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Children and Minors

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INTRODUCTION

State law contains specific procedures for handling defendants under the age of 17 who are accused of Class C misdemeanors. This chapter will discuss laws pertaining to children and minors, outline specific procedures for processing juvenile cases, and provide an overview of the part municipal court plays in the criminal juvenile justice system.

PART 1
CRIMINAL RESPONSIBILITY AND PROCEDURE

A. Age Affecting Criminal Responsibility

Generally, children in Texas are not criminally responsible for their behavior. Rather, with certain exceptions, including Class C misdemeanors, most behavior that would be criminal if committed by adults may be handled as a civil matter under Title 3 of the Family Code by the civil juvenile justice system (e.g., juvenile probation, juvenile court, juvenile detention). Section 8.07 of the Penal Code provides that children in Texas have no criminal responsibility for non-traffic fine-only offenses if the accused is younger than 10 years of age at the time of the offense. With the notable exception of curfew violations, children between the ages of 10 and 14 are presumed incapable of committing non-traffic fine-only misdemeanors. This presumption, which is a defense, can be rebutted by the prosecution upon a preponderance of the evidence. Sec. 8.07(e), P.C. No such presumption/defense exists for children aged 15 and 16.

B. Jurisdiction

There is no definition of "juvenile" in Texas law. Rather, Texas statutes use the terms "child" and "minor" for purposes of specifying certain age groups. Because these terms are not synonymous, readers must look at various codes to understand their meaning. Consider the following:

- The Transportation Code in Chapter 729 contains some rules for handling traffic offenders under the age of 17. Although the heading of Section 729.001 calls this person a minor, the text of the statute does not. Sec. 729.001, T.C.
- The Alcoholic Beverage Code defines a person under the age of 21 as a minor. Sec. 106.01, A.B.C.
- The Health and Safety Code, for the purposes of tobacco offenses under Sec. 161.252, provides that an individual commits an offense if the individual is younger than 21 years of age. Sec. 161.252, H.S.C.
- The Education Code, for determining school attendance requirements, defines a child as a person at least six years of age or younger than six years if the child has previously been enrolled in first grade and has not yet reached his or her 19th birthday. Sec. 25.085, E.C.
- The Family Code defines a child as a person who is (1) at least 10 years of age or older and under 17 years of age, or (2) 17 years of age or older and under age 18 who engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age. Sec. 51.02(2), F.C. The definition of "traffic offense" has been amended in the Family Code to exclude any crime punishable by incarceration. Sec. 51.02(16), F.C. The Family Code provides procedures for persons in this age group, including some procedures for handling a child committing an offense that is filed in municipal court.

- The Code of Criminal Procedure in Article 45.0215 contains rules for persons who are under age 17. Article 45.0216, C.C.P., contains rules for expunction of penal offenses and provides that the meaning of child in the statute has the same meaning as the Family Code definition of child (at least age 10 and under age 17). Article 45.045, C.C.P., has special provisions for persons under the age of 17 issued capias pro fines. Article 45.058, C.C.P., contains rules for taking persons who are at least age 10 and under the age of 17 into custody. Article 45.060, C.C.P., provides rules for persons under the age of 17 who fail to appear.

Practice Note

"Status offense" is a term with which court clerks should be familiar when working with cases involving children and minors. A status offense is one that is restricted only to a certain class of individuals. In this case, it is an offense prohibited for children and minors because of their age. A status offender is defined in Section 51.02(15) of the Family Code as "a child who is accused, adjudicated, or convicted for conduct that would not be a crime under state law if committed by an adult." Status offenses are listed in the Family Code:

- running away from home;
- a fine-only offense that municipal court has waived jurisdiction over;
- violation of standards of student conduct;
- violation of a juvenile curfew ordinance or order;
- violation of a provision of the Alcoholic Beverage Code applicable to minors only; or
- violation of any other fine-only offense under Section 8.07(a)(4) and (5) of the Penal Code, but only if the conduct constituting the offense would not have been criminal if engaged in by an adult.

C. Filing Criminal Cases Against Children in Municipal Court

Criminal offenses occurring in school were historically dealt with through the disciplinary procedures of the school or by referral to juvenile court. Over time, criminal cases filed in municipal and justice courts increased as schools sought a different avenue to deal with offenses by children. In response to criticism that citations were being misused as a disciplinary tool and that children being adjudicated in municipal courts were not being treated as fairly as children accused of the same behavior in juvenile court, the Legislature in 2013 passed major reforms aimed at protecting the interests of children, maintaining the safety of public schools, and reducing the number of criminal cases being filed against children in municipal courts. Among the notable reforms was a new Subchapter E-1 contained in Chapter 37 of the Education Code that only applies to offenses defined as "school offenses." This means that there are now two sets of procedures available for criminal cases filed in municipal court. To know which applies, you have to consider where the offense is alleged to have occurred.

1. Determining Which Criminal Procedures Apply

In most cases, the general provisions of the Code of Criminal Procedure, including those specifically addressing these individuals, will apply to cases filed against children and minors in municipal court. There are important differences, though, for cases that qualify as school offenses handled under the Education Code procedures. To determine the procedures that apply, municipal

courts must consider (1) where the offense is alleged to have occurred, (2) if the person accused is a student, and (3) the age of the person accused. If a case does not involve *both* a *child* and a *school offense*, it is *not* governed by the rules contained in Subchapter E-1. Rather, such cases are generally governed by the Code of Criminal Procedure and other statutes. Child is defined here as a person between the ages of 10 and 18. School offense is defined as any non-traffic Class C misdemeanor that is committed on school property by a child enrolled in public school. Sec. 37.141, E.C. To the extent of any conflict, Subchapter E-1 controls over any other law applied to a school offense alleged to have been committed by a child. Sec. 37.142, E.C.

Practice Note

There are two key considerations when determining if the case is governed by Subchapter E-1 in Chapter 37 of the Education Code. These are: (1) the definition of child and (2) the definition of school offense. Neither of these terms are defined as may be expected, or even as elsewhere in the law, so it is important for court clerks to nail down the actual definitions as used in Subchapter E-1.

Child

A "child" is a person who is between ages 10 and younger than 18 and is a student. Sec. 37.141(1), E.C. The age range here is different than the one found in the Family Code, which generally defines child as between ages 10 and younger than 17. The extra year was added by the Legislature two years after the creation of Subchapter E-1 in order to cover those students who turn 17 while still in school. Note that the expanded definition only applies to the Subchapter E-1 school offenses.

School Offense

A "school offense" is an offense (1) committed by a child, (2) enrolled in a public school, (3) that is a Class C misdemeanor other than a traffic offense, and (4) that is committed on property under the control and jurisdiction of a school district. This broad definition means that the offense does not necessarily have to be one relating to attending school, as long as it is within all the parameters. This has proven confusing, as the term school offense typically makes one think of offenses like curfew, truancy, parent contributing, and the like. In addition, even a change of location could affect the determination of school offense. Under this definition, an offense such as Minor in Possession could be a school offense if committed by a public-school student on school property. If committed off school property, however, it would not be a school offense.

2. Criminal Procedure Under Subchapter E-1

Cases governed by Subchapter E-1 are not initiated in a court by citation. A peace officer may not issue a citation to a child who is alleged to have committed a school offense. Sec. 37.143(a), E.C. Subchapter E-1 does not, however, prohibit a child from being taken into custody for such offenses under Section 52.01 of the Family Code or preclude misconduct from being handled with or without referral to juvenile court under Title 3 of the Family Code (i.e., the Juvenile Justice Code). Sec. 37.143(b), E.C. A special complaint alleging the commission of a school offense must be filed. This complaint, which can be conceptualized as a "complaint-plus," must contain all of the requisites for a complaint under Art. 45.019, C.C.P. *plus* the following:

- be sworn to by a person who has personal knowledge of the underlying facts giving rise to probable cause to believe that an offense has been committed; and
- be accompanied by a statement from a school employee stating whether the child is eligible for or receives special education services under Subchapter A, Chapter 29, E.C.; and the graduated sanctions, *if required under Section 37.144*, that were imposed on the child before the complaint was filed. (Section 37.144 only applies to school districts that commission peace officers and have chosen to adopt progressive sanctions.) In other words, all such complaints must state whether the child is eligible for or receives special education services, but the adoption of graduated sanctions is not required by a school district, even if it commissions its own peace officers.

Section 37.146(b) of the Education Code provides that after a complaint has been filed, a summons may only be issued upon request of the attorney representing the State and the determination of probable cause by the judge. Arts. 23.04, 45.057(e), C.C.P. Under Subchapter E-1, a prosecutor in a municipal court may adopt additional local rules pertaining to the filing of a complaint that the prosecutor believes are necessary in order to: (1) determine whether there is probable cause to believe that the child committed the alleged offense, (2) review the circumstances and allegations in the complaint for legal sufficiency, and (3) see that justice is done. Sec. 37.147, E.C.

D. Waiver of Jurisdiction

In some cases, the municipal court is required to waive jurisdiction of cases involving children and minors; in others, the court has discretion to waive jurisdiction; and in some cases, the court may not waive jurisdiction.

1. Mandatory Waiver

Section 51.08(b)(1), F.C., provides that a municipal court shall waive jurisdiction and transfer a child's case to the juvenile court if the child has been previously convicted of:

- two or more prior fine-only offenses under state law other than a traffic offense;
- two or more violations of a penal ordinance of a political subdivision other than a traffic offense;
- one or more of each of the types of misdemeanors described above; or
- is accused of committing an offense under Section 43.26, Penal Code (Electronic Transmission of Certain Visual Material Depicting a Minor), commonly referred to as "sexting."

Unless the child's case involves a traffic offense or a tobacco offense, a municipal court is required to waive jurisdiction and transfer subsequent cases involving children if the court, or another court, has previously dismissed a complaint against the child under Section 8.08 of the Penal Code. (Child with Mental Illness, Disability or Lack of Capacity, discussed further below.)

2. Exception to Mandatory Waiver

Section 51.08(d) of the Family Code provides that a municipal court that implements a juvenile case manager program under Article 45.056, C.C.P., may, but is not required to, waive its original jurisdiction under 51.08(b)(1)(B). Article 45.056, C.C.P., provides authority for the court, with written consent of the city council, to employ a case manager to provide services in juvenile cases, and Article 102.0174, C.C.P. provides authority for city councils to adopt ordinances to create a Juvenile Case Manager Fund to fund that position.

3. Discretionary Waiver

Although the law sometimes mandates waiver of jurisdiction from municipal to juvenile court, in other instances the decision to waive and transfer is a decision that can be made by the municipal judge. With the exception of traffic and tobacco or e-cigarette offenses, a municipal court may waive jurisdiction and transfer a child to juvenile court whenever a complaint is filed alleging a Class C misdemeanor. Similarly, a municipal court with a juvenile case manager may, but is not required to, waive original jurisdiction.

4. No Waiver

A municipal court may not waive jurisdiction over traffic and tobacco or e-cigarette offenses regardless of how many times a defendant is convicted of these offenses.

Practice Note

Section 161.257 of the Health and Safety Code (H.S.C.) provides that Title 3 of the Family Code does not apply to a proceeding under Subchapter N, Chapter 161, entitled "E-Cigarette and Tobacco Use by Minors." The chapter includes the offenses of and penalties for possession, purchase, consumption, and receipt of e-cigarettes or tobacco products by individuals who are under the age of 21 as well as misrepresentation of age to obtain an e-cigarette or tobacco product. Section 161.257, H.S.C. prevents a third or subsequent case involving tobacco use by an individual under the age of 17 from being transferred to juvenile court.

E. Procedure for Waiving

If a judge waives jurisdiction and transfers a case to the juvenile court, all pertinent documents in the case need to be forwarded to the juvenile court with a transfer order. The municipal court should retain a copy of all documents. If the case is being transferred under the mandatory provision because of two prior convictions, information about the two prior cases should be included. The form used to waive jurisdiction sending the case to the juvenile court should contain the following:

- name of the court;
- name of the defendant;
- name of the judge;
- offense charged;
- cause number assigned to the case; and
- the prior convictions.

Practice Note

Other than cases required by law to be transferred from municipal court, what cases do juvenile courts handle? Juvenile courts have civil jurisdiction over cases alleging delinquent conduct and conduct indicating a need for supervision. Both are defined in Section 51.03 of the Family Code. In short, delinquent conduct is conduct, other than a traffic offense, that is punishable by imprisonment or confinement and includes contempt of court. Conduct indicating a need for supervision, or CINS, includes running away and paint or glue inhalation by a juvenile. However, CINS also includes most Class C misdemeanors other than traffic and tobacco or e-cigarette offenses. Jurisdiction and the law governing proceedings in juvenile court can be found in the Juvenile Justice Code, Title 3 of the Family Code.

True or False

1. The term juvenile is not defined by statute. ____
2. The terms "child," "minor," "individual," and "person" are all synonymous terms for juvenile. ____

Short Answer

3. Define status offender. _____

_____

_____

4. List examples of status offenses. _____

_____

_____

5. When must a municipal court waive its jurisdiction over a child's case and transfer it to the juvenile court? _____

_____

_____

6. When does a municipal court have discretion to waive jurisdiction of a case involving a child?

_____

_____

_____

7. List offenses over which municipal courts may not waive jurisdiction over a defendant. ___

_____

_____

8. When may a court retain jurisdiction over a child after there are more than two convictions for non-traffic offenses? _____

_____

9. When a municipal court waives jurisdiction over a child's case in municipal court, what information should be sent to the juvenile court? _____

PART 2
TRANSPORTATION CODE

Section 729.001 of the Transportation Code provides that a person who is under the age of 17 commits an offense if the person violates a traffic law. The Transportation Code does not provide any special rules regarding the adjudication of a person under the age of 17 charged with a criminal traffic offense punishable by the imposition of a fine. As previously stated, juvenile courts have no criminal jurisdiction over traffic offenses. Accordingly, we look to Chapter 45 of the Code of Criminal Procedure for the procedures for handling such defendants.

A. Appearance

A parent, managing conservator, or custodian of a defendant under age 17 is required to appear in open court with their child. This rule applies regardless of how the defendant wants to handle his or her case. Even if the defendant just wants to request a driving safety course, he or she must do so in open court in the presence of a parent. The court must summon a parent, managing conservator, or custodian to appear in court to be present during all proceedings. Art. 45.0215(a-1), C.C.P. See Part 8B for more information on appearances.

B. Offenses

Chapter 729 of the Transportation Code includes a list of traffic offenses that a person under age 17 may or may not be charged with in municipal court. One important exception is that a person under age 17 cannot be charged with an offense under Section 521.457 of the Transportation Code (Driving While License Invalid), a common offense in many courts. (See, Sec. 729.001(a)(2), T.C.)

C. Penalty

1. Fines

When a person under the age of 17 is charged with a traffic offense under the Transportation Code, the punishment is the same penalty that is applicable to adults. Sec. 729.001, T.C.

2. Community Service

Article 45.049, C.C.P., provides that any person unable to pay a fine may discharge the fine and costs by performing community service. In addition, Article 45.0492 of the Code of Criminal Procedure provides that a defendant younger than 17 years old may be allowed to discharge the fines and costs by community service or tutoring without regard for the child's resources or ability to pay.

3. Additional Optional Requirements

Under Article 45.057, C.C.P., when a person under the age of 17 is convicted of a fine-only offense, the court may enter an order requiring the minor to complete additional requirements. See Part 8G of this guide for a list of those requirements.

True and False

10. Special procedures for defendants charged with a traffic offense who are under the age of 17 are found in the Transportation Code. ____
11. Parents must appear in open court with a child charged with a traffic offense. ____
12. A judge may allow a 15-year-old defendant to discharge fines and costs by community service, regardless if the child has the ability to pay. ____
13. The punishment is the same penalty for a conviction of a traffic offense regardless of whether the defendant is an adult or a person under the age of 17. ____

PART 3
PENAL CODE

Section 8.07 of the Penal Code relates to the age affecting criminal responsibility. It states that a person under the age of 15 may not be prosecuted for or convicted of any offense except:

- perjury and aggravated perjury;
- Transportation Code offenses, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail;
- city traffic ordinances;
- misdemeanors punishable by fine only;
- penal ordinances of a political subdivision (e.g., city ordinances);
- a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to criminal court under Section 54.02 of the Family Code (juvenile court) for prosecution if the person committed the offense when 14 years of age or older.

Even these exceptions, however, have exceptions:

- No child younger than 10 years of age may be prosecuted or convicted of a misdemeanor punishable by fine only or a penal ordinance of a political subdivision; and
- A person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing a misdemeanor punishable by fine only or a penal ordinance of a political subdivision, other than an offense under a juvenile curfew ordinance or order. This presumption may be refuted if the prosecution proves to the court by a preponderance of the evidence that the actor had sufficient capacity to understand that the conduct engaged in was wrong at the time the conduct was engaged in. The prosecution is not required to prove that the actor at the time of engaging in the conduct knew that the act was a criminal offense or knew the legal consequences of the offense.

The Legislature has provided for cases in which a court may encounter children with mental illness, disability, or lack of capacity. Section 8.08 of the Penal Code provides a procedure which the court may apply for such situations. On motion by the state, the defendant, or a person standing in parental relation to the defendant, or on the court's own motion, the court shall determine whether

probable cause exists to believe that a child, including a child with a mental illness or developmental disability:

(1) lacks the capacity to understand the proceedings in criminal court or to assist in the child's own defense and is unfit to proceed; or

(2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform the child's conduct to the requirement of the law.

If the court determines that probable cause exists for the above stated reasons, after providing notice to the prosecutor, the court may dismiss the complaint. A dismissal of a complaint under Section 8.08, P.C., may be appealed by the prosecution. It is important to reiterate that per Sec. 51.08, F.C., a municipal court is required to waive jurisdiction and transfer subsequent cases involving the same child if the court, or another court, has previously dismissed a complaint against the child under Section 8.08 of the Penal Code.

Other than provisions for handling children accused of non-traffic fine-only offenses who lack the capacity to proceed in a criminal court proceeding, the Penal Code does not provide special handling procedures for children. Therefore, courts must use the special procedures in the Family Code and the Code of Criminal Procedure. The Family Code provides procedures for persons committing offenses who are at least 10 years of age, but younger than age 17. Article 45.0215, C.C.P., provides rules governing how a person younger than age 17 makes an appearance in court. Article 45.057, C.C.P., allows courts to order additional requirements for a child convicted of a fine-only offense, at least 10 years of age and younger than 17 years of age. See Part 8G for more information on the additional optional requirements.

A. Appearance

Article 45.0215 of the Code of Criminal Procedure provides that the entering of a plea, and all proceedings of a person under the age of 17 in a municipal or justice court must be in open court. The court is required to summon the parent, managing conservator, or custodian and have him or her present during all proceedings relating to the case filed against his or her child. See Part 8B of this chapter for more information on summoning parents.

B. Offenses

Municipal courts have jurisdiction over persons under the age of 17 charged with Class C misdemeanor Penal Code offenses. Art. 4.14, C.C.P.; Subsections 8.07(a)(4) and (5), P.C.

C. Penalty

1. Fines

Persons under the age of 17 charged with Penal Code violations are subject to the same penalties as adults. The penalty for a Class C misdemeanor offense in the Penal Code is a fine not to exceed $500. Sec. 12.23, P.C.

2. Community Service

Article 45.049, C.C.P., provides that any person unable to pay a fine may discharge the fine and costs by performing community service. In addition, Article 45.0492 of the Code of Criminal Procedure provides that a defendant younger than 17 years old may be allowed to discharge the fines and costs by community service or tutoring without regard for the child’s resources or ability to pay.

3. Additional Optional Requirements

Under Article 45.057, C.C.P., when a child is convicted of a fine-only offense, the court may enter an order for additional optional requirements that are rehabilitative in nature. See Part 8G for a listing of the optional requirements.

D. Expunction

Expunge means to erase, remove, or wipe out. Within certain parameters, a conviction, dismissal, and acquittal may be expunged under the Penal Code. A child who is at least 10 years of age and under age 17 and has been convicted of only one fine-only offense described in Sections 8.07(a)(4) and (5) of the Penal Code may apply to the court in which he or she was convicted to have the conviction expunged. Additionally, records relating to an acquittal at trial or a case dismissed through deferred disposition or teen court may also be expunged under this statute. Art. 45.0216(h), C.C.P.

For Penal Code offenses, the judge must inform the child and his or her parent in open court of the child's expunction rights and provide both with a copy of Art. 45.0216, which provides the expunction procedures. When the child reaches the age of 17, he or she may apply to the court in which the conviction occurred to have it expunged. When the petitioner makes application, he or she must also pay a $30 non-refundable reimbursement fee. Article 102.006, C.C.P., also provides for certain fees to be assessed by the court for expunctions.

The request must be in writing and made under oath. It must contain a statement that the person was not convicted while a child of any offense described by Subsections 8.07(a)(4) or (5), P.C., other than the offense the person seeks to have expunged. If the court finds that the person was not convicted while a child of any other offense described by those subsections, the court shall order the conviction, together with the complaint, verdict, sentence, prosecutorial and law enforcement records, and any other documents relating to the offense expunged. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

Practice Note

There are currently numerous statutes that authorize expunction of criminal offenses in municipal court. There are different requirements and even different costs allowable depending on the specific statutory authorization. Note that an expunction under Section 45.0216 of the Code of Criminal Procedure specifically does not apply to offenses covered by Chapter 106 of the Alcoholic Beverage Code, Chapter 161 of the Health and Safety Code, or the procedures for municipal courts of record under Chapter 55 of the Code of Criminal Procedure.

True or False

14. Procedures for taking the plea of a child under the age of 17 accused of a Penal Code offense are contained in the Penal Code. ____

15. Defendants under the age of 17 must appear personally with a parent or guardian in open court when charged with a Penal Code offense. ____

16. The court is required to tell the parent and the child of his or her right to expunge a conviction of a Penal Code offense and to give them a copy of the statute that provides the expunction procedures. ____

17. A person under the age of 17 may request the court to expunge multiple convictions of Penal Code offenses. ____

18. A person under the age of 17 charged with a Penal Code offense that has been dismissed under the deferred disposition statute may request the municipal court to expunge the records. ____

PART 4
ALCOHOLIC BEVERAGE CODE

Complaints alleging Alcoholic Beverage Code offenses by minors are frequently filed in municipal courts. These include the illegal possession or consumption of an alcoholic beverage by minors and Driving Under the Influence by a minor.

A. Appearance

The Alcoholic Beverage Code provides specific appearance and plea procedures for these offenses. A minor, who is defined as a person under the age of 21, must appear in open court to enter a plea of guilty. Sec. 106.10, A.B.C. A minor who is at least age 10 and under 17 is also a "child" by Family Code definition and, in some instances, also referred to as a child in the Alcoholic Beverage Code. If the minor is under the age of 17, a parent, managing conservator, or custodian must appear with his or her child in open court, and the procedures for an appearance by a child must be followed.

B. Offenses

As suggested in Level I, court clerks should be familiar with the "A.B.C. offenses" with which persons under the age of 21 may be charged. These offenses are entirely within Chapter 106 of the Alcoholic Beverage Code, and include Purchase of Alcohol by a Minor, Attempt to Purchase Alcohol by a Minor, Consumption of Alcohol by a Minor, Driving Under the Influence of Alcohol by Minor (DUI), Possession of Alcohol by a Minor, and Misrepresentation of Age by a Minor.

C. Penalty

1. Alcoholic Beverage Code Offenses Involving a Minor

Offenses under Chapter 106 are unique in that the punishment generally includes not only a fine, but also community service and a class. The penalty provisions regarding Alcoholic Beverage Code offenses committed by a minor are found in Sections 106.041 and 106.071 of the A.B.C. First and second offenses are fine-only offenses, commonly heard in municipal courts. Third or subsequent convictions of a minor at least age 17 include confinement as part of the penalty. Specifically, Section 106.071(c), A.B.C., provides that if the defendant is a minor who is not a child and who has been previously convicted at least twice of an Alcoholic Beverage Code offense, the penalty is a fine of not less than $250 or more than $2,000 and/or confinement in jail for a term not to exceed 180 days. Such offenses are outside the jurisdiction of a municipal court and are filed in a county court.

a. Fine

Except for the offense of driving under the influence of alcohol by a minor (DUI), the penalties for the above listed offenses are found in Section 106.071, A.B.C. The penalties discussed in this section also apply to persons under the age of 21 charged with the offense of public intoxication. Sec. 49.02(e), P.C. Section 106.071, A.B.C. provides that first and second offenses are Class C misdemeanors. Since the Alcoholic Beverage Code does not define Class C misdemeanor, the court must use the Penal Code definition, which provides for a punishment not to exceed a $500 fine. Sec. 12.23, P.C. This is also the fine for subsequent offenses, except for those that are enhanced out of the municipal court jurisdiction.

b. Community Service

In addition to a fine, a minor convicted or placed on deferred disposition for possessing, consuming, purchasing or attempting to purchase alcohol, misrepresentation of age by a minor, or public intoxication (under age 21) must perform community service. The community service must be related to education about or prevention of misuse of alcohol or drugs, as applicable. If the conviction is for a first-time offense, the minor must perform between eight and 12 hours of community service. For a subsequent offense, the minor must perform between 20 and 40 hours of community service. Sec. 106.071(d), A.B.C. Community service must be related to the prevention of misuse of alcohol if those programs are available in the community where the court is located. If there are no programs available, the court may order community service that it considers appropriate for rehabilitative purposes. Sec. 106.071(e), A.B.C.

c. Alcohol Awareness, Drug Education, and Drug and Alcohol Driving Awareness Programs

In addition to a fine and community service, upon conviction a minor must generally complete a class. The court must require a minor convicted for the first time of possessing, consuming, purchasing or attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21) to attend the alcohol awareness program, drug education program, or a drug and alcohol driving awareness program (DADAP). Section 106.115, A.B.C. For a subsequent offense, the court has the discretion whether to require participation in an alcohol awareness program, drug education program, or drug and alcohol driving awareness program. If a defendant does not complete a program, Sec. 106.115(d)(2), A.B.C. provides that the court may order the defendant's parent, conservator, or guardian to refrain from doing anything that would increase the likelihood that the minor will complete the alcohol awareness program. (Note, the statutory authority for DADAP is set to be repealed, effective June 1, 2023).

A minor has 90 days to complete a court ordered program and return to the court with evidence of attendance. Sec. 106.115(c), A.B.C. If the minor completes a court-ordered program, the judge may lower the fine to not less than one-half of the originally assessed amount. Sec. 106.115(c), A.B.C. If the minor fails to present evidence of completion within 90 days, the court should set the minor for a show cause hearing and notify the minor of the hearing. If the minor is under the age of 17, the court must summon the parent or legal guardian to the hearing. At the hearing, the judge may or may not grant an extension of up to 90 days. If the court does not grant the extension, the court should explain to the defendant that the Texas Department of Public Safety (DPS) will be ordered to deny issuance or suspension of his or her driver's license for failing to complete the program. Sec. 106.115(d), A.B.C.

After the judge orders the suspension of a defendant's driver's license, the clerk reports the suspension to DPS on form DL-115. For first time offenses, the suspension period may not exceed six months. Sec. 106.115, A.B.C. To compute the time for the six months suspension, Section 311.014(c), G.C. provides that the period ends on the same numerical day in the concluding month as the day of the month from which the computation began, unless there are not that many days in the concluding month, in which case, the period ends on the last day of that month.

If the charge is filed as a second or subsequent offense, the judge shall order DPS to suspend or deny issuance of the driver's license for a period not to exceed one year. Clerks report the order to DPS on the DL-115. It is recommended that courts notify the minor and his or her parents by sending a copy of the suspension order. While not required, this "best practice" demonstrates the seriousness of the matter and helps avoid misunderstandings.

d. Driver's License Suspension or Denial

In addition to imposing a fine, community service, and a court-ordered program, the court must order DPS to suspend or deny issuance of a driver's license of a minor convicted of any of the following offenses: minor possessing, consuming, purchasing, attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21). Sec. 106.071(d)(2), A.B.C. The suspension or denial is for a period of 30 days if the minor has not been previously convicted. If it is a second conviction (charge is filed as second or subsequent offense), the suspension or denial is for 60 days. If it is a third or more conviction, the suspension or denial is for 180 days. Sec. 106.071(d)(2), A.B.C.

The driver's license suspension takes effect on the 11th day after the date the minor was convicted. Sec. 106.071(h), A.B.C. When a minor is convicted, clerks should immediately notify DPS of the suspension order so that DPS will have the notice before the 11th day after judgment. To report the order of suspension to DPS, courts must use DPS form DL-115.

e. Immunity for Possession or Consumption in Certain Cases

Minors charged with possession or consumption of alcohol in cases where the minor was first to request emergency medical assistance for himself or herself or another person for a possible alcohol overdose have a "safe harbor." This means that the minor generally would not be charged with an offense under these provisions if he or she makes the report. For public policy reasons, this is intended to encourage minors to get medical help without fear of the repercussions. Secs. 106.04, 106.05, A.B.C.

2. Driving Under the Influence of Alcohol by Minor (DUI)

a. Fine

Driving Under the Influence by a Minor is a Class C misdemeanor and like other A.B.C. offenses. 106.041, A.B.C. carries a maximum fine of $500. If a minor has two prior convictions for DUI, however, the third offense includes confinement as punishment and the municipal court would lack jurisdiction.

b. Community Service

In addition to a fine, the court must require the minor to perform community service. The community service must be related to education about or prevention of misuse of alcohol or drugs, as applicable. If the conviction is for a first DUI offense, the minor must perform between 20 and 40 hours of community service. If the conviction is for a subsequent offense, the minor must

perform between 40 and 60 hours of community service. Community service must be related to education about or prevention of misuse of alcohol. Sec. 106.041(d), A.B.C.

c. Alcohol Awareness Program, Drug Education, and Drug and Alcohol Driving Awareness Programs

See Part 4C(1)(c). above.

d. License Suspension or Denial

When it comes to driver's license suspension, DUI differs from other A.B.C. offenses. The court does not order DPS to suspend the minor defendant's driver's license as a sanction upon conviction. Instead, the peace officer who stopped the defendant initiates an administrative license revocation hearing that is handled in the same manner as driving while under the influence (DUI).

Practice Note

Driving Under the Influence is often shortened to DUI but should not be confused with Driving While Intoxicated (DWI). The two are not interchangeable under Texas law. A DWI, under Section 49.04 of the Penal Code, requires intoxication, which is defined, among other ways, as a blood alcohol concentration of .08 or more. DUI, on the other hand, requires the minor to have only "any detectable amount of alcohol" while operating the vehicle. While a minor may be charged with either a DWI or DUI, depending on the facts of the case, an adult may only be charged with a DWI. Because operation of a motor vehicle by a minor with any detectable amount of alcohol in the minor's system is, as a matter of public policy, considered an "at-risk" behavior and potentially a gateway to more dangerous criminal behavior, Texas law (1) proscribes more community service than for other Chapter 106 offenses, and (2) makes suspension of driving privileges a separate administrative matter.

D. Deferred Disposition

1. Enhancement of a Charge

For purposes of determining whether a minor has been previously convicted of an offense for possessing, consuming, purchasing, attempting to purchase alcohol, misrepresentation of age, driving under the influence of alcohol, or public intoxication, an order of deferred disposition is considered a conviction. Secs. 106.04(d), 106.041(h)(2), and 106.071(f)(2), A.B.C. This means that it is only used as a conviction for enhancement purposes, but not a conviction for purposes of a driver's license suspension.

2. Not Eligible for Deferred Disposition

Because a deferred disposition can be treated as a conviction for certain purposes, see above, a minor who is not a child and who has been previously convicted at least twice of an offense to which Section 106.071, A.B.C. (Punishment for Alcohol Related Offense by Minor) applies is not eligible to receive a deferral of final disposition of a subsequent offense. In addition, a minor who commits the offense of driving under the influence of alcohol (DUI) and has been previously convicted twice or more of that offense is not eligible for deferred disposition. Sec. 106.041(f), A.B.C.

3. Alcohol Awareness Program, Drug Education, Drug and Alcohol Driving Awareness Programs

When a court grants deferred disposition to a minor charged with an Alcoholic Beverage Code offense or public intoxication, the court must require the minor to attend an alcohol awareness program, drug education program, or a drug and alcohol driving awareness program (DADAP) per Art. 106.115, A.B.C. (Art. 106.071(d), A.B.C.) (Note, the statutory authority for DADAP is set to be repealed, effective June 1, 2023).

4. Community Service

When a court grants deferred disposition to a minor charged with possessing, consuming, purchasing, or attempting to purchase alcohol, misrepresentation of age, or public intoxication, the court must require the minor to perform not less than eight or more than 12 hours community service if the minor does not have any previous convictions. If the minor has a previous conviction, the minor must perform not less than 20 or more than 40 hours community service. Sec. 106.071(d)(1), A.B.C. The community service must be related to education about or prevention of misuse of alcohol or drugs, as applicable.

E. Expunction

A minor is eligible for expunction of an Alcoholic Beverage Code offense based on the number of either prior convictions or prior arrests. Based on convictions, the minor must not have been convicted of more than one A.B.C. offense while a minor. Sec. 106.12(a), A.B.C. Based on arrests, the minor must not have been placed under arrest for more than one A.B.C. offense or been convicted of the offense while a minor. Sec. 106.12(d), A.B.C. To expunge the offense, on attained 21 years of age, the person must file with the municipal court that tried the case an application with a sworn affidavit that the person only has one conviction or one arrest and is 21 years of age. Secs. 106.12(b), 106.12(d), A.B.C. When the petitioner makes application, he or she must also pay a $30 non-refundable fee.

Some courts simply accept the affidavit, conduct a record check, and in the absence of other alcohol-related offenses, expunge the conviction. Other courts conduct a more formal proceeding notifying all agencies or persons who have a relation to the case, have records about the case, or have knowledge about the applicant. These agencies might include the State and local office of the Alcoholic Beverage Commission, DPS (since it maintains the records of all convictions of Alcoholic Beverage Code offenses), the community service provider, the alcohol awareness program provider, the local police department, and the city attorney's office. If no agency or person can provide evidence that the applicant was convicted of more than one alcohol-related offense, the court must grant the petition for expunction.

When a case is expunged, the judge orders that the conviction, along with all complaints, verdicts, sentences, and other documents, be expunged from the applicant's records. Sec. 106.12(c), A.B.C. After the order is issued, the applicant is released from all disabilities arising from the conviction. In addition, the case may not be shown or made known for any purpose. Sec. 106.12(c), A.B.C.

Practice Note

In recent years, the process of expunction has become a more complicated procedure. It is no longer just a matter of gathering relevant paper files and destroying them. To make a complete expunction, computer records and other digital evidence of the expunged case must now also be considered. Records are typically stored in case management software, police department computers, and even other agencies' computers. One practice is to inquire with the court's case management software provider as to methods to address digital records. Many providers now streamline the process.

True or False

19. The Alcoholic Beverage Code defines a minor as a person under the age of 21. ____
20. Municipal courts have jurisdiction over all fine-only offenses in the Alcoholic Beverage Code regardless of how many prior convictions. ____
21. If a minor age 17 is charged with a subsequent Alcoholic Beverage Code offense after two prior convictions, the potential penalty for third and subsequent offenses may include confinement in jail. ____
22. Judges may, but do not have to, require minors convicted of the offense of minor consuming alcohol to perform a certain number of community service hours upon conviction. ____
23. Courts must require minors convicted for the first time of any Alcoholic Beverage Code offense to complete either an awareness or education program. ____
24. The court must approve all alcohol awareness programs. ____
25. The court may require parents to attend the alcohol awareness program with their child. ____
26. Minors must complete the alcohol awareness program within 120 days from the date of conviction. ____
27. The court does not have any authority to grant an extension of time if the minor fails to complete the alcohol awareness program. ____
28. Clerks should notify the Department of Public Safety of an order of driver's license suspension immediately upon conviction of a minor of an Alcoholic Beverage Code offense because the suspension is effective on the 11th day after the judgment of conviction. ____
29. If a minor fails to complete an alcohol awareness program, the law requires a court to order the Department of Public Safety to suspend the minor's driver's license for a period of time not to exceed six months. ____
30. Courts do not have to require minors convicted of the offense of driving under the influence of alcohol to perform community service. ____

31. The court must order the Department of Public Safety to suspend the driver's license of defendants convicted of the offense of driving under the influence of alcohol. ____

32. Fine-only offenses under the Alcoholic Beverage Code that are dismissed upon completion of deferred disposition may be used to enhance subsequent charges under the Alcoholic Beverage Code. ____

33. Minors charged with an Alcoholic Beverage Code offense are eligible for deferred disposition regardless of how many times they have been convicted of an Alcoholic Beverage Code offense. ____

34. Minor defendants charged with an Alcoholic Beverage Code offense who are granted deferred disposition do not have to take either an awareness program or education program. ____

35. Courts must require minor defendants charged with the offense of driving under the influence who are granted deferred disposition to complete a certain number of community service hours as a term of the deferral. ____

36. Minors may petition a municipal court to expunge an Alcoholic Beverage Code conviction only if the minor has just one arrest upon reaching the age of 21. ____

37. When a court orders an expunction, the clerk must destroy or seal the paper records of the court. ____

PART 5
HEALTH AND SAFETY CODE

The Health and Safety Code includes offenses related to cigarettes, e-cigarettes, and tobacco products. There are a number of specific provisions for children and minors charged with these offenses, including a unique dismissal procedure.

A. Appearance

There are no special provisions in the Health and Safety Code for handling persons under the age of 17. Article 45.0215, C.C.P., however, requires a defendant under the age of 17 to personally appear in open court. The Health and Safety Code, for the purposes of charging tobacco offenses under Section 161.252, also provides that an individual commits an offense if the individual is younger than 21 years of age. Sec. 161.252(a), H.S.C. The court must summon a parent, managing conservator, or custodian to appear in court to be present during all proceedings involving a child. Art. 45.0215, C.C.P.

B. Offenses

An individual under the age of 21 commits an offense if he or she possesses, purchases, consumes, or accepts a cigarette, e-cigarette, or tobacco product. Sec. 161.252(a)(1), H.S.C. Also, if an individual falsely represents himself or herself as being 21 years of age or older to obtain possession of, purchase of, or receive a cigarette, e-cigarette, or tobacco product, he or she commits an offense. Sec. 161.252(a)(2), H.S.C.

C. Penalty

1. Fine

The penalty for all tobacco offenses is a fine not to exceed $100. Sec. 161.252(d), H.S.C.

2. E-Cigarette and Tobacco Awareness Program

Upon a first conviction of a tobacco offense, the court must suspend execution of the fine and require the individual to attend an e-cigarette and tobacco awareness program approved by the Texas Health and Human Services Commission. Sec. 161.253(a), H.S.C. The e-cigarette and tobacco awareness program and the e-cigarette and tobacco-related community service are remedial and not punishment. Sec. 161.253(d), H.S.C. The court may also require the parent or guardian of the individual to attend the e-cigarette and tobacco awareness program. Sec. 161.253(a), H.S.C. If the individual resides in an area in which access to an e-cigarette and tobacco awareness program is not readily available, the court must require the individual to perform eight to 12 hours of e-cigarette and tobacco-related community service instead of attending the e-cigarette and tobacco awareness program. Sec. 161.253(c), H.S.C.

The individual must present proof to the court of completion of the e-cigarette and tobacco awareness program no later than the 90th day after the date of conviction. Sec. 161.253(e), H.S.C. When a court receives evidence of completion of the program from an individual who has not been previously convicted of an offense, the court must dismiss the complaint. Sec. 161.253(f)(2), H.S.C.

3. Subsequent Offenses

When a second or subsequent offense is filed, the consequence may be increased. Although the first offense was dismissed, it is considered a conviction for the purposes of subsequent violations. Sec. 161.253(g), H.S.C. If a subsequent offense is filed with the court, to be charged as second or subsequent offenses, the complaint must allege the prior conviction; otherwise, the court must process and handle it as a first-time offense.

If the individual has been previously convicted and the subsequent offense is not eligible for dismissal under Section 161.253(f)(2), H.S.C., the court must impose the fine and require attendance of an e-cigarette and tobacco awareness program. Sec. 161.253(f)(1), H.S.C. The court, however, may reduce the fine to not less than half of the original fine assessed if the individual completes the tobacco awareness program. Sec. 161.253(f)(1), H.S.C.

Practice Note

Pay close attention to the statutory requirements upon an order to take an e-cigarette or tobacco awareness class. The process upon conviction under Section 161.253 of the Health and Safety Code works very differently than a conviction for a Penal Code offense or even an Alcoholic Beverage Code offense. In this case, the defendant receives a "suspended sentence" upon conviction. If the class is then completed, the court is required to dismiss the case even after conviction; however, the dismissed case can be used as a prior conviction if defendant later commits the same offense. This process, although similar to that used in a deferred disposition for an A.B.C. offense, is different because the defendant started with an actual conviction. This is a bit like a combination of deferred disposition in municipal court and probation in county court.

D. Expunction

Individuals may apply to the court on or after that person's 21st birthday to have a conviction for a tobacco-related offense expunged. Sec. 161.255, H.S.C. When the petitioner makes application, he or she must pay a $30 non-refundable reimbursement fee. A defendant may request multiple expunctions. Interestingly, since the expunction provision only applies to convictions, any charge that is dismissed would not be subject to expunction under this statute.

True or False

38. The Health and Safety Code for the purpose of tobacco offenses provides that an individual commits an offense if the individual is younger than 21 years of age. ____
39. The Health and Safety Code contains special handling provisions for individuals under the age of 17. ____
40. The court must order an individual convicted of a first-time tobacco offense to attend an e-cigarette and tobacco awareness program. ____
41. When a defendant completes an e-cigarette and tobacco awareness program for a first-time offense and presents evidence of completion to the court, the court may, but is not required to, dismiss the case. ____
42. If a court dismisses a first-time tobacco offense, it may still be used to enhance consequences for a subsequent offense. ____
43. Defendant must complete an e-cigarette and tobacco awareness program within 90 days of having the execution of the sentence suspended. ____

PART 6
EDUCATION CODE OFFENSES AND SCHOOL ATTENDANCE LAW

The Education Code contains a host of Class C misdemeanor criminal offenses. As previously described in Part 1, it contains its own criminal procedure in Subchapter E-1 of Chapter 37 for fine-only offenses defined inside and outside of the Education Code that are alleged to have occurred on school property and to have been committed by students. The Education Code focuses on acts prohibited at school. It also contains the requirement that students attend school.

Why do students have to come to school in the first place? Texas compulsory school attendance law, Section 25.085, E.C., states that a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached his or her 19th birthday must attend school unless specifically exempted. Section 25.086, E.C., lists the exemptions that apply if someone:

- attends a private or parochial school that includes in its course a study of good citizenship;
- is eligible to participate in a school district's special education program and cannot be appropriately served by the resident district;
- has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary conditions, indicating the treatment prescribed to remedy the

temporary condition and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;

- is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011, F.C.;
- is at least 17 years of age, and
  - is attending a course of instruction to prepare for the high school equivalency examination;
  - has the permission of the child's parents or guardian to attend the course;
  - is required by court order to attend the course;
  - has established a residence separate and apart from the child's parent, guardian, or other person who has lawful control of the child;
  - is homeless (as defined by 42 U.S.C. Section 11302); or
  - has received a high school diploma or high school equivalency certificate;
- is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order or is enrolled in a Job Corps training program;
- is enrolled in the Texas Academy of Mathematics and Science;
- is enrolled in the Texas Academy of Leadership in the Humanities; or
- is specifically exempted under another law.

Although parents may still face criminal Class C misdemeanor charges, Texas compulsory school attendance law no longer contains a criminal offense for students not attending school. In 2015, the criminal offense of Failure to Attend School was repealed and truancy court procedures were added to the Family Code by the Legislature. These changes are further discussed below (see, Compulsory Attendance Enforcement).

A. Appearance

If the child is at least 17 years of age and charged with an Education Code offense, there are no special provisions for the defendant. Article 45.0215, C.C.P., however, requires all persons under the age of 17 to appear in open court. Additionally, although the Education Code does not require the parent, managing conservator, or custodian to appear in open court with his or her child, Article 45.0215, C.C.P., requires the court to summons the parent, managing conservator, or custodian to be present at all proceedings involving a child who is younger than 17 years of age.

B. Offenses

While there are criminal offenses in the Education Code that are not Class C misdemeanors, many are fine-only misdemeanors. Municipal courts have jurisdiction over the following Education Code offenses:

- Parent Contributing to Non-Attendance (Sec. 25.093);
- Rules Enacted by School Board (Sec. 37.102);
- Trespass on School Grounds (Sec. 37.107);

- Possession of Intoxicants on School Grounds (Sec. 37.122);
- Disruption of Classes – Notably, a person cannot commit this offense if the person is enrolled either as a primary or secondary grade student. (Sec. 37.124);
- Disruption of Transportation – Similar to Disruption of Classes, a person cannot commit this offense if the person is enrolled either as a primary or secondary grade student. (Sec. 37.126); and
- A Member of a Fraternity, Sorority, Secret Society, or Gang that is Not Sanctioned by Higher Education (Sec. 37.121).

The Education Code does not define a Class C misdemeanor, so the court must use the Penal Code definition, which provides a fine not to exceed $500. Sec. 12.23, P.C.

C. Compulsory Attendance Enforcement

Texas has required compulsory school attendance for nearly 100 years, but it wasn't until 2015 that there was an entirely distinct court with specialized procedures devoted to school attendance issues. The court, called a "Truancy Court," has exclusive, original jurisdiction over cases of truant conduct and follows a hybrid civil, rather than criminal, procedure. Justice, municipal, and certain county courts are designated as truancy courts. This means, for example, that a municipal court can now function as a separate truancy court if an allegation of truant conduct is filed in the court.

Practice Note

Clerks should have a broad understanding of truancy courts in the event a case is filed. Although most truant conduct cases are filed in justice courts, all municipal courts in Texas may potentially be called upon to use its truancy court jurisdiction. This section provides a basic overview to help clerks understand the law governing truancy courts. Relevant laws are spread throughout various codes, including the Family Code, Code of Criminal Procedure, and Government Code. For more detailed information including steps and forms for handling truant conduct cases, clerks should consult TMCEC's *Texas Truancy Court Resource Manual*, available online. In addition, TMCEC maintains a website called Texas Truancy Transition, located at https://www.tmcec.com/resources/truancy/.

1. Truancy Prevention Measures

Provisions of Section 25.0915, E.C., require a school district to adopt truancy prevention measures designed to address student conduct related to truancy in the school setting and minimize the need for referrals to truancy court. Truancy prevention measures must be one or more of the following:

- a behavior improvement plan that includes a specific description of the behavior, the period in which the plan will be effective, or the penalties for additional absences, including disciplinary action or referral to truancy court;
- school-based community service; or
- referral to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy.

A school district may not, however, refer a student to truancy court if the school determines that the student's truancy is a result of pregnancy, being in the state foster child program, homelessness,

or being the principal income earner for the student's family. Sec. 25.0915(a-3). If a student fails to attend school without an excuse on three or more days or parts of days within a four week period, but does not fail to attend school for 10 or more days or parts of days within a six month period, the school district shall initiate truancy prevention measures.

2. Title 3A of the Family Code

Municipal and justice courts are designated as truancy courts and may hear civil truancy cases. Sec. 65.004, F.C. This is distinct from their authority and jurisdiction as a municipal court. Title 3A of the Family Code contains provisions governing truancy court proceedings. The Chapter is divided into six subchapters and attempts to cover every aspect of the truancy court proceeding. These subchapters are:

(1) General Provisions (Subchapter A);

(2) Initial Procedures (Subchapter B);

(3) Adjudication Hearing and Remedies (Subchapter C);

(4) Appeal (Subchapter D);

(5) Records (Subchapter E); and

(6) Enforcement of Orders (Subchapter F).

The Chapter does, however, contain some criminal procedure elements. Truant conduct cases are required to be reviewed by a "truant conduct prosecutor" that will decide whether to file the petition. Sec. 65.053, F.C. In addition, although truant conduct cases are civil in nature, the burden of proof required at trial is proof beyond a reasonable doubt. Sec. 65.010, F.C.

An adjudication of the case will result in a finding that the child has engaged in truant conduct. Once the order is reduced to writing and signed by the judge, the child, parent, or other person, if financially able to do so, can be ordered to pay a court cost of $50. This cost shall be deposited in a special account and can only be used to offset the costs of operating the truancy court. Sec. 65.107(d), F.C. Clerks should take note that this is not a new cost applicable for the court when acting as a municipal court. The only time this cost may be assessed is following a finding of truant conduct in the truancy court.

Post-trial remedies generally follow the civil rules. A Motion for New Trial may be filed under Rules 505.3(c) and (e) of the Texas Rules of Civil Procedure. Sec. 65.109, F.C. There is also a right to appeal a finding of truant conduct. Rule 506 of the Texas Rules of Civil Procedure applies to the appeal, except that an appeal bond is not required. Sec. 65.151, F.C.

Practice Note

Recall that all municipal courts are also truancy courts. When the court is acting as a truancy court, the form and style of pleadings and court documents are different. An adjudication of truant conduct is not a criminal conviction and the proceedings are not criminal in nature. Consequently, instead of a complaint, as in a criminal case, the proceedings are initiated by a petition with its own unique requisites. Sec. 65.054, F.C. Additionally, the petition is required to be styled as "In the Matter of _____, Child." The child is required to be identified only by that child's initials.

3. Parent Contributing to Non-Attendance

Although the non-attendance case against the student is a civil matter, related cases involving parents are a criminal matter. The offense of Parent Contributing to Non-Attendance is a Class C misdemeanor and each day that a child remains out of school may constitute a separate offense. Section 25.093, E.C., allows school officials or the school attendance officer to file a complaint against a parent accused of contributing to a child's non-attendance. A parent includes a person standing in parental relation. Sec. 25.093(i), E.C. The State would need to prove that the parent failed to require the student to attend school through criminal negligence. Evidence of this criminal negligence must be provided by the school district at the time a complaint is filed. Sec. 25.0951(b). A person acts with criminal negligence when the person ought to be aware of a substantial and unjustifiable risk that the prohibited result will occur. Sec. 6.03(d), P.C.

As this charge remains a criminal offense, it would be filed in the municipal or justice court and *not* the truancy court. The court would use standard criminal procedures outlined in Chapter 45, Code of Criminal Procedure. The offense follows a fine value ladder based on prior offenses:

(1) $100 for a first offense;

(2) $200 for a second offense;

(3) $300 for a third offense;

(4) $400 for a fourth offense; or

(5) $500 for fifth and subsequent offenses.

Notably, a court is required to dismiss a complaint made by the school district if it: (1) does not comply with the requirements of Section 25.0951, E.C.; (2) does not allege the elements required for the offense; (3) is not timely filed; or (4) is otherwise substantially defective. Sec. 25.0951(c), E.C. A court may also dismiss a charge of parent contributing to non-attendance essentially at the court's discretion. Sec. 45.0531, C.C.P. It is an affirmative defense if one or more of the absences was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

If the defendant is convicted, one-half of the fine must be deposited to the credit of the operating fund of the school district in which the child attends school, charter school the student attends, or the juvenile justice alternative education program that the child has been ordered to attend. The city's portion is deposited into the city's general fund. Sec. 25.093(d), E.C.

Upon conviction, or if the court grants deferred disposition, the court may order the parent to attend a program, if one is available, that is designed to assist parents in identifying problems that contribute to the student's absences and to assist in developing strategies for resolving those problems. If the parent refuses to obey a court order, the court may punish the parent for contempt under Section 21.002 of the Government Code. Sec. 25.093(g), E.C.

D. Expunction

1. For Offenses Under Chapter 37, E.C.

Article 45.0216, C.C.P., provides expunction procedures and rules that apply to a person under the age of 17 charged with an offense under Chapter 37 of the Education Code. The judge must inform the child and his or her parent in open court of the child's expunction rights and provide both with a copy of Article 45.0216, C.C.P., which details the expunction procedures. When the child reaches

the age of 17, he or she may apply to the court in which the conviction occurred to have the conviction expunged. When the petitioner applies for expunction, he or she must pay a $30 non-refundable reimbursement fee.

The application must be in writing and made under oath. It must contain a statement that the person was not convicted while a child of any offense described by Subsections 8.07(a)(4) or (5), P.C., other than the offense the person seeks to have expunged. If the court finds that the person was not convicted of any other offense described by those subsections while a child, the court shall order the conviction, together with the complaint, verdict, sentence, prosecutorial and law enforcement records, and any other documents relating to the offense expunged. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose. Also, records of a person under 17 years of age relating to a complaint for a penal offense dismissed under deferred disposition or teen court may be expunged under Article 45.0216, C.C.P.

True or False

44. The Education Code defines "child" for the purpose of attending school to be between the ages of 10 years of age and younger than 18 years of age. ____
45. A child who is attending a private or parochial school is exempt from attending public school. ____
46. A child at least 17 years of age attending a course of instruction to obtain a GED is exempt from attending school. ____
47. Failure to Attend School is a Class C criminal offense that may be filed in municipal court against a truant student. ____
48. All municipal courts in Texas are also truancy courts and have jurisdiction over truant conduct. ____
49. The offense of Parent Contributing to Non-Attendance may be prosecuted in the municipal court where the child lives instead of the municipal court where the child attends school. ____
50. Parent Contributing to Non-Attendance carries a maximum fine of $500 for a first offense. ____
51. A school district is required to take preventative measures before referring a student to truancy court. ____
52. If a parent is convicted of the offense of Parent Contributing to Non-Attendance, the court must remit to the school district or the juvenile justice alternative education program that the child has been ordered to attend one-half of the parent's fine. ____

PART 7
PROCURING STATEMENTS: MAGISTRATE WARNINGS TO CHILDREN

Recall from Level I that municipal judges are also magistrates. Magistrates are regularly called upon to explain a juvenile's rights to juveniles charged with criminal offenses in the context of procuring a statement from a child. Such statements often, but not always, involve the child

confessing to crimes ranging from theft to murder. The warnings include the right to remain silent, the right to have an attorney present prior to or during questioning, the right to appointed counsel, and the right to terminate any interview. Sec. 51.095, F.C.

The requirements for handling a juvenile under these circumstances are outlined in Section 51.095 of the Family Code. A child may make a statement while the child is in a detention facility or other place of confinement, while the child is in custody of a peace officer, or during or after the interrogation of the child by an officer if the child is in the possession of the Department of Protective and Regulatory Services and is suspected to have engaged in conduct that violates a penal law of the State. Sec. 51.095(d), F.C.

When a magistrate gives the warnings to a juvenile, the juvenile may waive the right to remain silent and give a statement. The statement must be signed by the child in the presence of a magistrate without a law enforcement officer or a prosecuting attorney present unless the magistrate determines that the presence of a bailiff or law enforcement officer is necessary for his or her personal safety or the safety of other court personnel. The bailiff or law enforcement officer, however, may not carry a weapon in the presence of the child. Sec. 51.095(a)(B)(i), F.C. The statement may be taken by an electronic recording device or video or tape recording.

True or False

53. When a child signs a statement after waiving his or her right to remain silent, the magistrate may allow a law enforcement officer to be present only if the magistrate determines the officer's presence is necessary for safety reasons. ____

54. A statement of a person under the age of 17 may be recorded by a recording device such as a video camera. ____

PART 8
GENERAL PROCEDURES

A. Appearance in Court

1. Required in Open Court

Article 45.0215, C.C.P., requires defendants under age 17 to appear in open court, and that defendant's parent, guardian, or managing conservator must be present. This rule applies regardless of how the person under 17 wants to handle his or her case. Even if an attorney appears in court on behalf of a child or minor, the child or minor must still appear with the attorney in open court and with a parent.

2. Notification of Change of Address

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

to written notice of their obligation to provide a change of address to the court. The notice requirement may be satisfied by:

- the court providing notice to the child and parent during the child and parent's initial appearance before the court;
- a peace officer providing notice to the child when taking the child into custody and releasing a child under Article 45.058(a), C.C.P., which provides for nonsecure custody (See Part 9E(1) of this guide for information on nonsecure custody); or
- a peace officer providing notice at the time of issuance of a citation under Section 543.003, T.C., or Article 14.06(b), C.C.P.

It is an affirmative defense to prosecution that the child and parent were not informed of their obligation to provide a current residential address.

Practice Note

What happens if a child or minor who is a defendant has moved to a county some distance from the municipal court, or is now in some type of program that prevents his or her return to the county where the offense occurred? How would the court meet its obligation to take a plea in open court? Article 45.0215(c) of the Code of Criminal Procedure provides that the judge may allow the defendant to enter a plea before another judge in the county in which the defendant resides.

B. Parent's Appearance

Article 45.057(a)(3), C.C.P., defines parent to include a person standing in parental relation, a managing conservator, or a custodian. Parents, managing conservators, or custodians are required to be present at all proceedings involving their child under the age of 17. Even if an attorney appears in court with the child, the court must still require the presence of a parent or guardian. Art. 45.0215, C.C.P. The statute also requires the court to summon the parent, managing conservator, or custodian to be present at all proceedings involving a child who is younger than 17 years of age and has not had the disabilities of minority removed. Marriage removes the disability of minority. Thus, the parents of defendants who are younger than 17 years of age who are married need not be summoned. Sec. 1.104, F.C.

The summons must contain a notice to the parent that if the parent fails to appear in court with his or her child, the parent may be charged with a Class C misdemeanor. Art. 45.057(e), C.C.P. Although not required on a parental summons, the summons should also contain a statement about the parents' required notification of change of address that they must provide to the court. The summons is issued by the judge and served as other summonses are served, by a peace officer. Art. 45.202, C.C.P. A peace officer may serve the summons by mail or by delivering the summons to the parent. Article 102.011(a)(4), C.C.P., requires a $35 reimbursement fee to be assessed upon conviction for the service of the summons. This fee is charged to the defendant.

If the parent fails to appear, he or she could be charged with the offense of Failure to Appear at Hearing with Child. Art. 45.057(e), C.C.P. This charge should not be confused with the Failure to Appear offense in Section 38.10 of the Penal Code, which applies only to a defendant's failure to appear. The court may waive the requirement of the presence of the parent or guardian only if the parents have been summoned. Art. 45.0215(b), C.C.P.

C. Failure to Appear

1. Jailing Children

Article 45.060, C.C.P., provides that a justice or municipal court may not order the confinement of a person who is a child, as defined by Article 45.058(h), C.C.P. That statute defines "child" as a person who is at least 10 years of age and younger than 17 years of age and charged with a fine-only offense. Courts may, however, order persons under the age of 17 to be taken into non-secure custody. Article 45.058, C.C.P., provides procedures for handling these offenders. Custody is further discussed below in Part E.

2. Unadjudicated Children, Now Adults

Article 45.060, C.C.P., provides rules and procedures for handling a person who committed a crime while under the age of 17 and is now age 17 or older. Such defendants are commonly referred to as being JNA (juvenile now adults).

a. Requirements Before 17th Birthday

The court must use all available procedures under Chapter 45 to secure the individual's appearance to answer allegations made before the individual's 17th birthday. The procedures that the court must use include the following:

- provide notice to the juvenile and the juvenile's parents of their continuing obligation to provide the court notice of change of address within seven days of moving (Article 45.057, C.C.P.);
- summon the parents of the juvenile to appear in open court with their child (Articles. 45.0215 and 45.057, C.C.P.);
- order the DPS to suspend or deny issuance of the juvenile's driver's license; the court must report this suspension or denial of driver's license (Sections 521.201 and 521.294, T.C.); and
- order the juvenile to be taken into nonsecure custody under (Articles 45.058, C.C.P.).

b. Procedures When Children Turn Age 17

After the above requirements have been met, the court may issue an order to the juvenile who is now an adult providing notice of a continuing obligation to appear. The notice is served by a peace officer and may be served by personal service or by mail to the last known address and residence of the individual. Article 45.202, C.C.P., provides that process issued out of a municipal court may be served and shall be served when directed by the court by a peace officer or a city marshal. Court clerks do not have authority to serve this process.

A notice to appear must contain the following statement in bold-faced type or capital letters.

> WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.

If the defendant fails to appear, the prosecutor may file a charge of violation of continuing obligation to appear. The court may issue an arrest warrant for this charge. When the person is arrested, the court may also handle all the unadjudicated charges committed by this person as a juvenile.

D. Violation of a Court Order or Failure to Pay

1. General Procedures

Article 45.050, C.C.P., provides that the municipal court may not order a child confined for failure to pay all or any part of a fine or costs or for contempt of another order of the court. Instead, if a child fails to obey an order of the court under circumstances that would constitute contempt of court, the court must give the child notice of a hearing. The court conducts the hearing to give the child an opportunity to tell why he or she violated the court order.

If the court determines that the child's conduct constitutes contempt, the court decides whether to refer the child to juvenile court for delinquent conduct or to retain jurisdiction. If the court decides to refer the child to juvenile court, the court will prepare an order referring the child to juvenile court. If the court retains jurisdiction, it may hold the child in contempt and impose a fine not to exceed $500 or order DPS to suspend or deny issuance of the child's driver's license or permit until the child fully complies with the orders of the court or both. If the court orders the driver's license suspended or denied issuance, the court must notify DPS of the order.

For purposes of Article 45.057, C.C.P., "child" has the meaning described in Article 45.058, C.C.P., which defines "child" as a person who is at least 10 years of age and younger than 17 years of age and is charged with or convicted of an offense that municipal courts have jurisdiction of under Article 4.14, C.C.P.

2. Capias Pro Fine

Article 45.045, C.C.P., provides that a capias pro fine may not be issued for an individual convicted of an offense committed before the individual's 17th birthday unless, following a capias pro fine hearing:

- the individual is 17 years of age or older;
- the court finds that the issuance of the capias pro fine is justified after considering:
  - the sophistication and maturity of the individual (the judge should use his or her notes taken when the juvenile made an appearance before the judge);
  - the criminal record and history of the individual (generally, this will be a history of cases filed in the municipal court, and it could also include information from DPS); and
  - the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and
- the court has proceeded under Articles 45.050, C.C.P., to compel the individual to discharge the judgment.

The court uses the same procedures under Articles 45.050, C.C.P., even if the juvenile failed to obey the court order after he or she turned 17 years of age and the failure to obey occurred under circumstances that constitute contempt of court. If the juvenile engaged in conduct in contempt of an order issued by the court, but the contempt proceedings could not be held before the person's

17th birthday, the court must still use the proceedings under Article 45.050 before issuing a capias pro fine.

Practice Note

At the time of appearance of the child, the court should make notes of the child's sophistication and maturity. The notes should be placed in the court file. The reason for these notes is that if a child fails to discharge a judgment or violates another court order, when the juvenile turns age 17 before the court may issue a capias pro fine, the court must consider the matter of sophistication and maturity.

3. Waiver

The court may waive all or part of the costs if the defendant was a child at the time the offense was committed. The court may waive all or part of the fine if the defendant was a child at the time of the offense and discharging the fine through community service would impose an undue hardship. Art. 45.0491, C.C.P.

E. Custody

1. General Custody Procedures

Article 45.058, C.C.P., provides procedures for handling a child who is at least 10 years of age and younger than 17 years of age and is charged with or convicted of an offense that municipal courts have jurisdiction of under Article 4.14, C.C.P. The child may be:

- released to a parent, guardian, custodian, or other responsible adult;
- taken before a municipal or justice court; or
- taken to a place of nonsecure custody.

A place of nonsecure custody is defined as an unlocked multipurpose area. A lobby, office, or interrogation room is suitable if the area is not designated, set aside, or used as a secure detention area and is not part of a secure detention area. A juvenile processing office may be used as a nonsecure custody as long as it is not locked when being used as a nonsecure custody area. While in the custodial area, the child cannot be handcuffed to a chair, rail, or any object and he or she must be under continuous visual observation by a law enforcement officer or a member of the facility staff. The child cannot be held in the facility for longer than is necessary to take the child before a judge or to release the child to the parents. If the child is being held on charges other than municipal court matters, he or she may be held long enough to be identified, investigated, processed, and for transportation to be arranged to a juvenile detention facility. Under no circumstances is the child to be held for more than six hours.

2. Education Code

In response to reports of children being arrested in the same manner as adults for Education Code offenses, the Legislature created Section 37.085, which states "Notwithstanding any other provisions of law, a warrant may not be issued for the arrest of a person for a Class C misdemeanor under this code committed when the person was younger than 17 years of age." Section 37.085, E.C., prohibits courts from issuing arrest warrants for any Class C misdemeanor found in the Education Code. The prohibition of issuing an arrest warrant for such offenses is tied to the age of

the defendant at the time of the alleged criminal conduct. Even when the child reaches adulthood an arrest warrant cannot be issued for a Class C misdemeanor defined in the Education Code.

3. Curfew Ordinances

Article 45.059, C.C.P., provides that a person under the age of 17 taken into custody for violation of a juvenile curfew ordinance shall without unnecessary delay:

- release the person to the person's parent, guardian, or custodian;
- take the person before a municipal or justice court; or
- take the person to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person.

A juvenile curfew processing office must be an unlocked multipurpose area that is not designated, set aside, or used as a secure detention area or part of a secure detention area. The person may not be secured physically to a cuffing rail, chair, desk, or stationary object. The detention in the juvenile curfew processing office may not be longer than necessary to accomplish the purposes of identification, investigation, processing, release to parents, guardians, or custodians, or arrangement of transportation to school or court, and in no case may the detention be longer than six hours. The person must be under continuous visual supervision by a peace officer or other person during the time the person is detained in the office.

F. Discharge by Community Service, Tutoring, and Waiver

As previously stated, fines and costs imposed by municipal courts, regardless of whether the defendant is an adult or a child, may be discharged by performing community service. Art. 45.049, C.C.P. A judge may require a defendant who fails to pay a previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. Additionally, under Article 45.0492, C.C.P., a finding of insufficient resources to pay is not required when the court is dealing with a defendant under 17.

A judge is required to specify in an order requiring community service the number of hours the defendant is required to work. A defendant may perform community service by attending a program such as a work and job skills training program; high school equivalency preparatory class; an alcohol or drug abuse program; a rehabilitation program; a counseling program, including a self-improvement program; a mentoring program; or any similar activity. Alternatively, community service work must be for a governmental entity, a nonprofit organization, or another organization that provides services to the public that enhances social welfare and the general well-being of the community. The entity or organization that accepts a defendant ordered to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the judge. A judge may not order more than 16 hours per week of community service unless he or she determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant's dependents. A defendant is considered to have discharged not less than $100 of fines or costs for each eight hours of community service performed.

If a child fails to perform community service as ordered by the court, the court can hold the child in contempt and assess a fine not to exceed $500 or order DPS to suspend or deny issuance of a driver's license until the child fully complies. The court may also send the case to the juvenile court for contempt of court for violation of a municipal court order. Art. 45.050, C.C.P.

G. Optional Rehabilitative Sanctions

Under Article 45.057, C.C.P., the court may enter an order requiring additional rehabilitative sanctions on a finding that the child committed a fine-only offense.

Article 45.057 defines:

- "child" as the same as Article 45.058, C.C.P., which provides that a "child" is a person who is at least age 10 and younger than age 17;
- "residence" to mean any place where the child lives or resides for a period of at least 30 days; and
- "parent" to include a person standing in parental relation, managing conservator, or a custodian.

The additional optional requirements include the following:

- referring the child or the child's parents, managing conservators, or guardians for services under Section 264.302, F.C. Section 264.302 provides for early youth intervention services (See the next section, 9D, for information on these services);
- requiring the child to attend a special program that the court determines to be in the best interest of the child and if the program involves the expenditure of county funds, that is approved by the county commissioners court, including rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy, or mentoring program; or
- requiring the child's parent, managing conservator, or guardian, if the court finds the parent, managing conservator, or guardian, by act or omission, contributed to, caused, or encouraged the child's conduct, to do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:
  - attend a parenting class or parental responsibility program; and
  - attend the child's school classes or function.

The court may require the parent, managing conservator, or guardian of a child to attend one of the above-mentioned programs and to pay an amount not greater than $100 for the costs of the program. Art. 45.057, C.C.P. Both the child and the parent are required to attend a program, class, or function may also have to submit proof of attendance to the court. Art. 45.057, C.C.P.

H. Early Youth Intervention Services

Early youth intervention services apply to a child who is seven years of age or older and under 17 years of age. Early youth intervention services are for children and their families who are in at-risk situations. The municipal court may refer a child to these services if the Department of Health and Human Resources has contracted with the county to provide the services. Sec. 264.302, F.C. The services may include:

- crisis family intervention;
- emergency short-term residential care for a child 10 years of age or older;
- family counseling;

- parenting skills training;
- youth coping skills training;
- advocacy training; and
- mentoring.

I. Alternative Sentencing

1. Teen Court

Article 45.052, C.C.P., provides authority for municipal and justice courts to defer cases and send defendants to a teen court program. Teen court is a type of alternative sentencing in which the defendant is sent to a program where he or she is sentenced by other juveniles. The defendant must complete the teen court program not later than the 90th day after the date of the teen court hearing to determine punishment or the last day of the deferral period, whichever date is earlier. The teen court program must be approved by the court. To be eligible, the defendant must:

- enter a plea of guilty or no contest in open court in the presence of a parent, managing conservator, or custodian and request, either in writing or orally, the teen court program;
- be under the age of 18 or enrolled full-time in an accredited secondary school in a program leading toward a high school diploma for 90 days;
- be charged with a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine only; and
- not have successfully completed a teen court program in the year preceding the date that the alleged offense occurred.

A court may transfer a case deferred under the teen court program to a court in another county if the court to which the case is transferred consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred. Art. 45.052(f), C.C.P.

The judge must dismiss the charge at the conclusion of the deferral period if the defendant presents satisfactory evidence that he or she has successfully completed the program. A charge that is dismissed may not be part of the defendant's criminal record or driving record or used for any purpose. However, if the charge was for a traffic offense, the court shall report to DPS that the defendant successfully completed the teen court program and the date of completion for inclusion in the defendant's driving record. Art. 45.052(d), C.C.P.

The judge may assess an optional reimbursement fee not to exceed $10 when a defendant requests to participate in a teen court program. This fee is retained by the city. Art. 45.052, C.C.P. The court may also assess another $10 reimbursement fee to cover the cost of the teen court for performing its duties. This fee is paid to the teen court program, but the program must account to the court for the receipt and disbursal of the fee. Subsection (g) of Article 45.052, C.C.P., provides that a justice or municipal court may exempt a defendant from the requirement to pay court costs or other fees that are imposed by another statute.

2. Driving Safety Course

Persons under the age of 17 must make a personal appearance with a parent or guardian in open court to request to take a driving safety course or a motorcycle operator course on or before the

answer date on the citation. All requirements for taking the course that apply to adults apply to people under age 17.

If a child or minor who is a defendant does not complete the driving safety course or does not submit all the required evidence, the court is required to notify the defendant to appear at a show cause hearing. Additionally, the court should conduct a contempt hearing under Article 45.050, C.C.P., at the same time. The court must also summon a parent or guardian to appear with the defendant. See TMCEC Study Guide Level I, Chapter 8, *Traffic Law,* for more information on driving safety courses.

3. Deferred Disposition

An alternative to conviction and imposition of a fine is placing the child on deferred disposition. Art. 45.051, C.C.P. Deferred disposition is available for most offenses, with notable exceptions for minors, including:

- Alcoholic Beverage Code offenses committed by a minor who is not a child and who has previously been convicted at least twice of an offense to which Section 106.071 applies is not eligible to receive a deferral of final disposition of a subsequent offense. Sec. 106.071(i), A.B.C.
- A minor who commits the offense of driving under the influence of alcohol and has been previously convicted twice or more of that offense is not eligible for deferred disposition. Sec. 106.041(f), A.B.C.
- A minor charged with consuming an alcoholic beverage is not eligible for deferred disposition if he or she has been previously convicted twice or more of consuming an alcoholic beverage. Sec. 106.04(d), A.B.C.

As in all proceedings involving persons under the age of 17, the court is required to summon the parent or guardian and require his or her presence when granting deferred disposition. Before granting deferred disposition, the judge accepts a plea of guilty or no contest or the defendant may be found guilty after a trial.

When a deferred disposition is granted, the judge may impose reasonable conditions or requirements for the defendant to perform within a certain time. The judge has the discretion to impose a probation period of up to 180 days. The judge is required to order a defendant under the age of 25 charged with a moving traffic violation to complete a driving safety course as a term of deferred disposition. If the defendant has a provisional license, which is a person under the age of 18, and is charged with a moving traffic violation, the judge shall require, as a term of deferred disposition, the defendant to be retested by the DPS for his or her driver's license.

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

fine. The imposition of the fine constitutes a final conviction of the defendant. The defendant may pay the fine or appeal.

True or False

55. Judges should determine the sophistication and maturity of a child or minor at the time of appearance in court. ____
56. The court may transfer the case of a defendant under the age of 17 to a court of jurisdiction in another county if the defendant resides in the other county. ____
57. Whenever a person under the age of 17 is charged with an offense in a municipal court, the court must summon the parent, managing conservator, or custodian. ____
58. If a child is convicted of a fine-only offense in a municipal court, the child is required to pay the $35 reimbursement fee for the peace officer summoning the parents. ____
59. When a parent, managing conservator, or custodian fails to appear with his or her child, the court may charge the parent with the Penal Code offense of Failure to Appear. ____
60. The court may never waive the presence of the parents. ____
61. The court should notify the parents of their obligation to provide the court with the current address and residence of the child. ____
62. Defendants who are at least 10 years of age and younger than age 17 charged with a fine-only offense may not be ordered confined. ____
63. If a defendant under the age of 17 fails to appear, the court should use all the available procedures under Chapter 45, including a nonsecure custody warrant to obtain the defendant's appearance. ____
64. A notice about a defendant's obligation to appear issued to a defendant who turns age 17 may be served by a court clerk. ____
65. If a 17-year-old defendant is arrested after failing to respond to a notice to appear, the court may not handle the charges that occurred when the defendant was under the age of 17. ____
66. If a child defendant fails to obey a court order under circumstances that would constitute contempt, the court must give the child notice of a hearing. ____
67. If a court retains jurisdiction over a child whose conduct constitutes contempt, the court may order the Department of Public Safety to suspend or deny issuance of a driver's license. ____
68. If the court orders the suspension of the driver's license, the court may not order the defendant to pay a fine for contempt. ____
69. If the court decides to issue a capias pro fine for a defendant who committed an offense under the age of 17, the court must wait until the defendant turns age 17. ____
70. After a juvenile defendant fails to pay a fine, the court may just wait until the person turns age 17 and then issue a capias pro fine. ____
71. When a defendant under the age of 17 commits conduct constituting contempt, but the court could not conduct a contempt hearing before the defendant turned age 17, the court has lost authority to do anything with that defendant. ____

72. A peace officer who takes a person under the age of 17 into custody for a fine-only offense may take the person to a place of nonsecure custody. ____

73. A juvenile processing office may not be used as a place of nonsecure custody. ____

74. A court may not issue arrest warrants for any Class C misdemeanor found in the Education Code committed by a person under the age of 17 years. ____

75. If a person is taken into custody for violating a juvenile curfew ordinance, the officer may only take the person to a place of nonsecure custody. ____

76. Judges may not require defendants under the age of 17 to perform community service because of the risk of injury. ____

77. A court may order additional rehabilitative sanctions under Article 45.057, C.C.P., for all Class C misdemeanors. ____

78. When a court requires parents to attend a special program with their child, the court may require the parents to pay an amount not greater than $100 for the program. ____

79. When a child fails to fulfill the requirements of an additional sanction, the court may only enforce the order by taking the child into custody. ____

80. If a parent fails to comply with additional sanctions, the court may find the parent in contempt. ____

81. Early youth intervention services apply to a child seven years of age or older and under the age of 17. ____

82. Early youth intervention services are for children and families who are in at-risk situations. ____

83. Cities may contract with the Department of Human Resources for early youth intervention services. ____

84. Defendants under the age of 17 charged with a traffic offense may request to take a teen court program. ____

85. In order to participate in a teen court program, the program must be approved by the court. ____

Short Answer

86. List the eligibility requirements to attend teen court._____

_____

_____

_____

87. What fees may the court require the defendant to pay when he or she requests a teen court program? _____

True or False

88. Defendants under the age of 17 may request to take a driving safety course through the mail. ____

89. Defendants under the age of 17 cannot be required to pay court costs before being granted the right to take a driving safety course. ____

90. If a defendant under the age of 17 fails to submit evidence of completing a driving safety course, the court may, but is not required, to allow the defendant to appear at the show cause hearing without a parent. ____

91. A person under the age of 17 who requests deferred disposition must make a personal appearance in open court with a parent or guardian. ____

PART 9
REPORTS

A. Reports to Juvenile Court

When a municipal court has a pending complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense, the municipal court shall notify the juvenile court of the pending complaint and furnish a copy of the final disposition. Sec. 51.08(c), F.C.

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

1. Traffic Convictions

A record of traffic convictions and forfeitures of bail must be submitted no later than the seventh day after the date of the conviction or forfeiture. Sec. 543.203, T.C. The court counts the seven days starting with the day after the judgment was entered. Sec. 311.014, G.C.

When a court grants an extension or a time payment plan, the court does not wait to receive the final payment before reporting. The court determines the proper reporting period by counting seven days from the day after the date the judgment was entered by the judge. When a defendant discharges a fine by community service, the court starts counting the seven-day time period starting with the day after judgment was entered by the judge, not when the defendant completes the community service. If a defendant appeals a conviction, the municipal court does not report a conviction. In non-record municipal courts, the appellate court reports the conviction if there is one, to DPS. In municipal courts of record, if the judgment is affirmed in the appellate court, the court then reports the conviction to DPS.

2. Failure to Appear or Failure to Pay

Section 521.3452, T.C., requires courts to report to DPS persons under the age of 17 who fail to appear. Section 521.201(7), T.C., provides that DPS may not issue a license to a person who has been reported by a court for failure to appear under Section 521.3452. Section 521.201(8), T.C., provides that DPS may not issue a license in any case where a person under the age of 17 failed to appear and has been reported to DPS. Section 521.294, T.C., provides that DPS shall revoke a license of a person who has been reported under Section 521.3452, T.C., for failure to appear. The defendant may not obtain a license or have the suspension lifted until the court reports that the defendant files a report on the final disposition of the case.

Article 45.050, C.C.P., allows the court after deciding to retain jurisdiction of a case involving a person who committed an offense under the age of 17, and failed to pay or violated a court order, to order DPS to suspend or deny issuance of a driver's license. Section 521.201(8), T.C., provides that DPS may not issue a license to a person under the age of 17 who was reported for defaulting in payment of a fine. Section 521.3451, T.C., provides that DPS shall suspend or deny the issuance

of a license or instruction permit on receipt of an order to suspend or deny the issuance of a license or permit from justice and municipal courts under Art. 45.050, C.C.P.

3. Alcoholic Beverage Code Convictions

Municipal courts are required to furnish DPS with the notice of conviction or order of deferred disposition of an Alcoholic Beverage Code offense and an acquittal of the offense of driving under the influence of alcohol by a minor. Secs. 106.117(a)(2), (3) and (4), A.B.C. The notice must be in a form prescribed by DPS and must contain the driver's license number of the defendant, if the defendant holds a driver's license. Sec. 106.117(b), A.B.C.

DPS maintains the information and will provide it to law enforcement agencies and courts as necessary to enable them to carry out their official duties. The information is admissible in any action in which it is relevant. A person who holds a driver's license having the same number that is contained in a record maintained by DPS is presumed to be the person to whom the records relate. The presumption may be rebutted only by evidence presented under oath. Sec.106.117(c), A.B.C. The information on Alcoholic Beverage Code offenses maintained by DPS is confidential and may not be disclosed except as provided by Section 106.117.

4. Non-Attendance at a Required Program

If a minor fails to present the evidence of attending a required education or awareness program within 90 days of the court order, the court should set the defendant for a show cause hearing and notify the defendant of the hearing. If the defendant is under the age of 18, the court must summon the parent or legal guardian to the hearing as well. At the hearing, the judge may or may not grant an extension. If a judge grants an extension, the case is reset for 90 days later. If the court does not grant the extension, the court should inform the defendant about the driver's license suspension for failing to complete the program. If the minor fails to complete the course, the court must order DPS to suspend or deny issuance of the defendant's driver's license for a period not to exceed six months. If the offense is charged as second or subsequent offense, the license suspension order may not exceed one year. Sec. 106.115(d), A.B.C.

C. Report to the Texas Alcoholic Beverage Commission

Upon request by the Texas Alcoholic Beverage Commission, the municipal court clerk must furnish notice to the Commission of a conviction of the following Alcoholic Beverage Code offenses:

- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Driving Under the Influence of Alcohol by Minor (Sec. 106.041);
- Possession of Alcohol by a Minor (Sec. 106.05); and
- Misrepresentation of Age by a Minor (Sec. 106.07).

The report must be in the form prescribed by the Commission. Sec. 106.116, A.B.C.

True or False

92. Courts are required to report to the juvenile court the filing and disposition of non-traffic offenses. ____

93. When a defendant under the age of 17 fails to appear for a traffic offense, the court must notify DPS of the failure. ____

94. If a defendant under the age of 17 fails to pay a fine or violates a court order, the court may order DPS to suspend or deny issuance of a driver's license after finding the defendant in contempt. ____

95. Municipal courts must report to the DPS convictions and orders for deferred disposition for all Alcoholic Beverage Code offenses in which minors are charged. ____

96. Municipal courts must report to the DPS acquittals of all Alcoholic Beverage Code offenses. ____

ANSWERS TO QUESTIONS

PART 1

1. True.
2. False.
3. Section 51.02(15) of the Family Code states that a status offender is "a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult."
4. Status offenses include:
   - violation of a juvenile curfew ordinance;
   - violation of a provisions of the Alcoholic Beverage Code applicable to minors only; or
   - violation of any other fine-only offense under Section 8.07(a)(4) and (5) of the Penal Code, but only if the conduct constituting the offense would not have been criminal if engaged in by an adult.
5. Section 51.08(b)(1), F.C., states that a municipal court shall waive jurisdiction and transfer a child's case to the juvenile court if the child has been previously convicted of:
   - two or more prior fine-only offenses other than traffic or public intoxication;
   - two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or
   - one or more of each of the types of misdemeanors described above if the court does not have a juvenile case manager program established under Article 45.054, C.C.P.
6. A municipal court has discretion to waive jurisdiction and refer a child to juvenile court if the child has not been previously convicted of a fine-only misdemeanor other than traffic or tobacco, or has only been convicted once of a fine-only misdemeanor or twice of a penal ordinance violation, other than traffic.
7. Traffic offenses and tobacco offenses committed by a minor.
8. The court may retain jurisdiction if the court has a juvenile case manager under Article 45.056, C.C.P.
9. All pertinent documents in the case. The form used to waive jurisdiction should contain the name of the court; name of the defendant; name of the judge; offense charged; cause number assigned to the case; and prior convictions.

PART 2

10. False.
11. True.
12. True.
13. True.

PART 3

14. False.
15. True.
16. True.

17. False.
18. True.

PART 4

19. True.
20. False.
21. True.
22. False. (The court must require the defendant to perform a certain number of community service hours.)
23. True.
24. False. (Alcohol awareness programs must be approved by the Texas Department of Licensing and Regulation.)
25. True.
26. False. (Within 90 days after conviction.)
27. False. (Sec. 106.115(c), A.B.C. The court may extend this period by not more than 90 days for good cause.)
28. True.
29. True.
30. False.
31. False.
32. True.
33. False.
34. False.
35. False.
36. True.
37. True.

PART 5

38. True.
39. False.
40. True.
41. False.
42. True.
43. True.

PART 6

44. False. (Younger than age 17.)
45. True.
46. True. (Failure to Attend School was repealed in 2015.)
47. False.
48. True.

49. True.
50. False.
51. True.
52. True.

PART 7

53. True.
54. True.

PART 8

55. True.
56. False.
57. True.
58. True.
59. False.
60. False.
61. True.
62. True.
63. True.
64. False.
65. False.
66. True.
67. True.
68. False.
69. True.
70. False. (More than waiting is required. A court must also consider the criteria in Article 45.045, C.C.P.)
71. False.
72. True.
73. False.
74. True.
75. False.
76. False.
77. True.
78. True.
79. False.
80. True.
81. True.
82. True.
83. True.

84. True.

85. True.

86. To be eligible, the defendant must:

- enter a plea of guilty or no contest in open court in the presence of parents or guardian and request either in writing or orally the teen court program;
- be under the age of 18 or enrolled full-time in an accredited secondary school in a program leading toward a high school diploma for 90 days;
- be charged with a misdemeanor punishable by fine-only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine-only; and
- not have successful completed a teen court program in the two years preceding the date that the alleged offense occurred.

87. Two $10 reimbursement fees.

88. False.

89. False.

90. False.

91. True.

PART 9

92. True.

93. True.

94. True.

95. True.

96. False.