

Charging and Pre-Trial

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INTRODUCTION

Anyone, including the public, may seek to file charges in municipal court. This is accomplished by one of two legal instruments: citation or complaint. This alone is unique, but the charging process also differs greatly from other state criminal courts. Sometimes the process may be more formal, as when a peace officer issues a person a citation. Other times, the process may be less defined, as when a citizen seeks to file charges against a neighbor for a city ordinance violation. Court clerks should be aware that, regardless of how the offense occurs, there are specific requirements that must be met to provide notice of a criminal charge or initiate court proceedings. In addition, although responsibility for the criminal case belongs to the prosecutor, the clerk is responsible for processing the case. Processing the case may include the creation of the court's case file, documenting proceedings in the case, creating certain legal documents, and maintaining accurate court records. This chapter discusses the law behind these processes, referred to here as pre-trial procedure.

PART 1 CHARGING INSTRUMENTS

A. Purpose

1. Notifies Defendant of Charge

One of the fundamental rights afforded defendants, including defendants accused of fine-only misdemeanors, is notice of specific charges filed against them. Art. 1.05, C.C.P. A charging instrument must notify a person of the offense alleged so that he or she may prepare a defense. *Vallejo v. State*, 408 S.W.2d 113 (Tex. Crim. App. 1966). Defendants are entitled to notice not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint. Art. 45.018, C.C.P.

2. Initiates Proceedings

The filing of the complaint or citation initiates proceedings in the court. *Ex parte Greenwood*, 307 S.W.2d 586 (Tex. Crim. App. 1957). When the court accepts a complaint or citation, the case is considered to be filed. As a general rule, a charging instrument must be filed with the municipal court to vest jurisdiction in the court. Until jurisdiction is vested in the court, the court has no authority to do anything with the case.

B. Types

There are generally two instruments used to file criminal charges in municipal court. The first is the citation, commonly known to the public as “a ticket.” Citations are written notices to appear issued by a peace officer. Under certain circumstances, a citation may also serve as the formal charging instrument through trial. The second instrument is the complaint. This term should not be confused with the word complaint as it is commonly used by the public or as it is used when charging an offense in county court. In the most general sense, the complaint in municipal court is a sworn allegation charging an accused with an offense. In most municipal court cases, the complaint serves as the formal charging instrument through trial. There are also certain circumstances where a complaint must be filed.

1. Citation & Written Promise to Appear

A written notice to appear issued by a peace officer is commonly called a “citation” or “ticket” and is filed with the court to initiate proceedings. Section 543.003 of the Transportation Code authorizes peace officers to issue written notices to appear in lieu of making a full custodial arrest for *Rules of the Road* offenses (i.e., those offenses found in Subtitle C, Title 7 of the Transportation Code). Article 14.06(b) of the Code of Criminal Procedure further provides authority for a peace officer to issue a citation for all Class C or fine-only misdemeanors, except for public intoxication. Any time a person is subject to a full custodial arrest in lieu of a citation being issued, the charges filed in municipal court must be initiated by sworn complaint. In other words, the issuance of a citation often (but not always) serves as a substitution for a full custodial arrest and alleviates the need for a formal complaint.

a. Arrest & Public Intoxication

Peace officers generally may not issue a citation for public intoxication under Article 14.06(b) of the Code of Criminal Procedure, so a sworn complaint must be filed to initiate proceedings for that offense. Public intoxication is likely an exception because one of the elements of that offense is that the person is intoxicated to the degree that the person may endanger that person or another. It may not be in the interest of the public or the individual to simply issue a citation requiring the promise to appear when that person, at the time of arrest, is intoxicated and a danger to that person or another. The law provides, however, that law enforcement may release an individual in lieu of actually arresting them at the time if specific requirements are met. The requirements for release are outlined in Article 14.031 of the Code of Criminal Procedure.

b. Required Citation Offenses

There are three instances in the Transportation Code where a law enforcement officer is required to issue a citation rather than take the person into custody. These offenses are speeding, use of a wireless communication device under Section 545.4251, T.C., and violation of the open container law under Section 49.031, P.C. If a person makes a written promise to appear and signs the citation, the officer must issue the citation. These are the only offenses specifically delineated in the Transportation Code for which a written citation is mandatory.

Notice to Appear Required 543.004, T.C.		
Speeding 545.351, T.C.	Use of Wireless Communication Device 545.4251, T.C.	Open Container 49.031, P.C.

1. A citizen comes to court to complain about a neighbor’s dog running at large but does not want to make a written complaint. No complaint is filed with the court. May the municipal court hear this case? Why or why not? _____
2. For what Class C misdemeanor offense is an officer required to issue a citation? _____

True or False

3. If a municipal court does not have a complaint or citation filed, the court may not accept a plea of guilty from the defendant. _____
4. Municipal court defendants do not have a right to notice of the crime with which they are being charged. _____
5. Defendants are entitled to notice—a copy of the complaint—at least five days prior to trial. _____
6. If a person is arrested, the officer can file a citation with the court. _____
7. The offense of public intoxication may not be filed in municipal court by citation but must be initiated by a sworn complaint. _____

2. Complaint

The complaint is a sworn allegation charging an accused with the commission of a Class C or fine-only misdemeanor offense in municipal or justice court. Art. 45.018, C.C.P. The complaint must allege 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. Art. 45.019(a)(4), C.C.P. All 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.).

a. When a Citation Serves as the Complaint

A citation issued for a fine-only misdemeanor offense may substitute for the sworn complaint to which defendants can plead not guilty, guilty, or nolo contendere. Art. 27.14(d), C.C.P. However, a legible duplicate copy must have been given to the defendant. Attorney General Opinions JM-876 (1988) and JM-869 (1988).

b. When a Defendant Pleads Not Guilty

If a defendant pleads not guilty, the court must file a complaint that complies with the requirements of Chapter 45 of the Code of Criminal Procedure. Art. 27.14(d), C.C.P. If a defendant wants the prosecution to proceed only on the citation, the defendant may waive the filing of a sworn complaint. If the prosecutor agrees with the defendant, the agreement must be in writing, signed by both the prosecutor and the defendant, and filed with the court. Without such an agreement, a sworn complaint must be filed in the case. Art. 27.14(d), C.C.P.

c. When a Defendant Fails to Appear

When a defendant fails to appear, a complaint must be filed that conforms to the requirements of Chapter 45 of the Code of Criminal Procedure. Art. 27.14(d), C.C.P. In both the case of the defendant pleading not guilty and the defendant failing to appear, the complaint that is filed replaces the citation as the charging instrument.

C. Requirements

The requirements for a citation are discussed in the *Traffic Law* chapter of this Study Guide. The requirements for a complaint are found in Article 45.019 of the Code of Criminal Procedure. The complaint may be filed within two years of the date of the offense and not afterward. Art. 12.02(b), C.C.P. This is called the “statute of limitations.” The day upon which the offense is committed and the day upon which the charges are brought are not considered. Art. 12.04, C.C.P.

1. Written

The complaint must be written. Art. 45.019(a)(1), C.C.P. Although the prosecutor is responsible for composing the wording on a complaint, the preparation of the complaint is a ministerial task that commonly falls on the court clerk, especially in this era of electronic ticket writers and court software that automatically generates complaints based on the citations entered. Court clerks should be cautious, however, to not exceed their authority. A court clerk has no discretion to remedy legal errors in the criminal charge or advise the prosecutor.

a. Wording

The complaint shall begin: “In the name and by the authority of the State of Texas” and shall conclude: “Against the peace and dignity of the State.” If the offense is a city ordinance violation, it may also conclude: “Contrary to the said ordinance.” Art. 45.019(a)(7), C.C.P.

Article 45.019 also requires that the complaint include:

- the name of the accused, if known, and if unknown, a reasonably definite description (note that a defendant’s name cannot be changed on the complaint even with his or her consent; if the State wants to change the name, a new complaint must be sworn. *Franklyn v. State*, 762 S.W.2d 228 (Tex. App.—El Paso 1988));
- that the accused has committed an offense against the laws of this State;
- that the offense was committed in the territorial limits of the city in which the complaint is made;
- the date of the offense as definitely as the affiant is able to provide (remembering that the date of the offense must be before the filing of the complaint and within the statute of limitations. *Green v. State*, 799 S.W.2d 756 (Tex. Crim. App. 1990)); and
- that the affiant has good reason to believe and does believe the accused has committed an offense.

Frequently, defendants are charged with committing more than one offense on a traffic citation. When a clerk receives a citation with multiple offenses listed on it, each offense is a separate charge and should be alleged on a separate complaint. Each complaint will contain the name of the defendant, the date of the offense, and one of the offenses cited, in addition to the other requisites of the complaint.

b. Location of Offense

The specific location within the court’s jurisdiction where a violation was committed need not be alleged if the violation is one that could occur at any place within that jurisdiction. *Bedwell v. State*, 155 S.W.2d 930 (Tex. Crim. App. 1941). For example, the offense of assault by threat does not require that a location be alleged, as long as the complaint alleges that the offense occurred

within the territorial limits of the city. Although preparing the language of the complaint is a responsibility often delegated to court clerks, remember that every element in the complaint must be proven by the prosecutor if the case goes to trial; therefore, it is the prosecutor's duty to create the language and allege sufficient elements to charge the offense.

c. Culpable Mental States

Generally, a person commits an offense only if he or she voluntarily engages in criminal conduct, including an act, an omission, or possession. Sec. 6.01(a), P.C. This is a legal concept described as the “mens rea” or “guilty mind.” This is the idea that a certain mental state is required in order to be guilty of a criminal offense. The required culpable mental state must generally be alleged in the complaint where it is required for the offense. *Honeywell v. State*, 627 S.W.2d 417 (Tex. Crim. App. 1981). If the 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. For an offense that is a violation of a city ordinance punishable by a fine exceeding \$500, a culpable mental state is required to be pled in the complaint regardless of whether one is prescribed in the offense. Sec. 6.02(f), P.C. There are four defined in Texas law. Section 6.03 of the Penal Code defines the four culpable mental states as:

Intentionally - A person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.

Knowingly - A person acts knowingly with respect to the nature of the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly when the person is aware that the conduct is reasonably certain to cause the result.

Recklessly - A person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist, or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Criminal Negligence - A person acts with criminal negligence with respect to circumstances surrounding the conduct or the result of the conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Not all offenses defined in Texas law, however, require a mental state. These offenses are called strict liability offenses. *Zulauf v. State*, 591 S.W.2d 869 (Tex. Crim. App. 1979). This means that it is an offense, regardless of mental state, to either do something that is prohibited or not do something that is required. Many offenses like this can be found in the Transportation Code and



in traffic laws across the country. The general offense statute for Subtitle C, Title 7 of the Transportation Code creates just such a mental state for offenses in the Rules of the Road. The offense of speeding, for example, does not require that the person knew the speed or intended to speed; rather, only that the person was driving the car at a speed greater than that permitted by the law. As the Court of Criminal Appeals noted more than 100 years ago, “Very few people in driving a car have an evil intent; but the Legislature, in protection of the public, has decreed it wise to limit the speed at which these cars may run, and each one is required to keep within that limit.” *Goodwin v. State*, 63 Tex.Cr.R.140, 138 S.W. 399 (1911).

542.301, T.C. General Offense

A person commits an offense if the person performs an act prohibited or fails to perform an act required by Subtitle C, Transportation Code

2. Signed

A complaint must be signed. Art. 45.019, C.C.P. A complaint not signed by the affiant is defective. *Bender v. State*, 353 S.W.2d 39 (Tex. Crim. App. 1962). A signature on the complaint may be rubber-stamped or contain an electronic signature. *Parsons v. State*, 429 S.W.2d 476 (Tex. Crim. App. 1968). Article 45.012(h) of the Code of Criminal Procedure provides that a statutory requirement that a document contain a signature is satisfied if the document contains the signature as captured by an electronic device. This rule applies to the signature of any person, judge, clerk of the court, or defendant. The name of the affiant need not appear in the body of the complaint.

3. Sworn

A complaint must be sworn, i.e., must be made under oath. Art. 45.019, C.C.P. The person swearing to the complaint must have good reason to believe and in fact believe that the defendant committed the act alleged in the complaint. The person swearing to the complaint is declaring the truth of the information contained in the complaint.

a. 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 want to consider using: “Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?”

b. Affiant

The person swearing to the complaint is the affiant. 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. 1967). 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 and can be a court clerk or deputy court clerk.

The following is a list of procedures on how to administer an oath to an affiant:

- affiant reviews complaint;
- affiant and person administering oath both raise their right hand;
- oath is administered;
- affiant signs complaint; and
- person administering oath signs jurat.

c. Jurat

Jurat is a Latin term meaning “to swear.” The jurat, which typically appears below an affidavit, is the formal certification affirming when and before whom the complaint is sworn. Practically speaking in municipal court, it is the statement at the bottom of the complaint that begins, “Subscribed and sworn to me on this (day, month, year).” Article 45.019(e) of the Code of Criminal Procedure lists the persons who have authority to administer the oath to someone swearing to a municipal court complaint and includes the municipal judge, court clerk, deputy court clerk, city secretary, city attorney, or deputy city attorney. Section 602.002 of the Government Code also provides authority for a clerk to administer any oath.

Practice Note

Why does formal certification matter? If the jurat is defective or missing something, then the conviction would be void. This would negate everything done at trial. A jurat may be void if it does not contain a signature (*Carter v. State*, 398 S.W.2d 290 (Tex. Cr. App. 1966)) or even if it is undated (*Shackelford v. State*, 516 S.W.2d 180 (Tex. Crim. App. 1974)).

4. Seal

Municipal court complaints are required to have a court seal. Article 45.012(g) of the Code of Criminal Procedure 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 of the Government Code, 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.

The court seal may be created by electronic means, including optical imaging, optical disk, or other electronic reproduction technique that does not permit changes, additions, or deletions to an original document created by the same type of system. Art. 45.012(f), C.C.P.

D. Objections by Defendant

A defendant waives and forfeits the right to object to a defect, error, irregularity in form, or substance of the complaint if the defendant does not object before the commencement of the trial on the merits. A court may require that objections be made at an earlier time such as at a pre-trial hearing. Art. 45.019(g), C.C.P.

E. Errors in the Complaint

Remember that complaints, like citations, cannot be amended. If there is an error on a citation, the way to cure that error is to file a new sworn complaint. If there is an error on a complaint, the way to cure that error is to dismiss the defective complaint and refile a corrected complaint, so long as it is still within the statute of limitations.

8. If a citation has been filed to initiate the proceedings in court, when does a sworn complaint have to be filed? _____

9. Since the preparation of the complaint is a ministerial duty, who usually prepares the complaint? _____
10. Why does the complaint have to allege the date of the offense? _____

11. Who may administer the oath to an affiant swearing to a complaint in municipal court? _____

12. Define the word “jurat.” _____

13. What words are required to be on the seal of a municipal court of record? _____

14. May a court seal be created electronically? _____
15. What is the purpose of the court seal? _____

16. List the culpable mental states from the highest to the lowest. _____

17. If a statute does not state that a culpable mental state is required, which culpable mental state should be alleged in the complaint? _____
18. Which city ordinances must allege a culpable mental state even though the offense may not prescribe one? _____

19. When the sworn complaint is filed, is this a new case or the same case that was initiated by the citation? _____
20. When may the trial be on the citation instead of the sworn complaint? _____

21. _____
If a citation is filed with the court and the defendant fails to appear, what must be filed? ____

True or False

22. A complaint is a charging instrument filed in municipal court. ____
23. Citizens have the right to file a complaint with the court. ____
24. When an officer loses a ticket and finds it three months later and then files it with the court, the court has jurisdiction to try the case. ____
25. A complaint gives notice to a defendant of the offense with which he or she is charged so that the defendant can prepare a defense. ____
26. A complaint must begin with the following words: "In the name and by the authority of the State of Texas." ____
27. A city ordinance complaint for the offense of a dog running at large may also conclude with the words "Contrary to the said ordinance." ____
28. A complaint does not have to state that the offense was committed in the city in which it occurred. ____
29. The specific location where an offense occurs must always be stated in the complaint. ____
30. If a defendant's name is misspelled on a sworn complaint, the court clerk may correct it and the prosecution may proceed on the complaint. ____
31. Penal Code offenses do not require a culpable mental state. ____
32. Many Transportation Code offenses do not require a culpable mental state. ____
33. A person who recklessly damages someone else's property even though they might not have intended to do it may be charged with a crime. ____
34. If someone swears to a complaint, he or she is declaring by oath the truth of the information contained in the complaint. ____
35. Only the officer who personally observed an offense may be an affiant on a complaint. ____
36. A court clerk may not be an affiant on a complaint. ____
37. A hearsay affiant is one who is acquainted with the facts of the case but did not personally observe the offense. ____
38. A complaint that is not signed by the affiant is still a valid complaint. ____
39. A complaint is defective if either the affiant or the jurat stamps their signature instead of handwriting it. ____
40. A signature of the affiant or jurat can be electronically captured. ____
41. A person swearing to a complaint must sign his or her name in front of the person administering the oath. ____
42. The date the complaint is sworn does not have to be noted in the jurat. ____
43. A complaint is valid as long as it has been sworn to even if the person administering the oath does not sign the jurat. ____
44. If the prosecutor decides to file the offense of failure to appear on old cases that have already gone to warrant, the failure to appear must have occurred less than two years previously. ____

45. If a defendant is being charged with more than one offense, the court may put all the offenses on one complaint. ____
46. A defendant may plead guilty, not guilty, or nolo contendere to a filed citation. ____

PART 2 DOCKETS

A. Maintenance

A docket is a formal record of court proceedings. The judge must keep a docket and enter proceedings in each trial. Art. 45.017, C.C.P. Keeping a docket is not discretionary, so the judge usually delegates the maintenance of the docket to the court clerk.

B. Format and Information

There is no requirement that the docket be kept in a well-bound book. Attorney General Opinion DM-139. Information in a docket may be processed and stored by use of electronic data processing equipment at the discretion of the judge. Arts. 45.012(b)(3) and 45.017(b), C.C.P. If a court stores and maintains the docket electronically, the court is not required to simultaneously maintain a paper copy of the docket. In fact, courts that still keep the great bound docket book are the rare exceptions.

Article 45.017 of the Code of Criminal Procedure requires 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 thereon;
- the time when the examination or trial was held and if a trial was held, whether it was by jury or by the judge;
- the verdict of the jury, if any, and the date of the verdict;
- the judgment and sentence 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.

As a case proceeds through the judicial system, the clerk enters the required information on the docket. Remember that only brief entries of the information are required.

47. When a judge or clerk enters proceedings on a docket, what is he or she doing? _____

48. Why does the court keep a docket? _____

49. Why may a clerk enter proceedings on a docket? _____

True or False

50. The style and file number of each case must be entered on the docket. _____

51. A docket does not have to include the type of offense with which the person is charged. _____

52. When a judge issues a warrant, only the date that it is issued must be noted on the docket. _____

53. The docket must show whether the trial was conducted by the judge or by the jury. _____

54. Who has the authority to decide whether to process and store the information on the docket electronically? _____

55. If information is stored electronically, does the court still have to maintain a simultaneous record in a docket book that is a bound book? _____

PART 3 UNCONTESTED PROCEEDINGS

Defendants who do not wish to contest the charges against them may plead either guilty or nolo contendere and pay a fine. In some instances, the law may allow the court to require the defendant to comply with other sanctions. Adult defendants can plead guilty or nolo contendere without appearing in open court by delivering or mailing to the court a plea and waiver of jury trial or payment of the fine and costs. Defendants who do not want to contest charges against them may still present evidence to mitigate the fine to be used during the court's determination of punishment at the court's discretion. Arts. 27.14(a) and 45.022, C.C.P. In addition, after September 1, 2017, for pleas heard in open court, the judge must inquire, during or immediately after imposing the sentence, into the defendant's ability to pay all or part of the fine or costs. Art. 45.041(a-1), C.C.P.

A. Pleas of Guilty or Nolo Contendere

Nolo Contendere

Latin term meaning "I do not wish to contest." Nolo contendere has the same legal effect as a guilty plea; however, it may not be used against the defendant as an admission of guilt in a civil suit.

A plea of guilty is a formal admission of guilt wherein the defendant confesses to committing the charged crime. A plea of nolo contendere means the defendant is not contesting the charges filed against them. Literally, nolo contendere is a Latin phrase meaning, "I do not wish to contest." It is a more formal way of indicating a no contest plea, and the term is generally interchangeable with no contest. The plea has a similar legal effect as pleading guilty (i.e., the defendant is found guilty and is assessed a

fine and costs); however, the defendant does not admit or deny the charges. The principal difference between a plea of guilty and a plea of nolo contendere is that the nolo plea may not be

used against the defendant in a civil action arising from the same act, for example, a lawsuit seeking damages from a car crash.

Regardless of which plea is entered, though, either plea must be made intelligently and voluntarily. Defendants who plead guilty or nolo contendere also must also waive the right to a jury trial in writing. Art. 45.025, C.C.P. When a defendant waives a trial by jury, the judge then determines the punishment.

B. Payment of Fine – Plea of Nolo Contendere

Defendants may pay a fine by mail or by delivering the payment to the court in person or through the defendant’s counsel. 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 formally accept the payment. After the judge enters a judgment, the clerk notes the judgment on the docket. Art. 27.14(c), C.C.P.

C. Appearances

Defendants who do not wish to contest their cases must still make some type of appearance to dispose of their case. Adult defendants may appear in person or by counsel in open court, by mail, by delivering a plea and waiver of jury trial to the court, or by payment of the fine and costs. Art. 27.14, C.C.P.

1. Open Court

a. Identifying Defendant and Hearing Plea

Adult defendants generally may appear in person or by counsel in open court to enter a plea. Art. 27.14(a), C.C.P. At this point, the judge identifies the defendant, explains the charge, and requests a plea. This procedure is sometimes referred to as the arraignment. However, there is not statutory requirement for an arraignment in a municipal court like there is in criminal cases in a county or district court. Chapter 26 of the Code of Criminal Procedure. Art. 26.02, C.C.P. However, like at an arraignment, the purpose of a defendant’s presence at an appearance docket in municipal court is typically used to identify the defendant and to hear the defendant’s plea.

b. Required Inquiry on Sentencing

During or immediately after imposing the sentence in open court, the judge is required to inquire into 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 judge determines that the defendant does not have sufficient resources, then the judge shall determine which alternatives to payment are appropriate under the law. Alternatives to payment could include installment payments, community service, or tutoring.

Practice Note

A conversation about personal finances in open court can often be an uncomfortable process for both the judge and the defendant. One practice is that the court instruct defendants to submit any documentation regarding financial status or income ahead of time or separately for the judge to review. The majority of municipal court judges across the state were already asking, “can you pay this today?” prior to the law explicitly requiring the inquiry. But courts should give thought to the process and procedure to give the defendant a meaningful opportunity to provide this information.

2. Delivery of Plea in Person

Adult defendants can 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 shall dispose of the case without requiring a court appearance by the defendant. If the court receives the plea and waiver after the time the defendant is scheduled to appear in court but at least five business days before a scheduled trial date, the court shall also dispose of the case without requiring a court appearance by the defendant. The clerk usually receives these types of pleas and transmits them with the waiver of jury trial to the judge to accept and enter a judgment. Only the judge has the authority to request and accept a plea, and this duty may not be delegated to other court personnel. Attorney General Opinion H-386 (1974).

The court must give notice to the defendant either in person or by regular mail of the amount of any fine or costs assessed in the case, information regarding the alternatives to full payment of the fine or costs assessed, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond. Typically, the clerk provides notice when the defendant delivers the plea and waiver to the court. After the defendant receives the notice, he or she must pay the fine and costs assessed or post an appeal bond before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

3. Mailed Plea

Adult defendants may also make an appearance by mailing a plea of guilty or nolo contendere and a waiver of jury trial to the court. If the court receives the plea and waiver before the defendant is scheduled to appear or after the defendant is scheduled to appear but at least five business days before a scheduled trial date, the court simply disposes of the case without requiring a court appearance. Art. 27.14(b), C.C.P. If a defendant makes his or her appearance by mail, the court must notify the defendant by regular mail of the amount of the fine or costs assessed in the case, information regarding the alternatives to full payment of the fine or costs assessed, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond. The defendant must pay the fine and costs or post an appeal bond before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

A document is considered timely filed with the clerk of a court if it 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 and is received not later than the 10th day after it is

required to be filed. Do not count Saturdays, Sundays, or legal holidays when calculating this time period. This is called the “Mailbox Rule.” Art. 45.013, C.C.P. Consequently, courts should consider waiting an additional 10 days after a person is scheduled to appear before preparing warrants or filing failure to appear or violation of promise to appear charges.

Practice Note

An important exception to the above rule is for a defendant charged with a misdemeanor involving family violence. A defendant charged with a misdemeanor involving family violence, as defined by Section 71.004 of the Family Code, cannot plea by mail and must make a court appearance to enter his or her plea. Before accepting the plea in court, the judge is then required to provide a family violence admonishment to the defendant, either orally or in writing, in open court. The specific admonishment language is provided in Article 27.14(e)(1) of the Code of Criminal Procedure.

4. Jailhouse Plea

Judges may permit a defendant who is detained in jail to enter a plea of guilty, nolo contendere, or not guilty. Art. 45.023(b), C.C.P. If the defendant enters a plea of guilty or nolo contendere, the judge may, after giving the magistrate warnings required under Article 15.17 of the Code of Criminal Procedure and advising the defendant of the defendant’s right to a trial by jury, accept the defendant’s plea and:

- assess a fine, determine costs, and accept payment of the fine and costs;
- give the defendant credit for time served;
- determine whether the defendant is indigent; or
- discharge the defendant.

Although many judges were already in the practice of taking these “jailhouse pleas,” the practice was not codified until 2013 when the Legislature amended Article 45.023 of the Code of Criminal Procedure. The statute also provides that a defendant who enters a plea in jail may make a motion for new trial not later than 10 days after the rendition of judgment and sentence. If such a motion is made, the judge shall grant the motion for new trial. Consequently, courts should be mindful when processing payment of fines and costs made following a jailhouse plea that if the defendant makes a timely motion for new trial within the 10 days, the judge must grant that motion.

D. Alternative Sentencing

If a defendant does not want to contest a charge, he or she may request a driving safety course, teen court, or deferred disposition in lieu of having a judgment of conviction entered against him or her. Each of these alternatives requires the defendant to first plead guilty or nolo contendere. Unless the defendant is eligible for a driving safety course by statute, the decision to allow a defendant a form of alternative sentencing is completely in the judge’s discretion.

These forms of alternative sentencing are also available after a finding of guilty at trial; therefore, alternative sentencing methods, including deferred disposition and driving safety courses, are discussed at length in the *Post-Trial Procedures* chapter of this Study Guide.

True or False

56. A defendant who pleads nolo contendere will be found guilty by the court. _____
57. A defendant involved in a collision who pleads nolo contendere to the traffic charge may have the plea held against him in a civil suit. _____
58. Pleading guilty means that a defendant admits to having committed the crime. _____

Provide a Short Answer

59. What is the purpose of an arraignment? _____

60. When a defendant delivers a plea of guilty or nolo contendere to the court, what additional information must be included with the plea? _____

61. May the court require an adult defendant's personal appearance if the defendant delivers the plea of guilty or nolo contendere and a waiver on or before his or her appearance date? _____

62. When a defendant delivers the plea and waiver to the court and requests the amount of fine and appeal bond, what is the court required to do? _____

True or False

63. When a defendant pays a fine and court costs without sending in a plea, the payment constitutes a plea of nolo contendere and a written waiver of jury trial. _____
64. If a defendant's charge is the result of having caused a traffic collision, the judge has the authority to require that person to make an appearance in open court. _____
65. A defendant has 31 days to either pay a fine or present the court with an appeal bond from the time that he or she receives notice of the amount owed following a plea by mail. _____
66. When a defendant mails a plea of guilty or nolo contendere and waiver of jury trial to the court, the court considers that the defendant has made an appearance. _____
67. If a defendant mails the plea and waiver to the court after his or her appearance date but at least five business days before a scheduled trial date, the court may make the defendant make a personal appearance. _____
68. A defendant who makes an appearance by mail has the right to appeal his or her case. _____
69. When the defendant mails the money to the court, he or she is pleading guilty. _____
70. If the defendant sends in the wrong amount, the clerk must, before he or she gives the case to the judge, contact the defendant and try to get the rest of the money. _____
71. If an adult defendant's attorney appears in open court, the defendant must also appear in open court. _____

72. If a judge takes a plea from a person detained in jail on a Class C misdemeanor, the judge must grant any motion for new trial if made within five days of the judgment. ____
73. Mailed pleas are considered timely made if deposited in the U.S. Postal Service properly addressed and stamped on or before the appearance date. ____

PART 4 FAILURE TO APPEAR

A. Failure to Appear (FTA)

When a defendant is released from custody and intentionally and knowingly fails to appear in accordance with the terms of release, he or she can be charged with the separate offense of Bail Jumping and Failure to Appear (FTA). The offense is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only. Sec. 38.10, P.C. A defendant that has not been in custody and, consequently, has never promised to appear, cannot be charged with the offense of failure to appear. Remember, a person that has been detained by a peace officer and then released upon the issuance of a citation has been released from custody on the condition they subsequently appear in court. Likewise, a person who has been arrested and released by a magistrate either on bail or under a subsequent order to appear has been released from custody on the condition they subsequently appear in court.

B. Violate 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 Violate Promise to Appear (VPTA) may be charged only when the underlying offense is an offense in Subtitle C of Title 7 of the Transportation Code, i.e., a Rules of the Road offense (found in Chapters 541-600). Since no specific penalty is provided for the offense, the court must look to the general penalty found in Section 542.401 of the Transportation Code of a fine of not less than \$1 or more than \$200.

C. Filing FTA or VPTA

Only the prosecutor, as a representative of the State of Texas, may bring charges and decide whether to file an FTA or VPTA. Clerks and judges do not make this decision. Without direction from the prosecutor, a court cannot create a separate case for either of these criminal offenses. Both of these charges are initiated by a sworn complaint and filed on a new docket with a new cause number. Usually the bailiff, warrant officer, marshal, or clerk is the affiant.

Practice Note

What about a warrant for failing to appear? A court may not issue a warrant for failure to appear at the initial court setting unless certain requirements have been met, including sending notice of a date and time within 30 days when the defendant may appear and receive an explanation of the consequences. These are outlined in Article 45.014(e) of the Code of Criminal Procedure and further discussed below in Part 5 under *Warrant of Arrest*.

D. Charts

The following chart illustrates instances when it is possible to file FTA or VPTA charges. However, to reiterate, the clerk and judge are not authorized to initiate either of these criminal charges. It is solely up to the State, represented by the prosecutor, to decide whether (or when) to file any criminal charge.

Offense	Bail Jumping & Failure to Appear (Sec. 38.10, Penal Code)	Violation of Promise to Appear (Sec. 543.009, Transportation Code)
Vehicle Registration Laws Chapter 502, T.C.	Yes	No
Driver's License Laws Chapter 521, T.C.	Yes	No
Commercial Driver's License Laws Chapter 522, T.C.	Yes	No
Subtitle C, Rules of the Road offenses Chapters 541-600, T.C.	No	Yes (if signed the citation)
Financial Responsibility Law Chapter 601, T.C.	Yes	No
Other Transportation Code offenses outside Subtitle C, Rules of the Road	Yes	No
Alcoholic Beverage Code offenses	Yes	No
Education Code offenses	Yes	No
Health and Safety Code offenses	Yes	No
Penal Code offenses	Yes	No
City Ordinance offenses	Yes	No

The following chart indicates some similarities and differences between the two charges:

	Bail Jumping & Failure to Appear (Sec. 38.10, Penal Code)	Violation of Promise to Appear (Sec. 543.009, Transportation Code)
Decision to file charge	City prosecutor	City prosecutor
Charge initiated by sworn complaint	Yes	Yes
Culpable mental state	Intentionally or Knowingly	Willfully
Custody of defendant required	Yes	No
Defendant released on bail required	No	No
Signature on citation, if any, required	No	Yes
Maximum possible fine if convicted	\$500.00	\$200.00

True or False

74. A defendant who has been served with a summons and then fails to appear should be charged with the offense of Failure to Appear. ____
75. A defendant who is released without bail and then fails to appear may not be charged with the offense of Failure to Appear. ____
76. The culpable mental state of the offense of Failure to Appear is intentionally or knowingly. ____
77. The offense of Failure to Appear is a Class C misdemeanor if the offense for which the person was required to appear is also a Class C misdemeanor. ____
78. The maximum amount of fine that may be assessed for the offense of Failure to appear is \$200. ____
79. A municipal court clerk may sign as affiant on a complaint for Failure to Appear. ____
80. The culpable mental state for the offense of Violation of Promise to Appear is willful conduct. ____
81. If the charge for which the defendant's appearance was required is dismissed, the offense of Violation of Promise to Appear must also be dismissed. ____
82. When a defendant charged with the offense of Failure to Maintain Financial Responsibility fails to appear, he or she may be charged with Violation of Promise to Appear. ____
83. The maximum fine that a court may assess for the offense of Violation of Promise to appear is \$200. ____

PART 5
WARRANT, CAPIAS, CAPIAS PRO FINE, AND SUMMONS

What is a “writ?” Originally, a writ was a letter or command from the King, usually written in Latin and physically sealed. Now, a “writ” is referred to as a written order of the court ordering a person to perform or refrain from some specified act. Municipal courts deal with several types of writs, including an arrest warrant and a capias. For a judge to issue a warrant or capias, the judge must have probable cause to issue such an order.

Although municipal court clerks are not authorized to determine probable cause, they typically prepare affidavits of probable cause for peace officers and others. After an affidavit is sworn, it is presented to a judge or a magistrate who determines if the probable cause in the affidavit is sufficient 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; some give them the original. Some courts are connected electronically with the police department; some courts provide the police department with a list of defendants to whom warrants have been issued.

Article 15.26 of the Code of Criminal Procedure makes it the official duty of the magistrate's clerk to be the custodian of arrest warrants or affidavits made in support of the warrant. Warrants and affidavits are public information after the warrants are executed. The clerk has an affirmative duty to make a copy of the warrants and supporting affidavits available for public inspection after the warrants are served.

A. Probable Cause

One of the cornerstones of American criminal law is the idea that there must be a reason before the government can deprive a person of his or her liberty. Both the United States and Texas Constitutions provide that no warrant shall issue, but upon probable cause. Amend. IV, U.S. Const.; Art. I, Sec. 9, Tex. Const. and Art. 1.06, C.C.P. The term probable cause can sometimes be difficult to precisely define, but courts have broadly defined it as the amount of evidence necessary to cause a person to believe someone has committed a crime. An arrest warrant, a summons, and a *capias* require probable cause before being issued.

Practice Note

A municipal court clerk lacks authority to determine probable cause. Only a judge or magistrate has the authority to determine whether probable cause exists. *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 by additional wording contained in a complaint. 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. *Knox v. State*, 586 S.W.2d 504 (Tex. Crim. App. 1979).

B. Service of Process

1. Process Defined

Processes are written orders issued by a judge or a magistrate and include a warrant of arrest, *capias*, *capias pro fine*, and summons.

2. City Police Officers and Marshals

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 a municipal court anywhere in the county in which the municipality is situated. If the municipality is in more than one county, they may serve process throughout those counties.

C. Warrant of Arrest

1. Defined

A warrant of arrest is a written order from a magistrate directed to a peace officer or some other person specially named to take a person into custody to be dealt with according to law. Art. 15.01, C.C.P.

2. Authority to Issue

A magistrate may issue a warrant of arrest for all classifications of offenses, misdemeanors to felonies. Municipal judges and city mayors are magistrates and have that additional authority to

issue arrest warrants for higher crimes. Art. 2.09, C.C.P. A municipal judge may also issue arrest warrants as a judge for fine-only misdemeanors filed in municipal court. Art. 45.014, C.C.P.

a. Issued by Judge

When a sworn complaint or affidavit based on probable cause is filed, the judge may issue a warrant of arrest for charges over which the judge has jurisdiction. Art. 45.014, C.C.P.

A warrant issued pursuant to Article 45.014 of the Code of Criminal Procedure must:

- issue in the name of “The State of Texas;”
- direct the proper peace officer or some other person specially named in the warrant;
- include a command that the body of the accused be taken and brought before the authority issuing the warrant, at the time and place therein named;
- state the name of the person whose arrest is ordered, if known, and if not known, describes the person as in the complaint;
- state that the person is accused of some offense against the laws of the State naming the offense; and
- be signed by the judge and name his or her office in the body of the warrant or in connection with his or her signature.

Note that an arrest warrant issued by a municipal judge under Chapter 45 of the Code of Criminal Procedure orders the officer to bring the arrested person before the court. Additionally, Article 45.014(e) of the Code of Criminal Procedure requires that before an arrest warrant 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 that 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; and
- an explanation of the consequences if the defendant fails to appear.

b. Issued by Magistrate

A magistrate may issue a warrant of arrest in any case in which the magistrate is authorized by law to verbally order the arrest of an offender; when a person makes an oath before the magistrate that a person has committed an offense against the laws of the State; and in any case named in the Code of Criminal Procedure where the magistrate is specially authorized to issue a warrant. Art. 15.03, C.C.P.

Article 15.02 of the Code of Criminal Procedure provides that a warrant issued by a magistrate must:

- issue in the name of “The State of Texas;”
- specify the name of the person whose arrest is ordered, if known; if unknown, then some reasonably definite description of the person;
- state that the person is accused of some offense against the laws of the State naming the offense; and

- be signed by the magistrate and name his or her office in the body of the warrant or in connection with his or her signature.

A warrant issued by a magistrate, except a mayor, extends to every part of the State, and any peace officer to whom the warrant is directed is authorized to execute it in any county in the State. Art. 15.06, C.C.P. The peace officer receiving the warrant must execute it without delay.

The officer or person executing a warrant of arrest shall, without unnecessary delay but no later than 48 hours after the arrest, 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. Art. 15.16, C.C.P. If it is more expeditious to the person arrested, the officer may take the person before a magistrate in a county other than the county of arrest. Art. 15.16(b), C.C.P.

c. Issued by Mayor

A warrant issued by a mayor as a magistrate cannot be executed in another county other than the one in which it is issued. The exception to this is when it is endorsed by a judge of a court of record, in which case it may be executed anywhere in the State, or if it is endorsed by a magistrate in the county in which the accused is found, it may be executed in that county. If it is endorsed by a magistrate where the accused is found, the endorsement is as follows: “Let this warrant be executed in the County of _____.” If the warrant is endorsed by a judge of a court of record, the endorsement is “Let this warrant be executed in any county of the State of Texas.” Any other words of the same meaning will be sufficient. The endorsement shall be dated and signed officially by the magistrate making it. Art. 15.07, C.C.P.

D. Capias

1. Defined

A capias is a writ issued by the judge of 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 “to 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 on a day or at a term stated in the writ. Art. 23.01, C.C.P.

2. Authority to Issue

In misdemeanor cases, the capias issues from a court having jurisdiction of the case. Art. 23.04, C.C.P. 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.

Municipal court clerks may prepare the capias, but the municipal judge must issue the capias. Although Article 23.01 provides that the capias may be issued by the clerk at the direction of the judge, this provision only applies to district clerks under certain conditions. The 80th Legislature codified the *Sharp v. State* case that involved a City of Houston municipal court clerk who issued a capias writ for a defendant accused of violating the “helmet safety law.” The defendant was later arrested on that writ and, as a result of this arrest, was charged with and convicted of possession of methamphetamine. The appellate court held that authority was not vested in the deputy

municipal court clerk under Texas law to issue a *capias*. Because a magistrate had failed to direct the issuance of the *capias* and to determine probable cause, the defendant's arrest was illegal, and the evidence discovered as a direct result of the arrest was suppressed. In *Crane v. State*, 759 F.2d 412 (5th Cir. 1985), a district attorney and county attorney were held liable because the district attorney had devised a county policy authorizing clerks, rather than judges, to issue misdemeanor *capiases*.

3. Requisites

Article 23.02 of the Code of Criminal Procedure provides the requirements of a *capias*. It must:

- run in the name of "The State of Texas;"
- name the person whose arrest is ordered, or if unknown, describe the person;
- specify the offense of which the defendant is accused and state that the offense is against the penal laws of the State;
- name the court to which and the time when it is returnable (note that a *capias* does not lose its force if not executed and returned at the time fixed in the writ; rather it may be executed at any time afterward and all proceedings under such *capias* shall be as valid as if the same had been executed and returned within the time specified in the writ. Art. 23.07, C.C.P.); and
- be dated and attested to officially by the authority issuing the same.

4. Return

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 the defendant, 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. Capias Pro Fine

A *capias pro fine* is an order of the court directing a peace officer to bring a defendant who fails to satisfy a judgment before the court immediately or to place the defendant in jail until the business day following the date of the defendant's arrest if he or she cannot be brought before the court immediately. Art. 45.045, C.C.P. This writ is only issued post-judgment after a hearing and is discussed in the *Post-Trial Procedures* chapter of this Study Guide.

F. Summons

1. Defined

A summons gives notice to a person, association, or corporation that a charge has been filed against him or her in a court. It provides the address of the court and a date and time the defendant is required to appear.

2. Requisites

a. 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 summonses a defendant to appear before the proper court at a stated time and place. Art. 23.03(c), C.C.P.

Article 23.03(d) of the Code of Criminal Procedure requires that a summons 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.”

A summons issued by a magistrate for a defendant is in the same form as a warrant, except it summonses a defendant to appear before a magistrate at a stated time and place. Art. 15.03(b), C.C.P.

b. 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 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.

3. Authority to Issue

a. Judicial Authority

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 requiring his or her appearance for jury service. A summons may also be issued for a corporation or association under Article 17A.03, C.C.P.

In most cases, the summons for a defendant may be issued only upon request of the attorney representing the State. Art. 23.04, C.C.P. However, when a complaint is filed against a corporation or association, the clerk is directed by statute to issue a summons to the corporation or association. Art 17A.03, C.C.P.

b. Magistrate Authority

A magistrate may issue a summons for Class A and B misdemeanors and felonies, and in any case where a warrant may be issued. Art. 15.03, C.C.P.

4. Service

a. On the Defendant

Articles 23.03(c) and 15.03(b) of the Code of Criminal Procedure provide for how a peace officer serves a summons. The methods of service 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.

b. On the Corporation

Peace officers can serve a summons on a corporation in the following ways:

- 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, by personally serving the president or a vice president of the corporation; or
- if the attempt to affect service is unsuccessful, by serving 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.

c. On the Association

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. 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.

5. Enforcement

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 *causas*. Art. 23.03(b), C.C.P.

If counsel fails to appear for the corporation or association, it is deemed to be present in person for all purposes and the court shall enter a plea of not guilty and the court may 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.

When a defendant fails to respond to a summons issued by a magistrate, the magistrate enforces the summons by issuing a warrant of arrest. Art. 15.03(b), C.C.P.

G. Fees Attached to Writs

1. Arrest Reimbursement Fee

Courts must collect a \$5 reimbursement fee upon conviction when a peace officer issues a written notice to appear in court for a violation of a traffic law, municipal ordinance, or penal law of this

State or makes a warrantless arrest. Art. 102.011(a) C.C.P. The definition of conviction for the purpose of collecting the arrest fee is defined in Section 133.101 of the Local Government Code and provides that a person is considered to have been convicted in a case if:

- a judgment, a sentence, or both a judgment and a sentence are imposed on the person;
- the person receives community supervision, deferred adjudication, or deferred disposition; or
- the court defers final disposition of the case or imposition of the judgment and sentence.

Note that if a charge is initiated by the filing of a complaint, such as a citizen complaint or a code enforcement officer's complaint, the arrest fee may not be collected. Why? There has been no arrest and release with the issuance of a citation in these instances. Likewise, if a peace officer files a charge by complaint and obtains a warrant of arrest, the court may not collect the arrest fee. The arrest fee is not to be collected for the offenses of failure to appear and violation of promise to appear since these charges are initiated by complaint and a warrant is issued.

2. Warrant Reimbursement Fee

Warrant reimbursement fees are costs collected because of services performed by a peace officer. Article 102.011(a)(2) of the Code of Criminal Procedure requires that a \$50 warrant reimbursement fee be collected upon conviction if a warrant, capias, or capias pro fine is processed or executed by a peace officer.

H. Search Warrants

1. Defined

A search warrant is a written order issued by a magistrate and municipal judges are magistrates under Article 2.09 of the Code of Criminal Procedure. The search warrant directs a peace officer to search and seize property or things and bring the seized property before the magistrate. Art. 18.01, C.C.P. A search warrant must be supported by a sworn affidavit setting forth substantial facts establishing probable cause for its issuance. This affidavit is public information once the search warrant is executed, unless it has been ordered to be sealed, and the clerk must make a copy of the affidavit available for public inspection during normal business hours. Art. 18.01(b), C.C.P.

2. Authority to Issue

Generally, only municipal judges sitting in a court of record may issue evidentiary search warrants to order seizure of non-contraband items. The exception to this rule is if the county does not have a municipal court of record or a county judge that is an attorney. Art. 18.01(i), C.C.P. Since 2009, Article 18.01 of the Code of Criminal Procedure authorizes any magistrate who is a licensed Texas attorney to issue a search warrant to collect a blood specimen from persons accused of certain intoxication or alcohol offenses who refuse to submit to a breath or blood alcohol test. Art. 18.01(j), C.C.P. Consequently, it appears that municipal courts with attorney judges have authority to issue blood warrants.

3. Nuisance Abatement

The governing body of a municipality may, by ordinance, provide authority for a judge of a municipal court of record to issue a search warrant for the purpose of investigating a health and safety or nuisance abatement ordinance violation. Sec. 30.00005, G.C.

Also, a municipality may, by ordinance, provide authority for a municipal judge of a court of record to issue a seizure warrant for the purpose of securing, removing, or demolishing property that is a nuisance or removing debris from a property. Sec. 30.0005, G.C.

Answer True/False or Provide a Short Answer

84. Clerks are required to have copies of warrants and affidavits on file for public viewing after the warrants have been executed. _____
85. The amount of evidence necessary for a finding of probable cause is evidence that causes a judge to believe that a specific person has committed a crime. _____
86. A judge does not need probable cause to issue a capias. _____
87. Complaints alone are enough evidence to establish probable cause. _____
88. Probable cause must always be in a separate affidavit from a complaint. _____
89. Judges must always remain neutral when assessing probable cause. _____
90. Why can a municipal court clerk not issue a warrant or capias? _____

91. When a city is situated in only one county, where may city peace officers execute municipal court warrants, summons, and capiases? _____
92. When a city is situated in more than one county where may city peace officers execute warrants? _____
93. May a city peace officer execute a warrant of arrest in a neighboring city? _____
94. What kind of order is a warrant of arrest? _____
95. Mayors do not have the authority to issue warrants for felonies. _____
96. In what name must a warrant be issued? _____
97. To whom is a warrant directed? _____
98. When a person is arrested on a warrant, where should the officer take that person? _____

99. If the court does not know the name of the person for whom the warrant is being issued, what description must be on the warrant? _____
100. Must the warrant state the offense for which the person is being charged? _____
101. Where must the judge's office be named in the warrant? _____
102. A warrant issued by a magistrate must command that the person be brought before a magistrate. _____
103. The officer's first responsibility when he or she arrests a person is to take the person before the magistrate named in the warrant within 10 hours of the arrest. _____
104. If a person is arrested in a county other than the one from which the warrant was issued, the peace officer must transport the person immediately to the magistrate who issued the warrant. _____
105. Who has the authority to serve a warrant issued by a magistrate or a municipal judge? _____

106. A warrant issued by a municipal judge may only be served in the county in which the city is located. ____
107. A warrant issued by a judge must command that the person be brought before the court. ____
108. A judge can issue a warrant of arrest for a defendant charged with a Class C or fine-only misdemeanor in the judge's court upon the filing of a sworn complaint or probable cause affidavit. ____
109. The judge does not need to determine probable cause before issuing the arrest warrant for a defendant who has failed to appear in the court. ____
110. Who must endorse a warrant issued by a mayor so that it can be served in any county in the state? _____
111. What is the required wording of the endorsement? _____

112. All mayors have authority to issue a capias. ____
113. A judge who has the authority to hear a case has the authority to issue a capias. ____
114. A municipal court clerk has the authority to issue a capias. ____
115. The court must know the name of the defendant before it can issue a capias. ____
116. The capias does not have to state a time when it is returnable to the court. ____
117. When a defendant is arrested on a capias, the officer must bring the person before the court immediately or on a certain day stated in the capias. ____
118. When must a court issue a capias? _____
119. What happens if a peace officer does not execute a capias by the date fixed in the capias?

120. Where is a capias returned to? _____
121. What information is required to be on the return when the peace officer was unable to execute the capias? _____
122. A municipal court clerk has the authority to issue a summons. ____
123. A municipal judge may issue a summons. ____
124. Mayors have no authority to issue a summons. ____
125. A municipal court summons must follow the same form and procedure of the summons issued by the district court. ____
126. A summons issued by the municipal judge is supposed to be in the same form as a felony warrant of arrest. ____
127. A summons for a corporation or association requires the court to wait 20 days after service on the corporation or association before requiring an appearance by counsel for the corporation or association. ____
128. The summons does not have to contain a notice in Spanish that it is an offense to intentionally influence, coerce, or harm a witness. ____
129. A summons tells the defendant to appear in court at a stated time and place. ____
130. The only time that a municipal judge may issue a summons is when the city prosecutor makes a request for its issuance. ____

131. A summons issued for a corporation or associate must be served in person. ____
132. A copy of the summons must be personally delivered to a defendant. ____
133. A summons may be served by mailing it. ____
134. Municipal court clerks have the authority to serve a summons. ____
135. What is the form of a summons issued by a magistrate? _____

136. What does a summons issued by a magistrate do? _____

137. When may a magistrate issue a summons? _____

138. When a defendant fails to respond to a summons issued by the court (judge), what type of order does the court issue? _____
139. When a defendant fails to respond to a summons issued by a magistrate, what type of order does the magistrate issue? _____
140. Courts only collect the arrest fee when a defendant is arrested and taken to jail. ____
141. The arrest reimbursement fee is \$5. ____
142. The city must remit \$1 of the arrest reimbursement fee to the State for every arrest that a city officer makes. ____
143. The warrant reimbursement fee can be collected upon conviction of a defendant only when a peace officer executes the warrant. ____
144. If another law enforcement agency executes the warrant, the court is required to send the \$50 warrant reimbursement fee to the other law enforcement agency even if the defendant is found not guilty. ____
145. The warrant reimbursement fee must be allocated to the police department budget. ____
146. A search warrant is a verbal order of a magistrate. ____
147. A search warrant may command a peace officer to search for and seize a person's property. _____
148. A municipal judge who is not a licensed attorney may issue any type of search warrant. ____
149. After a search warrant is executed, the clerk must make a copy of the affidavit and have it available to the public. ____

PART 6 BAIL

A. Definition of Bail

“Bail” is the security given by the accused that he or she will appear and answer before the proper court the accusation brought against him or her and includes bail bonds and personal bonds. Art. 17.01, C.C.P.

B. When Bail is Fixed

Defendants accused of fine-only offenses have a constitutional and statutory right to bail. Art. I, Sec. 11, Tex. Const.; Art. 1.07, C.C.P. Bail in a fine-only misdemeanor case may be set in two different instances. A person who is arrested must be taken before a magistrate for certain warnings under Article 15.17 of the Code of Criminal Procedure. The magistrate, after giving the required warnings, shall admit the person to bail if allowed by law; thus, the first instance would be bail set by the magistrate prior to formal charges being filed. The second instance would be bail set by the judge. However, a municipal judge may only require a defendant to give bail to secure the defendant's appearance under limited circumstances (i.e., the defendant fails to appear with respect to the applicable offense, the judge determines the defendant has sufficient resources or income to give a bail bond, and the judge determines the bail bond is necessary to secure the defendant's appearance in accordance with the Code of Criminal Procedure). Art. 45.016, C.C.P.

Many of the rules regarding bail are applicable to all courts. They apply when a judge or magistrate sets and takes bail, when a peace officer takes bail, or when a witness is required to give bail. Art. 17.38, C.C.P.

In 2021, the Texas Legislature made substantial changes regarding bail set by magistrates in criminal cases other than Class C misdemeanors. (See, "S.B. 6 Bill Summary," *The Recorder* (February 2022) at 43.

C. Records of Bail

A magistrate or other officer who sets the amount of bail or who takes bail must record the following information in a well-bound book:

- the name of the person whose appearance the bail secures;
- the amount of bail;
- the date bail is set;
- the magistrate or officer who sets bail;
- the offense or other cause for which the appearance is secured;
- the magistrate or other officer who takes bail;
- the date the person is released; and
- the name of the bondsman, if any. Art. 17.39, C.C.P.

If a state law relating to the keeping of records by a local government officer or employee requires the records to be kept in a "book," "record book," or "well-bound book," or contains any similar requirement that a record be maintained in bound paper form, the record may be maintained on microfilm or stored electronically in accordance with the requirements of the Chapters 204 and 205 of the Local Government Code and rules adopted under those chapters, unless the law specifically prohibits those methods. Sec. 201.004, L.G.C.

D. Bail Bonds

There are two types of bail bonds.

1. Surety Bond

A surety bond is a written undertaking entered into by a defendant and the defendant's sureties guaranteeing the appearance of the defendant (the principal) before some court or magistrate to answer a criminal charge. Art. 17.02, C.C.P. If the defendant fails to appear, the surety or sureties are liable to the court for the bond amount.

2. Cash in Lieu of Surety (Cash Bond)

A defendant in any criminal action may deposit with the custodian of funds of the court in which the prosecution is pending money in the amount of the bond in lieu of having sureties. Art. 17.02, C.C.P.

Cash funds deposited must be receipted by the officer receiving the money and deposited with the custodian of the funds of the court (usually, the city designates the court clerk as the custodian of the court funds). Prior to 2011, cash bonds were refunded to the defendant if and when the defendant complied with the conditions of their bonds and upon order of the court. However, Article 17.02 of the Code of Criminal Procedure now requires that the bond shall be refunded to the person whose name is on the receipt issued when the bond was posted. If a receipt is not produced, then the bond can be refunded to the defendant. The law is silent, however, as to how long the court should wait for a receipt to be produced by a third party.

E. Personal Bond

In certain instances, a magistrate has the discretion to release a person on a personal bond, in lieu of having sureties. Art. 17.03, C.C.P. This means the defendant is giving their word that they will appear and if not, faces potential civil liability for the amount of the bond. There is a notable difference between how a magistrate may utilize a personal bond and how a personal bond is used in municipal court proceedings. When a municipal judge requires a defendant to post a bond, a personal bond is what is generally required. Art. 45.016, C.C.P.

PART 7 BOND FORFEITURES

When a defendant posts bond, he or she agrees as a condition of being released to appear in court. The failure to comply with the conditions of the bond causes the court to declare forfeiture of the bail. The term "forfeiture" simply means to become liable for the payment of a sum of money because of a certain act (typically, non-appearance). A bond forfeiture is a lawsuit to recover the amount of a bond from a defendant or surety because of the violation of the conditions of the bond. Generally, Chapter 22 of the Code of Criminal Procedure governs bond forfeiture proceedings. The exception to using the procedures in Chapter 22 is found in Article 45.044 of the Code of Criminal, which provides an alternative method of forfeiting a cash bond applicable to municipal and justice courts.

A. Procedures when Forfeited

When a defendant fails to appear in court, bail is required to be forfeited. Art. 22.01, C.C.P. Before bail is forfeited, the defendant's name must be called distinctly at the courthouse door. Art. 22.02, C.C.P. If the defendant fails to appear or to answer, the clerk prepares a judgment nisi for the judge's signature. A judgment nisi recites the amount of the forfeiture, who is liable for the

judgment, and that the judgment will be made final unless good cause is shown as to why the defendant did not appear.

The clerk enters the judgment nisi on the scire facias docket, which is a civil docket especially for bail forfeitures. The clerk then prepares a “citation,” which is a civil notice of the forfeiture proceeding. For much more detailed information on bond forfeiture proceedings, see the chapter on *Bond Forfeitures* in the Level II Study Guide.

B. Alternative Procedures for Forfeiting a Cash Bond

In cases involving Class C misdemeanors, Article 45.044 of the Code of Criminal Procedure permits forfeiture of a cash bond for fine and costs if the defendant:

- enters a written and signed plea of nolo contendere and a waiver of jury trial; and
- fails to appear according to the terms of the defendant’s release.

The judge must immediately notify the defendant of the conviction, forfeiture, and the right to apply for a new trial within 10 days from the judgment. If the defendant applies for a new trial, the court must permit the defendant to withdraw the previously entered plea of nolo contendere and waiver of jury trial.

If the defendant does not request a new trial within 10 days of the judgment, the judgment becomes final, and the court reports the court costs to the State Comptroller and turns the fine portion of the bond over to the general revenue fund of the city. If the defendant has been in jail, the court must also give jail-time credit at \$150 for a period of time specified in the judgment. Period of time is defined to mean not less than eight hours or more than 24 hours. This may result in the court refunding part or the entire bond.

Answer True/False or Provide a Short Answer

150. When a defendant posts a bond with the court, he or she is promising to appear in court at a later date. _____
151. Only a magistrate may set a bond. _____
152. Defendants may not use cash as security on a bail bond. _____
153. When the court allows a personal bond, the defendant is released from custody on the defendant’s word that he or she will appear in court without sureties or other security. _____
154. A cash bond received by a peace officer must be deposited with the custodian of the funds of the court. _____
155. Do defendants charged with Class C misdemeanors in municipal court have to follow the same bail rules as someone posting a bond for trial in district court? _____
156. When a defendant complies with the conditions of a bond by making all required appearances in court, may a court keep the bond to pay the fine if the defendant is convicted? _____
157. When is the court required to forfeit a defendant’s bail? _____
158. When a defendant fails to appear after having posted a bond, what must the court do? _____

159. What is a judgment nisi? _____

160. What is a scire facias docket? _____

161. When may a municipal judge forfeit a cash bond for a Class C misdemeanor without going through the bond forfeiture proceedings in Chapter 22? _____

162. If the defendant wants a new trial, what must the defendant do? _____

163. When the defendant requests a new trial, what must the court do? _____

164. When the defendant does not request a new trial, what does the court do with the bond money?

ANSWERS TO QUESTIONS

PART 1

1. No, because no complaint has been filed, so the court has no jurisdiction over the case. The charging instrument must be filed with the court to vest jurisdiction of a case in the court.
2. An officer shall issue a citation if the offense charged is speeding or use of a wireless communication device under Section 545.4251, T.C., or violation of the open container law under Section 49.031, P.C., and the person makes a written promise to appear.
3. True.
4. False (all defendants have a right to notice).
5. False (defendants are entitled to notice not later than the day before any proceeding).
6. False (the citation is in lieu of the arrest, as a substitute for the custodial arrest).
7. True.
8. A sworn complaint must be filed when the defendant fails to appear or when the defendant pleads not guilty unless the defendant and prosecutor agree in writing to proceed on the citation.
9. The clerk
10. The defendant is entitled to notice of the charge he or she is accused of committing and knowing the date may help the defendant prepare a defense. Also, the complaint must be filed within the statute of limitations.
11. A municipal judge, court clerk, deputy court clerk, city secretary, city attorney, or deputy city attorney.
12. The certificate of the person before whom the complaint is sworn. It is the clause written at the foot of a complaint stating when and before whom the complaint was sworn.
13. "Municipal Court of/in _____, Texas."
14. Yes, under Article 45.012(g) of the Code of Criminal Procedure.
15. To authenticate the acts of the judge and clerk.
16. Intentionally, knowingly, recklessly, criminal negligence.
17. Intentionally, knowingly, or recklessly.
18. If the ordinance violation is punishable by a fine exceeding \$500.
19. The same case. The sworn complaint replaces the citation.
20. When the defendant waives the filing of a sworn complaint, the prosecutor and defendant agree in writing, and the agreement is filed with the court.
21. A sworn complaint.
22. True.
23. True.
24. True.
25. True.
26. True.
27. True.
28. False (the complaint must state the offense occurred in the territorial limits of the city).

29. False.
30. False.
31. False.
32. True.
33. True.
34. True.
35. False. However, there is an important notable exception. “School offenses” alleged against a child require a complainant to have personal knowledge. See, Sec. 37.146(a)(1), Education Code.
36. False.
37. True.
38. False.
39. False.
40. True.
41. True.
42. False.
43. False.
44. True.
45. False (it is not within the court’s purview).
46. True.

PART 2

47. The judge or clerk is noting brief entries of the proceedings in a particular case.
48. The law requires that a judge keep a docket.
49. The maintenance of a docket is a ministerial duty. A clerk may enter proceedings on a docket because the law specifically states the information that must be contained in it.
50. True.
51. False.
52. False (the docket must also contain the return date).
53. True.
54. The judge.
55. No.

PART 3

56. True.
57. False.
58. True.
59. Arraignment is the procedure where the judge identifies the defendant, explains the charge, and requests a plea. There is no specific term for this process in the procedures that government municipal courts. Consequently, “arraignment” is commonly misused to describe a defendant’s initial appearance in municipal court.

60. The waiver of jury trial.
61. Generally, Art. 27.14(b) of the Code of Criminal Procedure provides for entry of a plea by mail. That subsection, however, has an important exception for a defendant charged with a misdemeanor involving family violence. In that case, the defendant is required to appear in open court to enter a plea. Further, the judge is required to admonish the defendant using specific language regarding family violence that is provided by the Code of Criminal Procedure.
62. The court must give the defendant notice of any fine and costs assessed, information regarding alternatives to full payment if the defendant is unable to pay the amount, and the amount of the appeal bond that the court will approve.
63. True.
64. False.
65. True.
66. True.
67. False.
68. True.
69. False (it is considered a no contest plea).
70. False.
71. False.
72. False (the judge must grant the motion if made within 10 days of the judgment).
73. True.

PART 4

74. False (the defendant has not been in or released from custody; custody is a required element of the offense of Failure to Appear).
75. False (the offense of Failure to Appear occurs when a person is lawfully released from custody, *with or without bail*, on condition that he subsequently appear, and the person intentionally or knowingly fails to appear in accordance with the terms of his release).
76. True.
77. True.
78. False(the maximum fine is \$500).
79. True.
80. True.
81. False (the two are separate charges).
82. False (Failure to Maintain Financial Responsibility is not a Rules of the Road offense; the correct charge would be Failure to Appear).
83. True.

PART 5

84. True.
85. True.
86. False.

87. False. However, probable cause may exist if there is additional information which causes the judge to believe that this defendant has committed the crime alleged in the complaint.
88. False.
89. True.
90. A municipal court clerk may not issue a warrant or capias because he or she does not have the authority to determine probable cause. Only a judge or magistrate may determine probable cause.
91. The city police officer may only serve process in the county in which the city is located.
92. The city police officer may execute warrants throughout each county in which the city is located.
93. It depends on whether the neighboring city is located in the same county in which the peace officer's city is located.
94. A written order; a writ.
95. False (as a magistrate, a mayor does have the authority. See Art. 2.09, C.C.P.).
96. In the State of Texas.
97. To the proper officer.
98. The officer is required to bring the accused before the court if the judge issued the warrant or before the magistrate if the warrant was issued by a magistrate.
99. The description in the complaint if the warrant is issued by a judge, or a reasonably definite description if the warrant is issued by a magistrate.
100. Yes.
101. Either in the body of the warrant or in connection with the judge's signature.
102. True.
103. False (the officer must take the person before a magistrate without unnecessary delay, but not later than 48 hours after the arrest).
104. False.
105. Any peace officer or someone specially named in the warrant.
106. True.
107. True.
108. True.
109. False (the judge must always determine probable cause).
110. Either a judge of a court of record or a magistrate in the county in which the warrant is being executed must endorse a warrant issued by a mayor.
111. If a magistrate endorses the warrant, the wording is "Let this warrant be executed in the County of ____." If a judge of a court of record endorses the warrant, the wording is "Let this warrant be executed in any county of the State of Texas."
112. False (a mayor who is also the judge of the city may issue a capias; however, a capias may only be issued by a judge with authority to hear the case and not by a magistrate. In general-law cities that have not adopted an ordinance to create the position of municipal judge, the mayor is the judge).
113. True.

114. False.
115. False.
116. False.
117. True.
118. A capias is required to be issued when a forfeiture of bail is declared.
119. The capias is still valid and may be executed at any time.
120. The return is made to the court from which the capias was issued.
121. The officer must state the reason for failing to execute the warrant, and if the defendant cannot be located, what efforts have been made to find the defendant.
122. False (there is no authority for a clerk to issue a summons).
123. True.
124. False (a mayor may issue a summons as a magistrate or if the mayor is also the municipal judge, the mayor may issue the summons as a judge).
125. True.
126. False (in the form of a felony capias).
127. True.
128. False.
129. True.
130. True.
131. True.
132. False See, Article 15.03(b), C.C.P. A summons for an individual may be mailed to the defendant's last known address.
133. True.
134. False.
135. A summons issued by a magistrate is in the same form as a warrant except that it shall summons the defendant to appear before a magistrate at a stated time and place.
136. It gives notice to a person that charges have been filed in court against him or her and gives the defendant a day and time to appear in court.
137. Anytime that he or she may issue a warrant of arrest.
138. A capias.
139. A warrant of arrest.
140. False (the arrest fee is also assessed when a defendant is issued a citation by a peace officer).
141. True.
142. False (the city need only remit to the State when the officer is employed by the State).
143. False (the warrant reimbursement fee applies also if a peace officer processes the warrant).
144. False (the warrant reimbursement fee only is assessed upon conviction).
145. False (the warrant reimbursement fee goes into the city's general revenue fund).
146. False (it is a written order).
147. True.
148. False.

149. True.

PART 6 and 7

150. True.

151. False (a judge can require a defendant to post a bond in municipal court under Article 45.016, C.C.P.).

152. False.

153. True.

154. True.

155. No. See, Art. 45.016, C.C.P.

156. Legally, the bond is to be refunded and fines/costs assessed against the defendant. The defendant is entitled to jail credit, so the amount held in bond and the amount owed after judgment may not match up. Legally, the bond shall be refunded, and the defendant shall pay new money to satisfy the judgment. Practically, courts convert the bond to make it easier on both the defendant and the court.

157. When the defendant fails to appear.

158. Article 22.02 of the Code of Criminal Procedure requires that the court order the defendant's name called outside the courtroom. This is an element of the bond forfeiture lawsuit. This requirement makes sure that the defendant had notice that his or her case was being called before the court.

159. A judgment nisi recites the amount of the forfeiture, who is liable for the judgment, and that the judgment will be made final unless good cause is shown as to why the defendant did not appear.

160. It is a civil docket in which the court enters proceedings of a bond forfeiture.

161. A judge may take a bond for the fine and costs when a defendant has entered a written and signed conditional plea of nolo contendere and a waiver of jury trial, and the defendant fails to appear according to the terms of the defendant's release.

162. The defendant must make a request for a new trial within 10 days from the date the judgment was entered.

163. The court must allow the defendant to withdraw the plea of nolo contendere and enter a plea of not guilty and reinstate the defendant's bond.

164. The court reports the court costs to the comptroller's office and deposits the fine portion of the bond in the general revenue fund of the city. If the defendant has been in jail, the court is also required to give jail-time credit and may have to refund that credit to the defendant.