUIRED HEARINGS *Report the number of show cause or contempt hearings held pursuant to Art. 45.045 (prior to issuance of capias pro fine), Art. 45.050 (juveniles), 45.051(c-1) (deferred disposition), or 45.0511(i)(driver's safety), Code of Criminal Procedure, for failure to satisfy the judgment or to comply with the requirements for deferred disposition or driver's safety course.*

2. Commitment

A defendant in municipal court may never be *sentenced* to any type of confinement. Municipal courts simply do not have the jurisdiction to hear offenses in which the punishment assessed may be confinement in jail or prison. A defendant could be confined in jail for unpaid fine or costs, though, if specific requirements are met and certain written judicial determinations are made prior to that commitment. The court may order the defendant to be confined in jail until the judgment is discharged if the judge makes written determinations that either the defendant is not indigent and failed to make a good faith effort to discharge the fine or costs; or the defendant is indigent, failed to make a good faith effort to discharge fine or costs through community service, and could have discharged the fine or costs through community service without any undue hardship. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. Art. 45.046(b), C.C.P. Clearly, the court clerk's role in maintaining the case file integrity and documenting every step in the process is essential when an individual's freedom is at stake.

True or False

167. A capias pro fine is a written order of the court issued because a defendant failed to satisfy the judgment and sentence according to its terms. ____

168. A capias pro fine may be issued once a defendant fails to complete community service to satisfy a fine as previously ordered by the court. ____

169. What is a peace officer authorized to do upon serving a capias pro fine? _____

_____

170. Where should the hearing prior to issuance of a capias pro fine be reported on the OCA Monthly Activity Report? _____

171. What documents are sufficient, and should be in the court's file, to authorize confinement of a defendant following commitment proceedings under Article 45.046 of the Code of Criminal Procedure? _____

_____

B. Collection by Civil Process

Municipal courts have express statutory authority to use civil execution against a defendant's property in the same manner as a judgment in a civil suit. Art. 45.047, C.C.P. Chapter 31 of the Texas Civil Practice and Remedies Code deals with civil judgments and court proceedings to assist in the collection of judgments. Some of the judicial remedies include turnover orders for non-exempt property, authority to appoint a receiver to manage or sell property to generate revenue to satisfy the judgment, and use of contempt powers to enforce these orders. The court cannot enter or enforce an order under Chapter 31 that requires the turnover of proceeds or property that are exempt under any statute, including Sections 42.001, 42.002, and 42.0021 of the Property Code. These sections define exempt personal property that is not subject to execution, including home furnishings, food and beverages, farming/ranching implements, and vehicle, tools and equipment used in a trade or profession, clothes, two firearms, one motor vehicle for each member of the family, and more.

Current wages for personal services are also exempt and cannot be garnished directly from a defendant's employer. Sec. 42.001(b)(1), P.C. However, when wages are deposited into checking or savings accounts, they may be subject to garnishment according to one court of appeals. *American Express Travel Related Services v. Harris*, 831 S.W.2d 531 (Tex. App.—Houston [14th Dist.] 1992).

Before proceeding to execution, the city may want to use some civil discovery tools to ascertain whether a defendant/debtor has any assets that might satisfy the court's judgment. There are several inexpensive ways to ascertain whether someone has any unknown assets that can be levied on to satisfy a judgment for the fine and costs. Post-judgment discovery in the same manner as pre-trial discovery may be used unless an appeal bond has been posted. Rule 621a, R.Civ.P. These provisions, when taken together and in conformity with the express intent of the Legislature (to execute on a defendant's non-exempt property for unsatisfied municipal court judgments), allow the court or city attorney to propound interrogatories, requests for production, and requests for admissions to discover non-exempt assets to satisfy the court's judgment. If non-exempt assets are located, then the court "may order the fine and costs collected by execution against a defendant's property in the same manner as a judgment in a civil suit."

1. Collection by Execution

Execution is a civil process where a defendant's property may be seized and sold to pay for the municipal court's judgment of fine and costs. Execution means carrying out some act or course of conduct to its completion. Execution upon a money judgment is the legal process of enforcing the judgment, usually upon somebody's property. The execution process begins by the city attorney requesting execution usually within 30 days after the judgment if there is no request for a new trial or appeal. The clerk issues the writ of execution, which evidences the debt of the defendant and commands a peace officer to take property of the defendant and sell it to satisfy the debt. Rule 629, R.Civ.P., provides for the requirement of the writ of execution:

- shall be styled "The State of Texas;"
- shall be directed to any sheriff or any constable with the State of Texas;
- shall be signed by the clerk or judge and bear the seal of the court, if any;
- shall require the officer to execute it according to its terms;
- to make costs which have been adjudged against the defendant in execution and the further costs of executing the writ;
- shall describe the judgment, stating the court in which and the time when rendered, and the names of the parties in whose favor and against whom the judgment was rendered;
- shall attach to the writ a copy of the bill of costs taxed against the defendant in execution; and
- shall require the officer to return it within 30, 60, or 90 days as directed by the city attorney.

Rule 636, R.Civ.P. requires the officer receiving the execution to endorse it with the exact hour and day when he or she received it. If the officer receives more than one on the same day against the same person, he or she shall number them as received.

When an execution is issued upon a judgment for a sum of money or directing the payment of a sum of money, it must specify the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum. It must require the officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law. Rule 630, R.Civ.P. The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of the debt.

Article 45.202, C.C.P., says that all process issuing out of a municipal court shall be served when directed by the court, by a peace officer or marshal of the municipality within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court. Hence, city police officers could serve the writ of execution.

Although post-judgment interest is added to all civil judgments at a rate set by the state consumer credit agency, there appears to be no statutory authority for post-judgment interest to be added to criminal judgments. However, since the Legislature expressly authorizes the use of civil execution against a defendant's property in the same manner as a judgment in a civil suit, it appears that the cost of executing the writ may be added and collected from the defendant.

2. Abstract of Judgment

An abstract of judgment is a simplified notation of basic information about the judgment and debtor, and includes the name and address of the defendant, the identity of the court that claims an interest in the judgment, the date of the judgment, and the amount of the judgment. Abstract of judgment can lead to recoveries by formally recording the court's judgment with a county clerk.

Preparing and filing an abstract of judgment with the county clerk may lead to payment at a later date. Abstracts of judgment recorded by the county clerk are usually picked up and noted by consumer credit companies, who routinely peruse the minutes of the county judgment records. Real estate title companies almost always look at county judgment records before issuing title insurance policies. Title companies are reluctant to issue policies for the sale of real estate if there is an outstanding judgment abstracted and recorded against the owner of the land.

True or False

172. The process of execution is started by the city attorney. ____

173. A writ of execution is a written order showing the debt of the defendant and commanding a peace officer to take property and sell it. ____

174. Only the judge can issue the writ of execution. ____

175. Only sheriffs and constables can serve a writ of execution. ____

176. An abstract of judgment requires the defendant/debtor to pay a municipal court judgment immediately. ____

177. An abstract of judgment can be filed with the county clerk's office claiming a judgment against a defendant. ____

C. Contracts

Another method of enforcing judgments is called "passive enforcement." This means that the case is referred to a third party, rather than the court actively pursuing collection under other methods discussed here. This type of enforcement typically involves contracts between the municipality and another entity. The details of state mandated requirements regarding these contracts are explored in depth in Chapter 6 of the Level I Guide. They are listed here as further examples of enforcement methods, but also to help clerks evaluate court processes. In this case, there are specific notice requirements attached to each of these methods. For more on the law, reread Chapter 6 of Level I. For more on practical considerations, court clerks may want to consult the actual contract between their city and the entity.

1. Department of Public Safety

A city may contract with DPS to deny renewal of the driver's license of a person who has failed to appear for the prosecution of the offense or failed to pay or satisfy a judgment ordering the payment of a fine and cost. Ch. 706, T.C. This program is commonly called Omni. When evaluating municipal court processes court clerks should remember that the law requires a warning notice to appear on the citation if the city has contracted with the DPS. The substance of the warning is found in Section 706.003(b)(2) of the Transportation Code.

2. Texas Department of Motor Vehicles

A home-rule city may contract with the county assessor-collector or the Texas Department of Motor Vehicles to deny motor vehicle registration to an owner who has an outstanding warrant for failure to appear or failure to pay a fine involving a traffic offense that has a possible maximum fine of $200. Ch. 702, T.C. Commonly called "Scofflaw," like the contract with DPS, enforcement requires a warning to appear on the citation. The warning language is found in Section 702.004(b) of the Transportation Code.

3. Collection Vendors

Article 103.0031, C.C.P., provides for contracts for collection services. The city may contract for the collection of fines, fees, restitution, and costs; forfeited bonds; fines associated with administrative parking citations; and amounts in cases in which the accused failed to appear when they are 60 days past due. The fee does not apply if a case is dismissed or to any part of the fine or costs that a defendant discharged by jail credit or community service. When assessing the collection fee on a case in which the defendant failed to appear, the amount of the collection fee is based upon the amount to be paid that is communicated to the accused as acceptable to the court under its standard resolution of the case policy, if the accused voluntarily agrees to pay that amount.

Practice Note

Courts should pay attention to communications sent on the court's behalf to defendants regarding collections when evaluating court processes. The law requires that communications include, where applicable, notice of the person's right to enter a plea or go to trial on the offense. In addition, the collection contracts statute requires that the communication also contain a statement that if the person is unable to pay the full amount of the payment, the person should contact the court regarding alternatives to full payment. Art. 103.0031(j), C.C.P.

178. What two statements must appear in a communication to defendant regarding collections under a contract with a collections vendor? _____

_____

PART 12
DSC AND DEFERRED

A. Driving Safety Courses

Citations issued for violations of traffic offenses must inform defendants of the right to complete a driving safety course or a motorcycle operator course. Art. 45.0511(q), C.C.P. Courts must also inform defendants charged with traffic offenses of their right to take a driving safety course or a motorcycle operator course. Art. 45.0511(p), C.C.P.

1. Application

a. Offenses to Which DSC/MOC Applies

DSC and MOC apply to an offense in the jurisdiction of the justice or municipal court that involves the operation of a motor vehicle as defined by Sec. 472.022, T.C.; Subtitle C, Title 7, T.C.; and Sec. 729.001(a)(3), T.C.

b. Exceptions

Exceptions to the application of Article 45.0511, C.C.P., include the following:

- persons with a commercial driver's license (if they held a CDL at the time of the offense or if they hold a CDL at the time of the request for DSC) even when the person is driving his or her own personal vehicle;
- an offense committed in a construction or maintenance zone when workers are present;
- persons who are alleged to have been speeding 25 mph or more over the speed limit;
- persons who are alleged to have been speeding more than 95 mph;
- persons charged with passing a school bus loading or unloading children;
- persons charged with leaving the scene of a collision after causing damage to a vehicle that is driven or attended; and
- persons charged with leaving the scene of a collision who fail to give information and/or render aid.

2. Course Requirements

a. Courses

If the offense was committed in a passenger car or a pickup truck, the judge must require the defendant to complete a driving safety course approved by the Texas Department of Licensing and

Regulation. If the offense was committed on a motorcycle, the judge must require a motorcycle operator course under the motorcycle operator training and safety program approved by DPS.

b. Special Safety Belt Course

If the offense charged is under Sections 545.412 or 545.413(b), T.C., regarding securing children in child safety seat systems or safety belts, defendants have a right to request a driving safety course. The court, however, must require a driving safety course that contains four hours of instruction on the effectiveness and safety of using a child safety seat system and seat belts. Secs. 545.412(g) and 545.413(i), T.C. If the defendant completes the course and submits the other required evidence to the court, the court must dismiss the case and report the completion date of the driving safety course for the defendant's driving record. These provisions have been repealed effective June 1, 2023.

3. Eligibility and Requirements

a. Mandatory DSC and MOC

Defendants have a right to be granted a driving safety course or a motorcycle operator course if the defendant:

- has not have completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense (Exception: Under Art. 45.0511(u), C.C.P., which has been repealed effective June 1, 2023, a defendant may take a specialized driving safety course for failing to keep a child secured in a child passenger safety seat system or a safety belt even though he or she has taken a regular driving safety course in the last 12 months. The defendant's driving record and affidavit must show that the specialized driving safety course was not taken in the last 12 months);
- enters a plea of guilty or nolo contendere on or before the answer date on the citation and present the court in person, by counsel, or by certified mail (postmarked on or before the due date) a request to take the course;
- presents a valid Texas driver's license or permit or is a member of the military on active duty or the spouse or dependent child of a person on active military duty who has not had a driving safety course in another state in the last 12 months; and
- provides evidence of financial responsibility.

b. Eligibility Requirements for Judge's Discretion

If a defendant has completed an approved driving safety course or motorcycle operator training course within the 12 months preceding the date of the current offense or fails to request the course in a timely manner, the court has the discretion to grant a request to take DSC or MOC if the request is made before final disposition of the case. Art. 45.0511(d), C.C.P.

4. Costs

Section 133.101, L.G.C., requires defendants to pay all applicable court costs when a case is deferred. These costs must be paid up front when the court grants the request for a driving safety

course. The court may require a $10 reimbursement fee. The defendant is not entitled to a refund of the administrative fee if the defendant fails to complete DSC or MOC. If the judge allows a defendant to take a driving safety course under the permissive provisions under Article 45.0511(d), C.C.P., the judge may require a fine in an amount not to exceed the maximum amount of the fine possible for the offense. If the person does not complete the course or present the other required evidence and the fine is imposed, the person is not entitled to a refund of the fee. Art. 45.0511(f)(2), C.C.P.

5. Time Requirements

After the defendant enters a plea and makes the request for the course, the court must enter judgment on the plea at the time the plea is made, defer imposition of the judgment, and allow the defendant 90 days to successfully complete the approved course and present evidence of successful completion of the course to the court on or before the 90th day.

6. Evidence Required for Dismissal

The defendant must present to the court on or before the 90th day after being granted the right to take a driving safety course the following evidence:

- a certificate of completion of DSC or MOC;
- the defendant's certified driving record as maintained by DPS showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense; and
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course under Article 45.0511, C.C.P., on the date of the request and had not taken one course within the 12 months preceding the date of the current offense.

When the defendant presents all the evidence required, the court shall remove the judgment and dismiss the charge. If a defendant fails to present evidence of all three requirements by the end of the 90-day deferral period, the court may not dismiss the charge.

7. Failure to Complete Course

When a person fails to present all of the required evidence mentioned above, the court must set a show cause hearing and notify the defendant by mail of the hearing. If the defendant appears but does not have a good reason for failing to submit the required evidence by the 90th day, the court simply imposes the fine. If the person can show good cause for the failure, the court may allow an extension of time in which the defendant may present the required evidence. If the defendant fails to appear for the show cause hearing, the court must impose the fine.

8. Payment of Fine

Defendants who do not complete the driving safety course and do not appeal must pay the fine. After the show cause hearing, the court enters a final judgment imposing the fine. If the defendant is placed on a time payment plan, the court counts 30 days from the date the judge entered final judgment to determine the 31st day for the time payment fee to be added, if necessary.

9. Reports to the Department of Public Safety (DPS)

If the defendant completes a DSC or MOC course and presents all satisfactory evidence to have the charge dismissed, the court reports the successful completion to DPS pursuant to Article 45.0511, C.C.P., noting the date of completion. Art. 45.0511(l)(2), C.C.P. If the defendant fails to complete the course and does not appeal, the court reports the traffic conviction to DPS. Sec. 543.203, T.C.

B. Deferred Disposition

When a court grant deferred disposition, the court defers further proceedings in the case without entering an adjudication of guilt and places the defendant on probation. Art. 45.051, C.C.P. Only judges have discretion to grant deferred disposition. The probation period may not exceed 180 days. Art. 45.051(a), C.C.P. The clerk's role is to maintain the paperwork and keep track of the probationary time period.

Deferred disposition applies to misdemeanor offenses punishable by fine only, with a few exceptions, which include:

- offenses committed in a construction work zone when workers are present (Secs. 472.022 and 543.117, T.C.);
- a person who holds a commercial driver's license or held a commercial driver's license at the time of the offense and is charged with an offense involving motor vehicle control (Art. 45.051(f)(2), C.C.P.);
- a minor charged with the offense of consuming an alcoholic beverage who has been previously convicted twice or more of this offense (Sec. 106.04(d), A.B.C.);
- a minor charged with driving under the influence of an alcoholic beverage previously convicted twice or more of this offense (Sec. 106.041, A.B.C.); and
- a minor under 17 charged with an offense to which Section 106.071, A.B.C., applies previously convicted at least twice of minor in possession of alcohol, consumption of alcohol, purchase of alcohol, attempt to purchase alcohol by a minor, or misrepresentation of age by a minor (Sec. 106.071(i), A.B.C.).

1. Terms

a. Discretionary Terms

The judge may require the defendant to perform any reasonable condition as part of the deferred disposition. The definition of reasonable rests within the judge's discretion, but Article 45.051(b) of the Code of Criminal Procedure provides several potential conditions, including paying restitution to the victim of the offense in an amount not to exceed the fine assessed, submitting to professional counseling, submitting to diagnostic testing for alcohol or a controlled substance or drug, or completing a driving safety course. The judge may select a condition from the full list or add another reasonable condition. The court clerk's role is to make certain deferred disposition forms used in court document the conditions ordered by the judge.

b. Mandatory Terms

Under certain circumstances, when the judge grants deferred disposition, the judge is required to order certain terms as conditions. The following is a list of those circumstances.

- If the defendant is under the age of 25 and charged with a moving traffic violation, the court shall require as a term of deferred disposition a driving safety course. The defendant must submit proof of taking the course. Art. 45.051(b-1), C.C.P.
- If the defendant has a provisional driver's license (applies to drivers under 18) and is charged with a moving traffic violation, the court shall require as a term of deferred disposition that the defendant be examined by DPS as required by Section 521.161(b)(2), T.C. Art. 45.051 (b-1), C.C.P. (To test a person's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the person will be licensed to operate.) The person must pay DPS a $10 fee for the examination. The defendant must submit proof of being examined by DPS.
- If the offense is an Alcoholic Beverage Code offense or the Penal Code offense of public intoxication and the defendant is younger than 21 years of age, as a term of the deferral, the court must require the defendant to take an alcohol awareness course, a drug education program, or, until June 1, 2023, a drug and alcohol driving awareness program. Sec. 106.115, A.B.C.
- The court must require community service as a term of probation when granting deferred for certain offenses committed by minors within the Alcoholic Beverage Code. Sec. 106.071(d), A.B.C.

2. Satisfactory Completion

At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he or she has complied with the requirements imposed, the judge shall dismiss the complaint, and clearly note in the docket that the complaint is dismissed and that there is not a final conviction. Art. 45.051(c), C.C.P. When the complaint is dismissed and there is not a final conviction, the complaint may not be used against the person for any purpose. Art. 45.051(e), C.C.P.

3. Failure to Comply with the Terms

When a defendant fails to present satisfactory evidence of compliance within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to show cause why the deferral order should not be revoked. Art. 45.051(c-1), C.C.P.

Article 45.051(d), C.C.P. provides that on a showing of good cause for the failure to present satisfactory evidence of compliance with the requirements, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the requirements. If at the conclusion of this period of time the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or reduce the fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant. Subsection (d) does not apply to a defendant under age 25 required to complete a driving safety course or to retake the driving test under Section 521.161(b)(2), T.C.

4. Docket Entries

When a judge grants deferred disposition, the clerk should note the following information in the docket:

- the date the judge ordered the deferred disposition;
- for an Alcoholic Beverage Code offense, that the deferral has been reported to DPS;
- the deferral period;
- court costs paid or when the court costs are to be paid;
- the fine assessed; and
- whether there was a plea of guilty or nolo contendere, or a finding of guilt at trial.

At the end of the deferral period, the clerk should note in the docket:

- the final disposition, whether there was a dismissal or a conviction;
- fine imposed, method of payment, and receipt number of payment;
- whether there was a show cause hearing conducted;
- amount of fine imposed, if any, method of payment, and receipt number; and
- appeal, if any.

5. Reports to Department of Public Safety

The court may not report to DPS deferral orders for a traffic offense. However, if the defendant fails to complete the terms of probation and the judge enters a finding of guilty and imposes the fine on the offense, the court must notify DPS of the conviction not later than the 30th day after the date on which the judge adjudicates guilt. Secs. 543.203 and 543.204, T.C. Courts must also report to DPS the order of deferred disposition for all minors charged with offenses under the Alcoholic Beverage Code. The report is made at the time deferred disposition is granted. Sec. 106.117, A.B.C.

Practice Note

After a plea or finding of guilt, the judge may require the defendant to pay court costs before deferring proceedings under deferred disposition. As an alternative, the judge may allow a defendant to enter into an agreement for payment of court costs in installments during the defendant's deferral, require the defendant to discharge the payment of the court costs by performing community service, or by both paying the court costs in installments and performing community service. Depending on the judge's interpretation of the waiver statute, the judge could also waive costs under Article 45.0491 of the Code of Criminal Procedure.

C. Deferral of Proceedings for Chemically-Dependent Persons

Deferral of proceedings for a chemically dependent person is similar to deferred disposition. The judge may grant deferral of the proceedings to a person charged with an offense that may be related to chemical dependency probation under Article 45.053, C.C.P.

True or False

179. The copy of the citation given to the defendant for a traffic offense by a peace officer must contain a statement of the person's right to take a driving safety course. ____

180. A driving safety course may be taken for any traffic offense. ____

181. A person with a commercial driver's license driving his or her personal vehicle is not eligible to take a driving safety course for a violation of a traffic offense. ____

182. Offenses committed in a construction maintenance work zone when workers are present are not eligible for a driving safety course. ____

183. Defendants who want to exercise their right to take a driving safety course must plead either guilty or nolo contendere. ____

184. Defendants must have a Texas driver's license and evidence of financial responsibility to be eligible to exercise their right to a driving safety course. ____

185. When a judge grants a driving safety course under the permissive provisions, the judge may require a fine not to exceed the maximum possible fine for the particular offense. ____

186. Defendants who are granted the right to take a driving safety course must take the course and submit evidence of completion within 120 days. ____

187. If a defendant's driving record submitted with the DSC completion certificate shows that the defendant was not eligible, the court must still dismiss the traffic charge if the defendant completed the driving safety course. ____

188. If a defendant's driving record shows the defendant was eligible and the defendant completed the driving safety course timely, but the defendant fails to file the required affidavit, the court may not dismiss the traffic charge. ____

189. If a defendant fails to submit the required evidence of course completion, the court must conduct a show cause hearing. ____

190. Courts must report the dismissal date of a driving safety course to DPS. ____

191. A person who holds or held a commercial driver's license at the time of the offense is generally not eligible for deferred disposition. ____

192. A person who commits an offense in a construction and maintenance work zone when workers are present is eligible for deferred disposition. ____

193. Defendants who agree to deferred disposition must either plead guilty or nolo contendere or be found guilty. ____

194. Before a judge can grant deferred disposition, the defendant is required to pay court costs. ____

195. The maximum deferral period for deferred disposition is 180 days. ____

196. When the judge grants deferred disposition to a defendant under 25 charged with a moving traffic violation, the judge must require as a term of the deferred a driving safety course. ____

197. When a court grants a deferred disposition to a defendant with a provisional license charged with a moving traffic violation, the court must require the defendant to retake the driving test at DPS. ____

198. If a defendant over the age of 25 fails to complete the terms of deferred disposition, the court may reduce the fine. ____

199. If a traffic offense is dismissed under deferred disposition, the court is required to report the deferral to DPS. ____

200. If an Alcoholic Beverage Code offense is deferred under deferred disposition, the court is required to report the deferral to DPS. ____

PART 13
APPEALS

A. Right to Appeal

A defendant in any criminal action has the right of appeal. Art. 44.02, C.C.P. Since municipal courts handle criminal cases, all the defendants charged in municipal court have a right to an appeal.

B. Appellate Courts

Appeals from a municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court, except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. Art. 45.042, C.C.P.

When an appeal bond is not filed in a timely manner, the appellate court does not have jurisdiction over the case and shall remand the case to the justice or municipal court for execution of the sentence. Art. 45.0426(b), C.C.P. When a defendant appealing the decision fails to file an appeal bond within the required time, the court must still send the case to the county court so that the county court may decide whether it has jurisdiction. A writ of procedendo is an instrument by which the county court declares its lack of jurisdiction and returns jurisdiction back to the municipal court to proceed to collect the judgment.

C. Appeals from Non-Record Courts

If an appeal is from a non-record court, the trial in the appellate court (generally the county court or, if there is not a county court, the district court) shall be de novo, as if the prosecution had been originally commenced in that court. Art. 45.042(b), C.C.P.

D. Appeals from Courts of Record

An appeal to the county court from a municipal court of record may be based only on errors reflected in the record. Art. 45.042(b), C.C.P. The appeal deadlines are different in a municipal court of record and a court of non-record. The information in this guide addresses only the procedures in non-record municipal courts. See Chapter 30 of the Government Code for specific provisions regarding appeals from municipal courts of record.

E. Appeal Bonds

Pending the determination of any motion for new trial or the appeal from any misdemeanor conviction, the defendant is entitled to be released on reasonable bail. If a defendant charged with a misdemeanor is on bail, and upon conviction, appeals, his or her bond is not discharged until he or she files an appeal bond as required by Article 44.04, C.C.P.

The requirements for an appeal bond differ depending on whether the court is non-record or record. In a non-record court, the amount of a bond may not be less than two times the amount of fine and costs adjudged against the defendant and may not in any case be for less than $50. Art. 45.0425, C.C.P. In a record court, however, the appeal bond must be in the amount of $100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater. Sec. 30.00015, G.C.

A defendant charged in a non-record municipal court may mail or deliver in person to the court a plea of guilty or nolo contendere and a waiver of jury trial. The defendant may also request in writing that the court notify the defendant, at the address stated in the request, of the amount of appeal bond that the court will approve. If the court receives a plea and waiver before the defendant is scheduled to appear in court, the court shall dispose of the case without requiring a court appearance by the defendant. The court shall notify the defendant either in person or by regular mail, of the amount of the fine assessed in the case and, if requested by the defendant, the amount of appeal bond that the court will approve. The defendant shall pay the fine assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice. Art. 27.14(b), C.C.P. If the defendant appeared in open court, the defendant must give the appeal bond within 10 days after the sentence was rendered. Art. 45.0426, C.C.P. When the appeal bond has been filed with the court that tried the case, the appeal is held to be perfected Art. 45.0426(a), C.C.P.

When a defendant files the appeal bond required by law with the judge, all further proceedings in the case in the municipal court shall cease because the municipal court no longer has jurisdiction over the case. Art. 45.043, C.C.P. The municipal court must send the case to the appellate court so that the appellate court may determine if it has jurisdiction.

Practice Note

There are a number of important timelines in the appeal process. The standard formula for calculating time is the first day is excluded and the last day is included. If the last day falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next business day. Sec. 311.014, G.C. In addition, recall the previously discussed "Mailbox Rule." A bond would be considered timely filed if it is mailed in a first-class postage prepaid envelope and properly addressed to the clerk on or before the date that it is required to be filed and the clerk receives it not later than the 10th day after the date that it is required to be filed. Article 45.013(a), C.C.P.

F. Role of the Clerk

The clerk's role in the process is ministerial in nature. This means that the clerk must make certain that the file includes required documentation, correspondence from defendants is file stamped, and the appeal is properly filed. The forwarding of appeals is a mandatory ministerial duty and not within the discretion of the clerk or the judge for that matter. *Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986).

In appeals from justice and municipal courts, all the original papers in the case, together with the appeal bond, if any, with a certified transcript of all the proceedings before the court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the case. Art. 44.18, C.C.P. When a clerk certifies a transcript, the clerk authenticates the transcript by attesting that the information contained in the transcript is true.

Practice Note

When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it and give it to the judge. The judge will decide whether to approve the bond. Even if the judge does not approve the bond, however, the clerk has a mandatory duty to send the case to the appellate court. The appellate court will review the case and make the decision whether it has jurisdiction of the case.

G. Conviction or Affirmance of Judgment on Appeal

In a trial de novo on appeal, when there is a conviction, the fine money stays with the county. There is no requirement for the county to return the fine money to the municipal court. When an appeal is taken from a municipal court of record and the judgment is affirmed, the fine and costs imposed on appeal shall be paid into the municipal treasury. Art. 44.281, C.C.P. When a defendant pays the fine, the judgment has been satisfied and there is nothing to appeal. *Fouke v. State*, 529 S.W.2d 772 (Tex. Crim. App. 1975).

H. Withdrawal of Appeal

In non-record courts there is no way to withdraw or dismiss an appeal. In record courts, a defendant or his or her attorney is required to file a motion to withdraw the appeal. If the prosecutor in the appellate court finds an error in the case filed in county court, such as the appeal not being filed in

a timely manner, the prosecutor can file an application for a writ of procedendo. The appellate court will remand the case back to municipal court if the application is granted. See the TMCEC *Forms Book*, under "Prosecutor Forms," for examples of these pleadings.

True or False

201. Defendants charged with a city ordinance violation do not have a right to appeal. ____

202. Most appeals from a municipal court are heard in the county court. ____

203. If a defendant fails to present the appeal bond to the court within the required time, the court can refuse to send it to the county court. ____

204. If a county court refuses to take jurisdiction of a municipal court appeal, the defendant must pay the municipal court's fine. ___

205. When a defendant appeals a case from a municipal court of non-record, the defendant gets a new trial at the appellate court. ____

206. The amount of the bond must be at least two times the amount of the fine and court costs. ____

207. Defendants in non-record municipal courts can plead guilty and appeal a case. ____

208. If a court receives through the mail a plea of nolo contendere and waiver of jury trial and a request for the amount of an appeal bond, the court can notify the defendant of the amount of the appeal bond by regular mail. ____

209. A defendant who makes a plea by mail and wants to appeal his or her case must present the court with an appeal bond before the 31st day from the judgment. ____

210. Defendants who appear in open court have 10 days from the time the judgment is entered to present the court with an appeal bond. ____

211. When counting the appeal time, the court counts the day the judgment is entered. ____

212. If the last day of the appeal falls on a Saturday, Sunday, or a holiday, the court must give the defendant to the next working day of the court to file the appeal bond. ____

213. If a defendant mails an appeal bond to the court, the court must receive the bond by the 10th day after judgment is entered. ____

214. Municipal court clerks have a mandatory ministerial duty to send a case to the county court regardless of whether the appeal bond was timely filed. ____

215. When there is a conviction on an appealed case from a court of non-record, the fine money is deposited into the county treasury for the use and benefit of the county. ____

216. There is nothing to appeal when a defendant pays his or her fine because the judgment has been satisfied. ____

ANSWERS TO QUESTIONS

PART I

1. True.
2. False.
3. True.
4. False.
5. False.
6. True.
7. True.
8. False.
9. True.
10. False.
11. False.

PART 2

12. False.
13. True.
14. False.
15. True.
16. True.
17. True.
18. False.
19. True.
20. False.
21. False.
22. True.
23. False.
24. False.
25. True.
26. False.
27. False.
28. False.
29. True.

30. True.
31. True.
32. True.
33. False.
34. True.
35. False.
36. False.
37. True.
38. True.
39. True.
40. False.
41. True.
42. False.
43. True.
44. False.
45. True.
46. False.
47. True.

PART 3

48. True.
49. False.

PART 4

50. True.
51. False.
52. True.
53. True.

PART 5

54. True.
55. True.
56. True.
57. False.
58. True.

59. True.

60. True.

61. False.

62. False.

63. True.

PART 6

64. False.

65. False.

66. True.

67. True.

68. True.

PART 7

69. True.

70. False.

71. True.

72. True.

73. True.

74. True.

75. False.

76. False.

77. True.

78. True.

79. True.

80. False.

81. True.

82. True.

83. True.

84. True.

85. True.

PART 8

86. False. (The defendant has a right to jury trial and must affirmatively waive that right to proceed without a jury trial.)

87. True.
88. False.
89. True.
90. True.
91. False.
92. True.
93. False.
94. True.
95. False.
96. False.
97. True.
98. False.
99. True.
100. True.
101. True.
102. True.
103. False.
104. False.
105. True.
106. False.
107. True.
108. True.
109. True.
110. False.
111. True.
112. False.
113. True.
114. True.
115. True.
116. True.
117. False.
118. False.
119. True.

120. True.
121. True.
122. False.
123. True.
124. False.
125. True.
126. False.
127. False.
128. False.
129. False. (If there are an insufficient number of jurors left after challenges, the judge may have the proper officer summons more jurors. This is known as a "pick up" jury.)
130. False.
131. True.
132. True.
133. True.
134. True.
135. True.
136. False.
137. False.
138. True.
139. True.
140. True.
141. False.
142. False.
143. False.
144. False.
145. True.
146. False.
147. False.
148. True.
149. False.

PART 9

150. True.

151. True.

152. False.

153. True.

154. True.

155. True.

156. False.

PART 10

157. True.

158. False.

159. False.

160. False.

161. True.

162. False.

163. True.

164. False. This was a true statement until September 1, 2017. The law now requires that no less than $100 is discharged per 8 hours of community service.

165. False. Current law expands waiver not only to the indigent, but also to those that do "not have sufficient income or resources to pay all or part of the fine or costs." It is up to the judge to decide what sufficient income or resources means, but that could be an individual that is not necessarily indigent who the judge determines cannot pay.

166. The judge's authorization to waive fine or costs is broad under current law. If the judge makes certain determinations, he or she could decide to waive any part of the fine or any cost depending on the judge's determination of sufficient resources or indigency.

PART 11

167. True.

168. False. The capias pro fine does not automatically issue following the defendant's failure to satisfy the judgment and sentence according to its terms. Article 45.046(a-2) of the Code of Criminal Procedure requires that notice be sent to the defendant and a hearing be held prior to issuance of the capias pro fine.

169. A peace officer is authorized to bring the person before the court immediately or place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately.

170. The capias pro fine hearing, called a show cause hearing by the OCA, is reported on Line 13 with show cause hearings held.

171. Article 45.046(b) of the Code of Criminal Procedure provides that a certified copy of the judgment, sentence, and order is sufficient to authorize confinement following commitment proceedings.

172. True.

173. True.

174. False.

175. False.

176. False.

177. True.

178. The law requires that communications include notice of the person's right to enter a plea or go to trial on the offense and a statement that if the person is unable to pay the full amount of the payment, the person should contact the court regarding alternatives to full payment.

PART 12

179. True.

180. False.

181. True.

182. True.

183. True.

184. True.

185. True.

186. False.

187. False.

188. True.

189. True.

190. False.

191. True.

192. False.

193. True.

194. False.

195. True.

196. True.

197. True.

198. True.

199. False.

200. True.

PART 13

201. False.

202. True.

203. False.

204. True.

205. True.

206. True.

207. True.

208. True.

209. True.

210. True.

211. True.

212. True.

213. False.

214. True.

215. True.

216. True.