

# Post-Trial Procedure

## Table of Contents

<b>INTRODUCTION .....</b>	<b>3</b>
<b>PART 1 SENTENCING.....</b>	<b>3</b>
A. Judgment and Sentence .....	3
1. State Law Offenses.....	5
2. Class C Misdemeanors .....	5
3. City Ordinances and Joint Airport Board Resolutions, Rules, and Orders .....	6
4. Setting the Fine.....	7
B. Restitution.....	7
C. Payment of Fine and Costs.....	8
1. Installment Payments.....	8
2. Discharged by Community Service .....	8
3. Jail Time Credit.....	9
4. Waiver of Fine and Costs.....	10
<b>PART 2 REPORT OF CONVICTION.....</b>	<b>12</b>
<b>PART 3 FINE ENFORCEMENT .....</b>	<b>13</b>
A. Failure to Satisfy Judgment.....	13
1. Issuing a Capias Pro Fine Writ.....	13
2. Indigency Considerations.....	14
3. Commitment .....	15
a. The Case of Preston Tate .....	15
b. Commitment Requirements.....	15
B. Other Enforcement Mechanisms.....	16
1. OmniBase .....	16
2. Scofflaw .....	17
3. Collections Vendors .....	18
4. Civil Collection of Fines.....	18
<b>PART 4 PROBATION.....</b>	<b>19</b>
A. Driving Safety Courses (DSC) / Motorcycle Operator Courses (MOC).....	19
1. Offenses to Which DSC/MOC Applies .....	20
2. Exceptions .....	21
3. Eligibility and Requirements .....	21
4. Costs .....	22
a. Required Court Costs.....	22
b. Administrative Fees.....	22
c. Optional Driving Record Fee .....	22

5.	When Course Granted .....	22
6.	Course Requirements .....	23
a.	DSC .....	23
b.	MOC .....	23
c.	Special Safety Belt Course .....	23
7.	Requirements for Dismissal .....	23
8.	Satisfactory Completion .....	24
9.	Failure to Submit Required Evidence .....	24
10.	Appeal .....	24
11.	Payment of Fine .....	24
12.	Report to the Texas Department of Public Safety .....	24
B.	Deferred Disposition .....	24
1.	Deferral of Proceedings for Fine-Only Offenses .....	25
a.	Discretionary Conditions .....	25
b.	Required Conditions .....	26
c.	Deferred Fine (Formerly the Special Expense Fee) .....	27
d.	Completion of Probation .....	27
e.	Unsuccessful Probation .....	28
f.	Docket Entries .....	28
2.	Deferral of Proceedings on Completion of Teen Court Program .....	30
3.	Deferral of Proceedings for Chemically Dependent Persons .....	30
a.	Time Period .....	30
b.	Application .....	30
c.	Successful Completion .....	30
d.	Failure to Complete .....	31
	<b>PART 5 APPEALS .....</b>	<b>33</b>
A.	Right to Appeal .....	33
B.	Appeals from Municipal Courts .....	33
C.	Appeals from Non-Record Municipal Courts .....	33
D.	Appeals from Municipal Courts of Record .....	33
E.	Appeal Bonds .....	34
1.	Types of Appeal Bonds .....	34
2.	Amount of Appeal Bond .....	34
F.	Appearance Not Required to Post Appeal Bond .....	34
G.	Time to Present Court with Bond .....	34
1.	Computing Time .....	34
2.	Mailbox Rule .....	35
H.	Effect of Appeal .....	35
I.	Sending the Case to Appellate Court .....	35
J.	Conviction or Affirmance of Judgment on Appeal .....	35
K.	Withdrawal of Appeal .....	36
	<b>APPENDIX A: CHECKLIST FOR HANDLING APPEALS .....</b>	<b>38</b>
	<b>ANSWERS TO QUESTIONS.....</b>	<b>43</b>

## INTRODUCTION

The previous chapter examined formal charging, trial, and the consequences of failing to appear for the trial of an offense. The case is not over, however, at conviction or upon a plea of guilty or no contest. Following the verdict or plea, the court must render judgment, assess punishment, and determine the sentence. After that, the defendant must satisfy their obligations according to the terms of the judgment or court order. There are several methods by which the defendant may meet these obligations, and depending on the facts of the case, additional hearings may even be required by law. Chapter 6, Post-Trial Procedure, will explore these issues and discuss not only issues that the judge must consider following trial, but also how the defendant shall satisfy the judgment and sentence according to the law.

### PART 1 SENTENCING

#### A. Judgment and Sentence

Upon a finding of guilt, the judge must render the judgment and sentence. The Code of Criminal Procedure provides some guidelines for this process. The first step is that the court must create a written, signed judgment. Art. 42.01, C.C.P. Without this written judgment signed by the judge, nothing that comes after will have a legal basis. There are two statutes that govern the judgment in municipal court. The general statute, Article 42.01 of the Code of Criminal Procedure, referenced above, includes the requirement that all judgments be written and signed by the judge. There are also several other general requirements in this statute that apply to any criminal offense, including both felonies and misdemeanors. The other specific statute is Article 45.041 of the Code of Criminal Procedure. Article 45.041 outlines important procedural steps specifically for municipal and justice courts that the judge must follow in rendering judgment and imposing the sentence. It is important that courts follow the requirements outlined, as appropriate for the level of offense, in both statutes.

The provisions of Article 45.041 primarily outline the determinations that a judge must make when imposing the sentence and the manner in which a defendant may satisfy the judgment. The judge may direct any defendant, regardless of ability to pay, to pay fine and costs at some later date, or to pay a specified portion of the fine and costs at designated intervals. Art. 45.041(b), C.C.P.

The court may also direct the defendant:

- to pay restitution, if applicable, to the victim of the offense (for the offense of issuance of bad check, restitution is limited to \$5,000); and
- to satisfy any other sanction authorized by law.

#### Art. 42.01, C.C.P.

A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant.

#### Art. 45.041(a-1), C.C.P.

When a defendant enters a plea in open court, the judge shall inquire whether the defendant has sufficient resources or income to immediately pay the fine or costs.

Finally, for every plea made in open court, the judge is required to inquire during, or immediately after imposing the sentence, whether the defendant has sufficient resources or income to immediately pay all or part of the fine or costs. Art. 45.041(a-1), C.C.P. If the judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, then the judge must determine alternatives to immediate payment.

The determination of which alternatives to immediate payment to order is entirely within the judge's discretion, based on the facts presented. This is not a duty delegable to the court clerk. Likewise, it is important to note that this is not the sentence in the case. A defendant will have been sentenced prior to this determination, based on either the defendant's plea or the verdict following trial. The alternatives to immediate payment are simply alternative means to discharging the previously ordered judgment and sentence. The law provides that these alternatives include payment at some later date, or in specified intervals, discharge by performing community service under Article 45.049, waiver in full or in part under Article 45.0491, or any combination of the above methods. These methods are explored in more depth in the sections that follow.

#### **Practice Note**

It was a common practice prior to the enactment of Article 45.041(a-1) for municipal judges to ask whether a defendant could pay the amount ordered after imposing the sentence. There is less clarity, though, on exactly what information a judge should rely on to make an ability to pay determination under this statute. One practice is for the judge to create a list of items that the defendant may bring to court to aid the judge's determination. These may include information on paycheck stubs, housing costs, medical expenses, or anything else that the judge thinks would be relevant to his or her determination of ability to pay.

The terms judgment and sentence are often used together and referred to as one event. The Court of Criminal Appeals has not provided a lot of guidance on distinctions between the two terms; but for purposes of understanding criminal procedure in municipal court, they are separated here as in Article 42.01: (1) judgment is the formal written, signed determination of guilt or innocence, and (2) sentence is the punishment resulting from that determination.

The sentence in a municipal court case is generally the amount of the fine and costs ordered to be paid to the State. Art. 45.041(a), C.C.P. This is important as the jurisdiction of municipal and justice courts extends only to the imposition of a fine and other sanctions as specifically authorized by law. Other sanctions may include statutory authorized requirements such as an alcohol awareness class on conviction for an offense committed by a minor under the Texas Alcoholic Beverage Code. In addition, a fine-only conviction may carry serious legal consequences that are not required to be included in the judgment and sentence. Art. 4.14(d), C.C.P. Such sanctions or penalties are referred to as collateral consequences. This means a penalty that is in addition to the sentence. This type of penalty is often assessed on conviction, typically by another entity, or state

agency, according to the law. An example of this type of collateral consequence would be license suspension by the Department of Public Safety. The municipal court does not suspend the license in the judgment, but it does report the conviction to the Department of Public Safety that may ultimately result in the suspension. Sometimes, however, a collateral consequence may not affect a defendant until much later. For example, someone convicted of a crime of moral turpitude may later face an inability to obtain a professional license, thereby barring them from working in a specific field of employment.

## 1. State Law Offenses

Municipal courts have concurrent jurisdiction with justice of the peace courts in all criminal cases arising under state law that are punishable by fine and such sanctions not consisting of confinement in jail or imprisonment. Convictions of certain offenses may also have as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege. Art. 4.14, C.C.P. and Sec. 29.003, G.C.

A common misconception among the general public is that the maximum fine that can be imposed in municipal court is relatively small. It would not be surprising if a majority of those unfamiliar with municipal court assumed that the maximum fine was a number somewhere between \$200 and \$500. The reality is that there is large range of fine amounts possible, and courts should carefully read the related statute to ascertain the correct fine range. There may be some criminal offenses that carry a specific fine, while others fall under a general penalty that pertains to an entire group of offenses. Nonetheless, it is important not to fall into the one-size-fits-all trap. It is no more true that the maximum fine in municipal court is \$500 than it is that municipal courts only hear traffic cases.

### **Sec. 7.187(a)(1)(b), W.C.**

The general penalty for Water Code offenses involving injection wells is one of the highest, carrying a fine range of \$1,000 - \$50,000 for each day of the offense.

## 2. Class C Misdemeanors

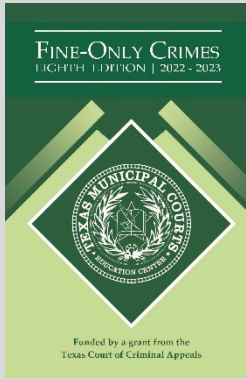
“Class C misdemeanor” is defined in Section 12.23 of the Penal Code. This section provides that an individual found guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500. This definition, however, only governs offenses in the Penal Code. This means that a criminal offense defined in the Penal Code will carry the maximum fine of \$500 unless otherwise specified. In other codes, Section 12.41 of the Penal Code instructs that any fine-only offense conviction is classified as a Class C misdemeanor, but those offenses are not bound by the \$500 maximum penalty. An offense under the Water Code, for example, may have a fine range of \$1,000 to \$50,000. This, in turn, could be doubled depending on whether the defendant has any prior convictions. Consequently, it is possible to see a fine set at \$100,000. This is not just applicable to arcane offenses that may be seldom seen in most municipal courts. A more familiar example may be the offense of Passing a School Bus found in Section 545.066 of the Transportation Code. This offense would be defined as a Class C misdemeanor; however, because it is a criminal offense located outside the Penal Code, the fine range for a first offense well exceeds \$500 and is set at \$500 to \$1,250.

If an offense outside of the Penal Code is defined as a Class C misdemeanor, but the code in which the offense is located does not assign a penalty, the court uses the Penal Code definition of Class

C misdemeanor and the \$500 maximum penalty. In some instances, statutes may also merely state that a particular act is “an offense.” In these cases, if the general penalty clause governing that statute provides for a fine-only penalty, the municipal court has jurisdiction.

In addition, for some Class C misdemeanors, the penalty is different depending on the age of the defendant. Defendants under the age of 21 charged with the offense of public intoxication are subject to different penalties than are those 21 or older. A person 21 or older faces a penalty of a fine up to \$500, while a person under the age of 21 is punished in the same manner as a minor charged with an Alcoholic Beverage Code offense. Sec. 49.02(e), P.C. The penalties for those offenses are found in Section 106.071 of the Alcoholic Beverage Code and include a fine of up to \$500, community service, potential driver’s license suspension, and an alcohol awareness course. Sec. 106.071, A.B.C.

Finally, some fine-only offenses can be enhanced because of prior convictions and remain Class C misdemeanors. For example, a person who has been previously convicted of the offense of failure to maintain financial responsibility and is convicted a second or subsequent time faces an increased penalty from a maximum of \$350 to \$1,000 and impoundment of the vehicle. In order for the court to assess the enhanced penalty, the complaint must allege the prior conviction or convictions.

	<p style="text-align: center;"><b>Practice Note</b></p> <p><i>Fine-Only Crimes</i> is a good resource for quick reference on the more than 1,300 fine-only criminal offenses defined by state law. Now in its eighth edition, the book is published by TMCEC every two years. Referred to as “The Green Book” by clerks, it includes information on fine ranges, statutory authority, and court costs. Editor’s notes highlight important points of law for both processing and charging offenses.</p>
--	--

### 3. City Ordinances and Joint Airport Board Resolutions, Rules, and Orders

In Texas, cities have some measure of self-government and may pass ordinances. Ordinances are essentially laws passed by the city. These often include criminal offenses that are distinct from state law offenses. Article 4.14 of the Code of Criminal Procedure and Section 29.003 of the Government Code establish limits on the maximum penalties that municipal governments may set for city ordinance offenses and that joint airport boards may set for violations of resolutions, rules, and orders. Although the city government or joint airport board establishes penalty ranges under state guidelines, it is within the sole discretion of the judge to set fines within the penalty range.

The penalty limits that can be adopted by the city or joint airport board are:

- a fine not to exceed \$2,000 for offenses involving fire safety, zoning, public health, and sanitation offenses (including dumping of refuse); and

- \$500 on all other city ordinance violations or violations of the rules, resolutions, or orders of a joint board.

Since each city and joint board may decide to establish different penalty ranges within the guidelines established by statute, courts should examine the penalty clauses of ordinances and resolutions, rules, and orders within their own city before setting fines.

#### 4. Setting the Fine

In any case before the municipal court, it is solely the authority of the judge to set the fine amount within the statutory range. Some judges determine the fine on a case-by-case basis, while other judges establish a suggested fine schedule that may be posted on the court's website or provided to defendants wishing to pay a fine at the window. This schedule is for defendants who do not want to contest the charges filed against them in court. This is commonly referred to as the "window fine." It is worth noting that no specific statutory authority defines the fine schedule or outlines its parameters, other than the judge's power to set fines within the statutory range. While window fines may be efficient for defendants who do not wish to contest the case, clerks should be cautious not to imply that the window fine is the only option. The window fine is an efficiency tool approved by the judge in uncontested cases, but a defendant's potential options always include speaking to the judge about the fine or even meeting with the prosecutor regarding the fine amount.

**Window Fine**  
This is the fine amount approved by the judge, allowing fines to be processed at the window. Sometimes called a fine schedule, there is no specific statute governing the practice.

In contested cases, the judge bases his or her decision on the facts of the case and relevant evidence admitted at trial. Higher courts typically will have a bifurcated trial, separating the guilt and innocence phase from the punishment phase. There are no provisions for this practice in municipal court, however, and the judge will need to consider a process to determine any relevant considerations regarding punishment. In addition, the judge will look to the penalty clause of the ordinance, statute, resolution, rule, or order, and set the fine at an amount within the limits prescribed by the penalty clause.

#### Practice Note

Chapter 132 of the Local Government Code authorizes cities to collect fines and costs through payment by credit card or other electronic means, but within certain parameters. The processing fee that the city may collect cannot be greater than five percent of the amount paid. Sec. 132.003(b), L.G.C. Also, if the credit card is declined, the additional service charge would be the same amount as the fee charged for a bounced check. Sec. 132.004, L.G.C.

#### B. Restitution

The law provides that restitution may be collected under certain circumstances in municipal court. Prosecutors and judges will want to proceed with caution, however, as there is often a separate

civil case pending in a different court that may also result in restitution or a civil judgment. There is the possibility that ordering restitution in a criminal Class C misdemeanor case may result in double recovery for a party. That said, Article 45.041(b)(2) of the Code of Criminal Procedure allows a municipal court to require a defendant to pay restitution to any victim of an offense. Restitution is the act of compensating the victim for his or her actual monetary loss. The amount of restitution that a municipal court may order is unlimited except in one instance, the offense of issuance of bad check. For that offense, restitution is limited to \$5,000.

Section 32.41 of the Penal Code also provides that a judge can require a defendant to make restitution upon conviction for the offense of issuing a bad check, which is a Class C misdemeanor. The statute provides that the defendant shall submit restitution through the prosecutor's office if collection and processing were initiated through that office. In other cases, restitution may, with the approval of the court in which the offense is filed, be handled through the court. When the court requires restitution, the court clerk should keep records of the restitution transactions and coordinate the payment to the victim.

## **C. Payment of Fine and Costs**

### **1. Installment Payments**

Installment payments are an important alternative means to the full payment of fine or costs. If the judge determines that the defendant is unable to immediately pay the fine and costs assessed, then the judge is required to allow the defendant to pay in specified portions at designated intervals. Art. 45.041(b-2), C.C.P. The portions and intervals are up to the judge based on the individual circumstances. When a judge orders the defendant to pay any part of the fine and costs through installments or at some later date, clerks should make sure that any orders are documented. Many courts also document this using a payment plan application.

### **2. Discharged by Community Service**

Although a defendant may not be sentenced to community service, it is an important alternative method to discharging fines or costs for those that are unable to pay post-judgment. In addition, community service may directly benefit the community in which the criminal offense occurred. The law provides that the court may require defendants who failed to pay previously assessed fines or costs, or who are 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. Art. 45.049, C.C.P. The definition of "community service" is very broad in the statute. The judge may order the defendant to attend any of several programs, including a work skills program, a high school equivalency class, an alcohol or drug program, a rehabilitation program, or a counseling program. The judge may also order a defendant to perform community service for a governmental entity, a nonprofit or other organization that provides services to the general public that enhance social welfare and the general well-being of the community, or an educational institution. Art. 45.049(c), C.C.P. This means that there are no strict parameters regarding the organization type. The entity could include a religious organization or even a for-profit, provided that the other qualifications are met. It is entirely within the judge's discretion to decide which entities qualify.



### **Art. 45.049(e), C.C.P.**

A defendant is considered to have discharged not less than \$100 of fines or costs for each eight hours of community service performed

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

limited in the amount of credit given if it is at least \$100 for every eight hours of community service performed.

Finally, it should also be noted that there are several paths to community service in the law. Under Article 45.0492 of the Code of Criminal Procedure, a judge may allow a defendant younger than 17 years of age to discharge any fine and costs through community service, or tutoring in some instances, without having to first determine that the defendant has failed to pay the fine and costs. Community service may also be ordered as a reasonable condition of deferred disposition under Art. 45.051, C.C.P., or as a requirement for minors charged with certain offenses under Chapter 106 of the Texas Alcoholic Beverage Code.

#### **Practice Note**

Unlike county and district courts, there is no probation department in municipal court that keeps track of community service hours. The court clerk is generally given responsibility for developing methods to track and record community service hours, creating forms to document completion of hours, and properly recording hours. One practice is to make certain that defendants receive a community service log and list of providers approved by the judge in court when they are ordered to perform community service.

### **3. Jail Time Credit**

The judge must credit a defendant for time the defendant served in jail on that charge. Arts. 42.03, Sec. 2, and 45.041, C.C.P. This includes time served in jail from the time of arrest to conviction and time served after conviction. Art. 45.041(c), C.C.P.

The rate of credit is not less than \$150 for a period of time specified in the judgment. "Period of time" is defined as not less than eight hours or more than 24 hours. Arts. 45.041 and 45.048, C.C.P. When a judge enters judgment, he or she must specify the amount of time that the defendant must serve to receive jail credit.

Additionally, defendants may now be entitled to jail credit for time in jail on unrelated, higher offenses. In 2021, subsection (c-1) was added to Article 45.041, requiring a judge to credit a defendant for any time the defendant was confined in jail or prison while serving a sentence for another offense, as long as the time was served after the fine-only misdemeanor was committed.

This new mandatory jail credit must be credited at the time of judgment when imposing a fine and costs.

As custodian of the records, court clerks should properly record jail-time credit. In some instances, the defendant may have enough jail-time credit to satisfy the total fine and court costs; in other instances, it may be just part of the amount owed. If a defendant does not pay any money to the court because he or she had sufficient jail credit for both fine and court costs, the Comptroller does not require the court to remit court costs that were not collected in money.

#### **4. Waiver of Fine and Costs**

Separate from the discussion about alternative means to discharge the fine or costs or jail credit is the concept of waiver. As authorized by Article 45.0491 of the Code of Criminal Procedure, waiver means that the judge would essentially erase the financial obligation to pay the fines or costs. In order to legally do this, prior law required that the defendant “default” prior to the waiver. There was no definition of “default” in the law, and it was often unclear across the state what timelines would be involved from the point of “default” to the waiver. Another requirement was that the judge find the person indigent before waiver if that person was not a child. If those requirements were not met, then the judge could not proceed with waiver of the fines or costs.

The 85th Texas Legislatures substantially altered the judge’s waiver power in 2017. This was followed by further tweaks to waiver provisions in 2019. Legislators completely removed “default” from the statute and broadened those who qualify. Current law now allows the judge to waive all or part of a fine imposed on a defendant if the judge determines that (1) the defendant is indigent or does not have sufficient resources to pay, or was a child at the time the offense was committed, and (2) discharging the fine through community service would impose an undue hardship on the defendant. A judge may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant is indigent or does not have sufficient resources or income to pay, or was a child at the time the offense was committed. Art. 45.0491, C.C.P. From a practical standpoint, this means that a judge no longer needs to determine whether or if the person “defaulted” on that person’s obligation or what definition of indigence to apply. If the judge determines that the person does not have sufficient resources and that community service would be an undue hardship, the judge may now waive all or part of the fine. Waiver of all or part of the costs can occur with only a determination of indigence or inability to pay (or for a child); no finding of hardship is required.

#### True or False

1. When a judge enters a judgment, the penalty is the fine and costs and in some cases, other sanctions. \_\_\_\_
2. Municipal courts may not require restitution. \_\_\_\_
3. Statutes do not establish limits on the amount of maximum possible penalties that municipalities may create in their ordinances. \_\_\_\_
4. If a judge believes that the maximum fine is not high enough, the judge may assess a higher fine. \_\_\_\_
5. Fine penalties for violations of state law offenses vary. \_\_\_\_

6. The maximum possible fine for a Class C Penal Code offense is \$500. \_\_\_\_\_
7. Offenses outside of the Penal Code that are fine-only, regardless of the amount of the fine, are Class C misdemeanors. \_\_\_\_\_
8. When a municipal court orders restitution upon convictions, it may be in an amount up to the amount of the fine assessed, except for the offense of issuance of bad check. \_\_\_\_\_
9. The maximum restitution that municipal courts may require for the issuance of a bad check is \$5,000. \_\_\_\_\_
10. Clerks should keep records of restitution payments and coordinate payments to victims. \_\_\_\_\_
11. Judges who know that a defendant has had a prior conviction can impose a higher fine regardless of how the offense was charged by the officer or prosecutor. \_\_\_\_\_
12. What are judges required to do when a defendant is arrested, placed in jail, and later convicted? \_\_\_\_\_  
\_\_\_\_\_
13. What constitutes a “period of time” for determining jail credit? \_\_\_\_\_  
\_\_\_\_\_
14. What is the clerk’s responsibility regarding records of defendants who have been in jail and later convicted? \_\_\_\_\_
15. What amount may the processing fee not exceed? \_\_\_\_\_  
\_\_\_\_\_
16. If a service charge is assessed, at what amount may it be set? \_\_\_\_\_

True or False

17. When a defendant fails to pay a previously assessed fine, the court may require a defendant to perform community service to discharge the fine. \_\_\_\_\_
18. Judges must specify in a community service order the amount of hours to be worked. \_\_\_\_\_
19. Community service may only be performed for a governmental entity or a non-religious organization. \_\_\_\_\_
20. If a judge determines that working more than 16 hours a week will not be a hardship, the court may order more time. \_\_\_\_\_
21. A judge is not liable for damages arising from an act or failure to act in connection with manual labor if the failure to act was performed under a court order and not intentional, willfully, or wantonly negligent. \_\_\_\_\_
22. When a judge determines that the defendant does not have sufficient resources to pay, and community service is an undue hardship, the court may waive payment of the fine and court costs. \_\_\_\_\_
23. The time payment fee is required to be paid by a defendant who pays any part of a fine, costs, or restitution on or after the 31st day after a judgment is rendered. \_\_\_\_\_

## PART 2 REPORT OF CONVICTION

Courts are required to report to the DPS all traffic convictions and forfeitures of bail in cases involving a law regulating the operation of a vehicle on a highway. The report is to be submitted by the magistrate, judge, or clerk of the court. Sec. 543.203, T.C. As this statute requires reporting if the offense was a law regulating the operation of a motor vehicle, courts are also required to report final convictions or forfeitures of bail on all city ordinance traffic offenses. The court clerk typically prepares this report and submits it to DPS.

Failure of a judge or clerk to properly and timely report final convictions of traffic offenses may constitute misconduct in office and be grounds for removal. Sec. 543.206, T.C. Courts may not submit a record of a traffic offense when the court defers disposition of the case under Article 45.051 of the Code of Criminal Procedure if the defendant completes the terms of the deferral and the case is dismissed. Sec. 543.204, T.C.

The report must be submitted not later than the seventh day after the date of conviction or forfeiture of bail. Sec. 543.203, T.C. This is because the DPS has just 10 days to submit certain convictions pertaining to commercial driver's license holders to the federal government.

Courts are also required to report convictions in certain cases to entities such as the Texas Commission on Alcohol and Drug Abuse (TCADA) and the Texas Parks and Wildlife Department (PWD). A discussion of those offenses that are required to be reported is included in the *State and City Reports* chapter of this Study Guide.

### 543.206, T.C.

The failure to properly and timely report convictions to the DPS may constitute misconduct in office and may be grounds for removal

True or False

24. Courts are required to report to the DPS all convictions for violations of laws regulating the operation of a vehicle on a highway. \_\_\_\_
25. When a defendant posts a bond and fails to appear for traffic offenses, the court must report the bond forfeiture to the DPS when there is a final judgment on the forfeiture. \_\_\_\_
26. If a court fails to properly report traffic convictions to the DPS, the judge or clerk may be removed for misconduct in office. \_\_\_\_
27. Courts are required to report to the DPS within 30 days of the date of conviction. \_\_\_\_

## PART 3 FINE ENFORCEMENT

### A. Failure to Satisfy Judgment

#### 1. Issuing a Capias Pro Fine Writ

Following the judgment and sentence, every court will eventually encounter a case where the defendant has failed to satisfy the judgment ordered in the case. This typically means that the defendant has neglected to pay the fine and costs ordered in the case. A common practice is for the municipal court to send a courtesy notice or make a telephone call, although these practices vary greatly depending on the court. But what happens when all other methods fail to bring the defendant back into court to address the failure to satisfy the judgment? The law provides a way, separate from the arrest warrant, that an officer may detain and transport that person to the municipal court. That method is through a type of writ called the *capias pro fine*.

#### Writ

A written order from the court directing a person to either act in some way or to refrain from an act.

A *capias pro fine* is a writ issued after a hearing for defendant's failure to satisfy the judgment and sentence. The writ, Latin for "that you take for the fine," directs any peace officer to arrest the person and bring him or her immediately before the court. Art. 43.015, C.C.P. This is generally different from an arrest warrant in that the person has already been convicted of the offense and has been ordered to pay fine and costs to the State.

#### Capias Pro Fine

A writ issued after a hearing for failure to satisfy the judgment and sentence. The writ directs a peace officer to bring the person before the court immediately.

The *capias pro fine* has a number of requirements that must be met prior to its issuance. The first is that the case has a written, signed judgment and sentence. Without the judgment, there is no evidence that the defendant owes anything whatsoever to the state. Second, the writ is required to state the amount of the judgment and sentence and command a peace officer to bring the defendant before the court. If it is not possible for the officer to bring the defendant before the court immediately,

then the officer may place the defendant in jail until the business day following the date of the defendant's arrest. Art. 45.045, C.C.P. This is an important consideration for courts, particularly small courts that do not have a staffed court or a judge on the bench throughout the day. If a judge decides to issue the *capias pro fine*, then that judge should be prepared to be available to see the defendant upon arrest. The law requires that the officer may only take the defendant before a municipal judge in the same municipality that issued the *capias pro fine*. Art. 45.045(a-1)(2), C.C.P. Procedures should be in place to avoid the possibility that the defendant could sit in jail without seeing any judge. The county magistrate is not authorized to dispose of the municipal *capias pro fine* case.

Finally, before the judge can issue a *capias pro fine*, the law requires that the court set a show cause hearing on the matter. Art. 45.045(a-2), C.C.P. This hearing should not be confused with the "show cause" hearing required under the Driving Safety or Deferred Disposition statutes. At the hearing on the *capias pro fine*, the defendant would have an opportunity to present evidence as to why the

capias pro fine should not be issued. The conviction will have already been entered, so it is not an opportunity to litigate the facts of the case. Additionally, the court must provide notice of the hearing to the defendant through regular mail. Art. 45.045(a-2)(1), C.C.P. If the defendant fails to appear for the hearing, then the court may issue the capias pro fine. Art. 45.045(a-2)(2)(b), C.C.P.

### Practice Note

It is important to regularly maintain the integrity of the case file and document any changes in the case status. Every case file that is post-conviction should have at a minimum a written, signed judgment. In addition, the clerk should document any changes in the case. This may include events such as contact with the defendant, payment plan details, amounts paid in the case, and docket settings. Prior to issuing a capias pro fine or ultimately committing a person, the court will need to verify that every step required by the law has been both documented and completed.

## 2 Indigency Considerations

An important consideration during the enforcement process is whether or not the defendant has the ability to pay the judgment as ordered. In certain instances, judges are required to determine whether a defendant is able to pay the fine and costs assessed in a case. In Class C misdemeanor cases, this determination is required (1) in open court during or immediately after imposing judgment and (2) before commitment to jail.

Whether or not a particular defendant is able to pay the fine and costs is a complex determination involving numerous factors that widely vary depending on where a defendant lives, especially in a state as large and diverse as Texas. The U.S. Supreme Court has made no attempt to define indigence, leaving that duty to state legislatures. Texas statutes like Articles 45.041, 45.046, and 45.049 of the Code of Criminal Procedure provide judicial discretion in determining whether a defendant is indigent without specifically defining indigence.

The 78th Legislature did, however, define “indigent” to mean “an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines” under Section 133.002 of the Local Government Code for purposes of fees listed in that chapter. The TMCEC application form for time payment, extensions, or community service asks that the defendant note any federal programs that he or she is eligible for and is receiving assistance from. The court should consider this information in combination with all relevant facts regarding the defendant’s ability to pay a fine and costs.

***Williams v. Illinois,  
399 U.S. 235 (1970)***

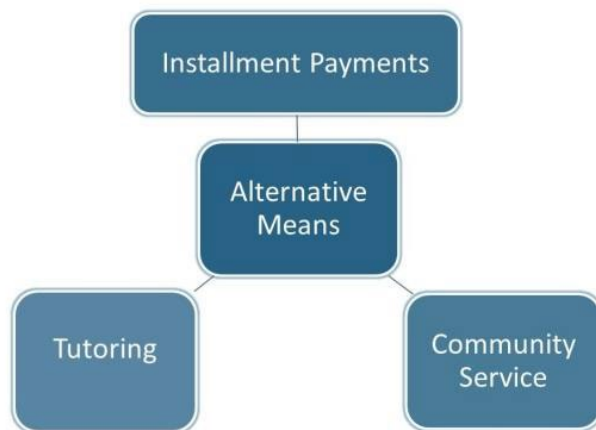
The Equal Protection Clause requires that the ceiling based on imprisonment for any offense be the same for all defendants irrespective of their economic status.

### 3. Commitment

#### a. The Case of Preston Tate

One of the most important cases regarding the equal treatment of court users and imprisonment in jail for fine-only offenses began in Texas and involved a man named Preston Tate. Preston Tate managed to amass fines totaling \$425 from nine traffic convictions in the Houston Municipal Court. He earned only between \$25 to \$60 a week while supporting a wife and two children; and, in Texas at the time, those who were unable to pay were sent to the prison farm to work off the amounts owed. When Preston Tate told the court that he could not pay, he was ordered imprisoned for 85 days.

The case ultimately ended up at the U.S. Supreme Court, where the majority ruled that imprisonment solely because of inability to pay was unconstitutional and violated the Equal Protection Clause of the 14th Amendment. The court respected the fact that the state has an interest in enforcing its judgments; however, it reasoned that automatically converting a fine to a prison term for those unable to pay violated the law. Quoting from another case decided just the year before, the court opined that because Texas had decided that traffic offenses would be fine-only, there should be a ceiling on the punishment for traffic offenses for all defendants. In this case, that ceiling was that, absent any alternative means to pay the amount, punishment could not include incarceration for only one group of people.



The court further explained that “There are, however, other alternatives to which the State may constitutionally resort to serve its concededly valid interest in enforcing payment of fines.” *Tate v. Short*, 401 U.S. 395, 400 (1971). What are the alternative means through which the state could enforce the judgment? Today, Texas law recognizes installment payments, tutoring, and community service. All three of these, in addition to waiver, could be avenues that a court would consider prior to the actual commitment proceedings for a defendant.

#### b. Commitment Requirements

This should not be taken to mean that defendants may never be committed to jail stemming from a fine-only offense. The court in *Tate* pointed out that it was “not precluding imprisonment as an enforcement method when alternative means are unsuccessful.” *Tate v. Short*, 401 U.S. 395, 401 (1971).

Texas law provides for a commitment process in Article 45.046 of the Code of Criminal Procedure. Following a default by the defendant in satisfying the judgment and sentence according to its terms, the court must hold a commitment hearing. Unlike the show cause hearing prior to the issuance of a *capias pro fine*, there is no provision for the court to proceed without the defendant present. In fact, if the defendant cannot be physically present at the hearing, the law permits the defendant to appear before the court by means of an electronic broadcast system. Art. 45.046(c), C.C.P.



At the commitment hearing, the judge must make specific written findings before being able to sign a commitment order committing the defendant to jail to satisfy judgment in lieu of payment of the fine and costs. The judge must make a written determination that:

- (1) the defendant is not indigent and has failed to make a good faith effort to discharge the fine and costs; or
- (2) the defendant is indigent, has failed to make a good faith effort to discharge the fine and costs through community service, *and* could have discharged the fine and costs through community service without experiencing any undue hardship.



Once the judge has made the above written determinations and documented them in the case file, then the judge can commit the defendant to jail to earn jail credit to satisfy the judgment. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. Art. 45.046, C.C.P.

#### Practice Note

The court in *Tate v. Short* observed, “The State is not powerless to enforce judgments against those financially unable to pay a fine; indeed, a different result would amount to inverse discrimination since it would enable an indigent to avoid both the fine and imprisonment for nonpayment whereas other defendants must always suffer one or the other conviction.” With increasing court costs and the advent of mechanisms such as “day fines” in some jurisdictions, this remains a topical issue even today.

## B. Other Enforcement Mechanisms

### 1. OmniBase

There are several enforcement mechanisms available to municipal courts once a defendant fails to satisfy the judgment. One of the more common means is through a private company called OmniBase. The company is a vendor that administers the DPS Failure to Appear Program. This program, authorized in Chapter 706 of the Transportation Code, involves a city contracting with the DPS. Generally referred to simply as Omni, the company acts as a go-between for the municipal court and the Department of Public Safety under the contract. A city may then send identifying information to the DPS to deny renewal of a person’s driver’s license if he or she fails to appear for the prosecution of any fine-only offense or fails to pay or satisfy a judgment ordering the payment of a fine or costs.

Numerous rights and responsibilities are outlined in the contract with DPS, which generally mirror those found in Chapter 706. When a city contracts with DPS, a peace officer issuing a citation for a violation of a traffic law must provide a written warning that tells the person that if he or she



fails to appear for the prosecution of the offense or fails to pay or satisfy a judgment ordering the payment of a fine and costs in the manner ordered by the court, he or she may be denied renewal of his or her driver’s license. The law provides that the warning is in addition to any other warning required by law and may be printed on the citation. In practical terms, most municipalities include the “*Omni Warning*” on the actual citation alongside other statutory warnings.

### How it Works

Pursuant to the written contract that is typically sent to courts by the DPS, if the defendant fails to appear as required or fails to pay or satisfy a judgment of the court, the court sends notice to Omni. Omni, in turn, then notifies DPS to flag the defendant’s driver’s license, prohibiting the defendant from renewing his or her license until the defendant either pays a reimbursement fee or one of several things happens to the case.

For the DPS to lift the hold on the defendant’s license, the court must send what is called a clearance notice to Omni. This tells Omni that one of the statutory conditions to lift the hold has been met, and Omni then transmits the information to DPS. There are two categories of events that will result in clearance notice: (1) paying the \$10 reimbursement fee; (2) not paying the \$10 reimbursement fee. The qualifying events in each category are outlined in Sections 706.005 and 706.006 of the Transportation Code. Due to the wording of the statute, even the most experienced court personnel can be confused as to what event qualifies with payment and what event does not require payment. For that reason, the two statutes, as well as a provision for indigency found in Section 706.006(d) of the Transportation Code, are summarized in the graphic on the previous page.

**Practice Note**

This chapter discusses the procedure when assessing the Omni reimbursement fee. The allocation of that fee, and issues regarding the amount collected or reported, are further discussed in the section of this Guide covering city contracts for enforcement. That section is found in Part 9 of Chapter 7, *State and City Reports*.

## 2. Scofflaw

A city may contract with the county assessor-collector or the Department of Motor Vehicles to deny motor vehicle registration to an owner who has an outstanding warrant for failure to appear or failure to pay a fine involving a traffic offense that has a possible maximum fine of \$200. Ch. 702, T.C. This program is referred to as “Scofflaw.” Prior to 2011, only home-rule cities could enter into these agreements, but that year the authority was extended to

<b>Omni Clearance Notice</b>	
With Payment of \$10 Fee	Without Payment of \$10 Fee
(1) On perfection of appeal (2) Dismissal of the charge for any reason other than lack of evidence (3) On posting of bond (4) Payment of fine and costs (5) On suitable arrangements to pay	(1) On acquittal at trial (2) Dismissal with prejudice for lack of evidence (3) Report was sent in error (4) Case has been destroyed under the records retention policy (5) Defendant was found to be indigent by the court

general-law cities as well. The denial of the vehicle registration is permissive, meaning the county tax-assessor must agree to participate. Cities may collect a \$20 reimbursement fee from defendants who are referred to the Scofflaw program, but the fee can only be used to reimburse the county for its services.

### **3. Collections Vendors**

Article 103.0031 of the Code of Criminal Procedure provides cities the authority to contract with private attorneys or public or private vendors for third party collection services. The city may contract for the collection of the following when they are 60 days past due:

- debts and accounts receivable such as fines, fees, restitution, and other debts or costs;
- forfeited bonds (however, bonds filed by commercial bail bondsmen may not be included in a contract for collection services; only personal bonds and surety bonds not filed by a commercial bail bondsman may be included);
- fines and fees assessed by a hearings officer for administrative parking citations; and
- amounts in cases where the accused failed to appear in compliance with a lawful summons; a lawful order of the court; or as specified in a citation, summons, or other notice for administrative parking. In these cases, the amounts must remain unpaid on the 61st day after the defendant failed to appear.

Vendors and attorneys sending a communication to an accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case, must include a notice of the person's right to enter a plea or go to trial on any offense charged. Article 103.0031(b) provides that a city that contracts with a private attorney or vendor may authorize the addition of a collection fee in the amount of 30 percent on each item that has been referred for collection. Article 103.0031(i) allows cities to contract to collect a debt incurred on an offense that was committed before June 18, 2003, but no collection fee may be added to those amounts.

### **4. Civil Collection of Fines**

Article 45.047 of the Code of Criminal Procedure provides authority for municipal courts to collect fines and costs by civil process. One means is by execution, which is a civil process where a defendant's property may be seized and sold to pay the fine and costs. Section 6.002 of the Civil Practice and Remedies Code provides that a municipality may initiate and prosecute suits without giving security for costs and may appeal from a judgment without giving a supersedeas or cost bond. A supersedeas bond is a bond that is required to set aside a judgment or execution and from which the other party in the lawsuit may be made whole if the action is unsuccessful. A cost bond is a bond that is given by a party to an action to secure eventual payment of such costs as may be required of an appealing party in a civil case. The purpose of the bond is to cover the appellee's (the party in a cause against whom an appeal is taken) costs if the judgment is affirmed, or confirmed, by the court.

The rules governing execution of property are complicated, and clerks should discuss the process with the city attorney. The prosecutor must be involved in most of these processes.

28. What is a *capias pro fine*? \_\_\_\_\_
29. What should every case file have, at a minimum, post-conviction? \_\_\_\_\_  
\_\_\_\_\_
30. Who has the authority to issue a *capias pro fine*? \_\_\_\_\_  
\_\_\_\_\_
31. If a defendant is indigent, what must the court do? \_\_\_\_\_  
\_\_\_\_\_
32. What is the process called that may be used to sell a defendant's property to satisfy a fine? \_\_\_\_\_
33. A contract with DPS for denial of driver's license renewal applies to what offenses?  
\_\_\_\_\_
34. When a city contracts with DPS, when is the \$10 reimbursement fee required? \_\_\_\_\_  
\_\_\_\_\_
35. What kind of city may contract with the county and the Department of Motor Vehicles for the denial of vehicle registration? \_\_\_\_\_  
\_\_\_\_\_
36. Vehicle registration may be denied for what offenses? \_\_\_\_\_  
\_\_\_\_\_
37. What authority does the city have to contract with a vendor for collection of fines? \_\_\_\_\_  
\_\_\_\_\_
38. When a city contracts with a private or public vendor, how old must the debt or failure to appear be before the court can require the defendant to pay 30 percent of the debt owed?  
\_\_\_\_\_

## PART 4 PROBATION

*Black's Law Dictionary* defines probation as “a court imposed criminal sentence that, subject to certain conditions, releases a convicted person into the community instead of sending the criminal to jail or prison.” By that definition, nothing in municipal court would qualify as probation. The Code of Criminal Procedure provides, however, for legal mechanisms in municipal court that would essentially place a person on something similar to probation. These may defer a finding of guilt, subject to certain conditions, and release the person into the community to complete these conditions instead of convicting that person. There is not a collective name for these mechanisms spelled out in the code, but with the understanding that confinement is not a sentencing option in municipal court, “probation” is likely the best collective term for Driving Safety Courses and Deferred Disposition. These are further explored below.

### **A. Driving Safety Courses (DSC) / Motorcycle Operator Courses (MOC)**

Defendants charged with traffic offenses, with some exceptions, may request to take a driving safety course or motorcycle operator training course to have the charge dismissed. Art. 45.0511,

C.C.P. This is a specific course, sometimes referred to by the general public as “Defensive Driving.” The certification and administration of the program is regulated by the Texas Department of Licensing and Regulation (TDLR). The section of the TDLR website providing information on driving safety courses is shown below.

### 1. Offenses to Which DSC/MOC Applies

Article 45.0511 of the Code of Criminal Procedure is entitled “Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures.” These remedial courses are available to dismiss offenses that are in the jurisdiction of the justice or municipal court and involve the operation of a motor vehicle defined by Section 472.022, Subtitle C of Title 7, or Section 729.001(a)(3) of the Transportation Code. For defendants younger than 25 years of age, the article applies to any alleged offense that is within the jurisdiction of the justice or municipal court, involves the operation of a motor vehicle, and is classified as a moving violation. Art. 45.0511(a-1), C.C.P.

**Practice Note**

Offenses defined under the Rules of the Road are generally eligible offenses for drivers to take a driving safety course. There are certain exclusions to this rule listed in the Code of Criminal Procedure, including offenses committed in a construction zone and the offense of passing a school bus. These are also listed below; but for quick reference in court or at the front counter, have the Green Book nearby. The Editor’s Notes under the Rules of the Road tab include a quick summary of eligible offenses.

## 2. Exceptions

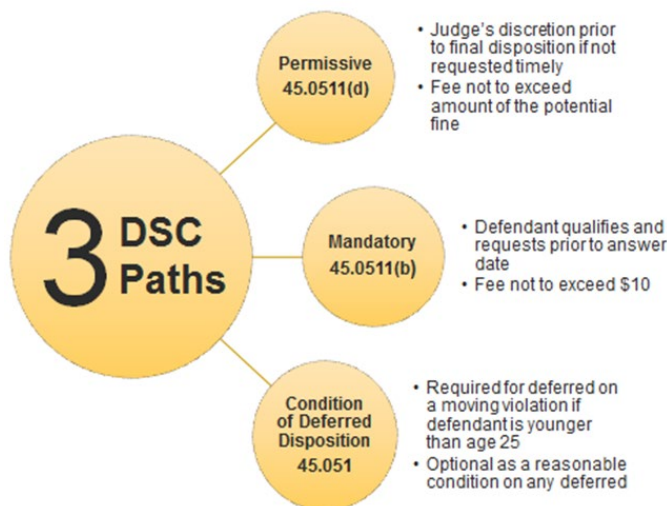
Defendants eligible for driving safety or motorcycle operator courses have the right to take one course in each 12-month period to dismiss certain types of traffic offenses. The following offenses, though, are not permitted for dismissal:

- speeding 25 mph or more over the speed limit;
- driving 95 miles per hour or more;
- offense committed in a construction or maintenance zone when workers are present;
- passing a school bus loading or unloading children;
- leaving the scene of a collision after causing damage to a vehicle that is driven or attended;
- leaving the scene of a collision and failing to give information and/or render aid;
- serious traffic violation; and
- offense committed by a person who held a commercial driver's license at the time of the offense or holds a CDL at the time of the request for DSC, including when the person is driving his or her own personal vehicle.

## 3. Eligibility and Requirements

To be eligible for a DSC or a MOC, the defendant:

- May not have completed an approved driving safety course or motorcycle operator course, as appropriate, within the 12 months preceding the date of the offense (see exception below for specialized safety belt course);
- Must enter a plea of guilty or nolo contendere on or before the answer date on the citation and present the request to take the course to the court in person, by counsel, or by certified mail (postmarked on or before due date);
- Must present to the court a valid Texas driver's license or permit or proof of active military duty status or be the spouse or dependent child of a person on active military duty; and must provide the court evidence of financial responsibility.



Defendants who are otherwise ineligible because they do not enter a plea of guilty or nolo contendere on or before their answer date, or because they have taken a course within the 12 months preceding the request, may still request to take the course. In some courts, this type of course may result from a plea agreement with the prosecutor. It may also result from a defendant's untimely request for a course when appearing in open court after the answer date.

Courts will need to consider processes for addressing these requests to make certain that the case file is properly documented.

As the figure at right indicates, there are different potential fees depending on the type of driving safety course that is ordered.

No matter the path, however, a permissive driving safety course is in the judge's discretion to grant. Defendants must still meet the other eligibility requirements outlined above. The process after the court order will then also be the same as the mandatory course.

#### **Practice Note**

It is important for the court clerk to carefully document which type of driving safety course is ordered by the judge. In some courts, there may be defendants appearing in court prior to their answer date and others appearing in court after the answer date. If the judge grants mandatory driving safety, then the maximum reimbursement fee allowed by law is only \$10. The permissive driving safety course, however, carries a potential amount set as high as the fine amount for the offense. To prevent collection of amounts outside those legally authorized, the clerk will need to pay close attention to the proceedings and inquire with the judge as to the order if it is unclear.

#### **4. Costs**

##### **a. Required Court Costs**

Court cost statutes require the defendant to pay all applicable court costs when the court grants the request for a driving safety course. Sec. 133.101, L.G.C.

##### **b. Administrative Fees**

The court may require a \$10 reimbursement fee if the request is made on or before the answer date on the citation. Art. 45.0511(f), C.C.P. If someone has taken a DSC or MOC in the last 12 months or fails to timely submit their request for a DSC/MOC, and the judge nonetheless grants the course, the judge may require a fine (formerly called a fee as well) in an amount not to exceed the maximum amount of the fine that could be imposed for the offense.

##### **c. Optional Driving Record Fee**

The court may also require the defendant to pay a \$17 reimbursement fee for obtaining a copy of the defendant's driving record from DPS. Secs. 521.047, T.C. and 521.048, T.C. The court must keep a record of the fees, which must be remitted to the State Comptroller quarterly. The Comptroller then credits the fees to DPS. Art. 45.0511(c-1), C.C.P.

#### **5. When Course Granted**

After the defendant enters a plea and makes the request for the course, the court enters judgment on the plea at the time the plea is made, defers imposition of the judgment, and allows the defendant 90 days to successfully complete an approved course and present required evidence of course completion to the court.

## 6. Course Requirements

### a. DSC

If the offense was committed in a passenger car or a pickup truck, the judge must require the defendant to complete a driving safety course approved by the Texas Education Agency.

### b. MOC

If the offense was committed on a motorcycle, the judge may require a motorcycle operator course under the motorcycle operator training and safety program approved by the Department of Public Safety.

### c. Special Safety Belt Course

If the offense charged is either Section 545.412 or 545.413(b) of the Transportation Code involving securing children in child safety seat systems or safety belts, defendants have a right to request a driving safety course. The court, after determining if the defendant is eligible, must require a driving safety course that contains four hours of instruction on the effectiveness and safety of using a child safety seat systems and safety belts. Secs. 545.412(g) and 545.413(i), T.C. If the defendant completes the course, the court must dismiss the case and report the completion date of the driving safety course for inclusion in the defendant's driving record. It should be noted that Secs. 545.412(g) and 545.413(i), T.C., will be repealed effective June 1, 2023 according to House Bill 1560 passed in the 87th Regular Legislative Session.

A defendant may take a specialized driving safety course for failing to keep a child secured in a child passenger safety seat system or a safety belt even though he or she has taken a regular driving safety course in the last 12 months. The defendant's driving record and affidavit must show that the specialized driving safety course was not taken in the last 12 months. The Texas Education Agency refers to this specialized DSC as "Seat Belt School." Art. 45.0511(u), C.C.P. House Bill 1560 also repeals Art. 45.0511(u), C.C.P., effective June 1, 2023.

## 7. Requirements for Dismissal

For dismissal of the case, the defendant must present to the court on or before the 90th day after permission was granted to take the DSC or MOC:

- a certificate of completion of the DSC or MOC;
- the defendant's driving record as maintained by the Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense; or
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course at the time of the request nor has the defendant taken a course in the preceding 12 months from the date of the offense (members of active military duty must swear that they have not taken a course in another state in the preceding 12 months from the date of the offense).

### Riding Dirty

A term used by bikers for operating a motorcycle without a driver's license or without a Class M endorsement on the license.



## 8. Satisfactory Completion

When the defendant presents all the evidence required, the court shall remove the judgment and dismiss the charge.

## 9. Failure to Submit Required Evidence

If a person fails to present the court with the required evidence of course completion, the copy of the driving record as maintained by the DPS, and the affidavit, the court shall set a show cause hearing and notify the defendant by mail of the hearing. If the defendant fails to appear for the show cause hearing, the court shall enter judgment and impose the fine. If the person appears and can show good cause for the failure to furnish evidence to the court, the court may allow an extension of time during which the defendant may present the evidence of course completion and other required evidence.

## 10. Appeal

If a defendant fails to complete the course or fails to submit all the required evidence and the judge subsequently adjudicates the defendant's guilt, the defendant may appeal the conviction.

## 11. Payment of Fine

If the person does not complete the course or present the other required evidence and the fine is imposed, the person is not entitled to a refund of the administrative reimbursement fee or fine under the mandatory or permissive provisions. Defendants who do not complete the driving safety course and do not appeal must pay the fine. The judge, after a show cause hearing, enters judgment, which may be appealed or paid. When the defendant decides not to appeal, the payment becomes due, and the defendant must satisfy the judgment by either paying or through an alternative mean described elsewhere in this chapter.

## 12. Report to the Texas Department of Public Safety

If the defendant completes the DSC or MOC and presents satisfactory evidence of the other requirements and the charge is dismissed, the court reports the date of successful completion to the Department of Public Safety. Art. 45.0511, C.C.P. If the defendant fails to complete the course and does not appeal, though, the court reports the conviction to the Department of Public Safety.

## B. Deferred Disposition

When a court grants deferred disposition, the court is deferring further proceedings in the case without entering an adjudication of guilt. Art. 45.051, C.C.P. Although a prosecutor may routinely offer deferred disposition as part of a plea agreement, only judges have the authority to actually grant deferred disposition. Typically, the clerk's role is to accurately process the deferred disposition paperwork and maintain court records of the probation through its completion.

### Art. 45.051(a), C.C.P.

A judge may order deferred disposition on a finding of guilt. This means that the judge may also order it if the defendant elects for the judge to decide punishment after trial.

Deferred disposition applies to misdemeanor offenses punishable by fine only, with a few exceptions. The following offenses are not eligible for deferred disposition.



- Offenses committed in a construction work zone when workers are present. Sec. 542.404, T.C.
- A minor charged with the offense of consuming an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.04, A.B.C.
- A minor charged with the offense of driving under the influence of an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.041, A.B.C.
- A minor who is at least 17 and has previously been convicted two or more times of an offense to which Section 106.071 of the Alcoholic Beverage Code applies (purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor). Sec. 106.071(i), A.B.C.
- A defendant charged with an offense relating to motor vehicle control who holds or held a commercial driver's license.

## 1. Deferral of Proceedings for Fine-Only Offenses

A defendant must enter a plea of guilty or nolo contendere, or there must be a finding of guilt before deferred disposition may be granted. Art. 45.051(a), C.C.P. This means the judge could grant a deferred disposition prior to trial or even after trial if the defendant elects for the judge to decide punishment at trial. A jury, however, has no authority to require deferred disposition.

After a plea or finding of guilt, the judge may require the defendant to pay court costs before deferring proceedings. Art. 45.051(a), C.C.P. As an alternative, the judge may allow a defendant to enter into an agreement for payment of court costs in installments during the defendant's period of probation, require the defendant to discharge the payment of the court costs by performing community service, or through a combination of both. Art. 45.051(a-1), C.C.P. Pursuant to the definition of "conviction" for most court costs, courts are required to collect costs on cases that are deferred. Sec. 133.101, L.G.C. The judge also sets the fine but does not enter judgment. The judgment, or case disposition, is *deferred*, pending successful completion of any requirements of the probation. Art. 45.051(a), C.C.P. The period of the deferral, however, cannot exceed 180 days. Art. 45.051(a), C.C.P.

### a. Discretionary Conditions

The judge may require the defendant to complete a number of conditions during the probation. These conditions are optional in that they are completely at the discretion of the judge to order when sentencing the defendant. The discretionary conditions are found in Article 45.051(b) of the Code of Criminal Procedure, and include requiring the defendant to:

- post a bond in the amount of the fine assessed to secure payment of the fine;
- pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
- submit to professional counseling;
- submit to diagnostic testing for alcohol or a controlled substance or drug;
- submit to a psychosocial assessment;
- participate in an alcohol or drug abuse treatment or education program;
- complete a driving safety course approved by the Texas Education Agency;

- present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and
- comply with any other reasonable condition.

**b. Required Conditions**

The judge must order certain terms as conditions of deferred disposition if the defendant falls within specific statutory requirements. These conditions are required when probation is ordered and, unlike the discretionary conditions above, are *not* at the discretion of the judge. The requirements, found in Article 45.051(b-1) of the Code of Criminal Procedure, are:

- If defendant is under the age of 25 and charged with a moving traffic violation, the court shall require a driving safety course as a term of deferred disposition. The judge may also require an additional course designed for drivers under the age of 25, although this additional course as listed in Art. 45.051(b-1) is repealed effective June 1, 2023.
- If defendant has a provisional driver’s license and is charged with a moving violation, the court shall require as a term of deferred disposition that the defendant be examined by DPS as required by Section 521.161(b)(2) of the Transportation Code. This section requires DPS to test a person’s ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the person will be licensed to operate. The person must pay DPS a \$10 examination fee.
- If the offense is an Alcoholic Beverage Code offense or the Penal Code offense of public intoxication and the defendant is younger than 21 years of age, as a term of the deferral, the court must require the defendant to take an alcohol awareness course or a drug education program. Until June 1, 2023, a drug and alcohol driving awareness program (DADAP) can be ordered as an alternative to the alcohol awareness course or drug education course. Sec. 106.115, A.B.C. Additionally, the court must report to the DPS the deferred disposition when it is granted.
- The court must require community service as a term of probation when granting deferred if the offense is purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, misrepresentation of age by a minor, or public intoxication. For a first offense, the court must require not less than eight or more than 12 hours community service. For a subsequent offense, the court must require not less than 20 or more than 40 hours of community service. Sec. 106.071(d)(1), A.B.C.

**Practice Note**

Alcohol awareness, drug education programs, or, until June 1, 2023, drug and alcohol driving awareness programs are mandatory for offenses under Chapter 106 of the Texas Alcoholic Beverage Code on both an order of deferred disposition and on an actual conviction. It is not uncommon, however, to see these requirements routinely forgotten in plea agreements negotiated by prosecutors or orders issued by judges. These courses are not only required by law, but also useful rehabilitative tools to prevent future alcohol or drug abuse by minors. The graphic below illustrates the TABC requirements for minors charged with alcohol offenses.



**c. Deferred Fine (Formerly the Special Expense Fee)**

**Deferred Disposition Fine**

An amount that may be set by the judge in an order of deferred disposition. The amount may not exceed the maximum of the potential fine in the case.

The judge may impose a deferred fine to be paid by the defendant when placed on deferred disposition. Art. 45.051(a), C.C.P. The deferred fine, which must be paid during the term of probation, is set according to the potential fine amount. This means that the deferred fine may be any amount up to and including the maximum fine amount provided by law for the underlying criminal offense. The deferred fine can be paid at any time prior to the end of the probationary

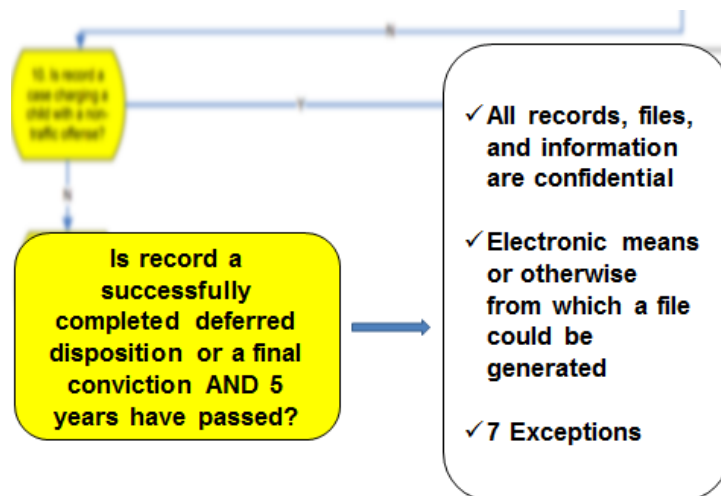
period; and, if the defendant is ultimately convicted, the deferred fine will be credited toward payment of the full fine if it is different than the deferred fine. Prior to January 1, 2020, this amount was called a special expense fee. The 86th Legislature opted to rename the fee as a fine, creating some amount of confusion between the deferred fine and the potential fine that could be assessed if the defendant is unsuccessful with the probation.

**d. Completion of Probation**

At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he or she has complied with the requirements imposed in the deferred disposition order, the judge shall dismiss the complaint; and clearly note on the docket that the complaint is dismissed and that there is not a final conviction. Art. 45.051(c), C.C.P. When the complaint is dismissed and there is not

a final conviction, the complaint may not be used against the person for any purpose. Art. 45.051(e), C.C.P.

In addition, records of cases in which the defendant successfully completes deferred disposition for an offense other than traffic generally become confidential for adult defendants after five years. Art. 45.0218, C.C.P. The law provides that there are only seven -exceptions to this confidentiality, which are specifically named in Article 45.0218: only by (1) judges/court staff, (2) a criminal justice agency for a criminal justice purpose, (3) the Department of Public Safety, (4) the attorney representing the state, (5) the defendant or defense counsel, (6) insurance companies authorized to write motor vehicle liability insurance in this state (if a traffic offense), or (7) if disclosure is required by federal law). For children placed on deferred disposition, the records are similarly confidential, but without a waiting period following successful completion and dismissal. Art. 45.0127, C.C.P.



#### e. Unsuccessful Probation

When a defendant fails to present satisfactory evidence of compliance of the terms of the deferred disposition within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to appear to show cause why the court should not revoke the defendant’s probation. Art. 45.051(c-1), C.C.P. The appearance is commonly called a “show cause hearing.” Article 45.051(d) 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, which results in 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 retake the driving test. If the defendant does not complete the driving safety course or the driving test, on the date of the show cause hearing, the judge shall impose the fine. The imposition of the fine constitutes a final conviction of the defendant.

If a defendant under the age of 17 fails to comply, the court must set the defendant for a contempt hearing under Article 45.050 of the Code of Criminal Procedure. The court may then issue a non-secure custody order for the juvenile defendant to compel his or her appearance.

#### f. Docket Entries

Many courts rely on case management software to prompt for information in a case, but a suggested practice when processing probation cases is the collection and documentation of certain information outlined below. When the judge grants deferred disposition, the clerk should note the following information in the docket:

- the date the judge granted the deferred disposition;

- the deferral period;
- the court costs paid and the amount of the deferred fine imposed;
- the potential fine assessed; and
- whether there was a plea of guilty or nolo contendere, or a finding of guilt after a trial.

At the end of the deferral period, the clerk should also note the information below in the docket. This is particularly important when a defendant is unsuccessful. As discussed, the law requires that the court afford the defendant an opportunity to appear in court prior to final conviction following probation. It is important that this show cause hearing is documented. Docket entries include:

- the final judgment, whether the case was dismissed or there was a conviction;
- any deferred fine paid, method of payment, and receipt number of payment;
- show cause hearing date;
- fine imposed, method of payment, and receipt number, if any; and
- appeal made.

#### **Practice Note**

There are important reporting requirements when processing deferred disposition cases. In some cases, reports must be made upon the probation being ordered; while in others, nothing is reported unless the defendant is unsuccessful. Reporting to the DPS is further discussed in Chapter 7, *State and City Reports*, but with regard to probation, it is important to be aware of the differences, as below:

**Traffic offenses:** If a defendant charged with a traffic offense is granted deferred disposition, the court may not report to the Department of Public Safety that the defendant has been placed on deferred disposition. However, if the defendant fails to complete the terms of deferred disposition and the judge enters a finding of guilt and imposes the fine on the traffic offense, the court is required to notify the Department of Public Safety of the conviction. Sec. 543.204, T.C. The court must submit the report not later than the seventh day after the date on which the judge adjudicates guilt. Sec. 543.203, T.C.

**Alcoholic Beverage Code offenses:** Courts must report to the Department of Public Safety the order of deferred disposition for all minors charged with offenses under the Alcoholic Beverage Code. The report is made at the time the deferred disposition is granted. Sec. 106.117, A.B.C.

## 2. Deferral of Proceedings on Completion of Teen Court Program

A court may also defer proceedings for up to 180 days as part of a teen court program for a defendant who is under age 18 or enrolled in a secondary school. Art. 45.052, C.C.P. Although sometimes confused with a separate court, teen court functions similar to other forms of probation within the municipal court's jurisdiction. Teen court programs also tend to vary widely within individual municipal courts.

The law provides, though, that the defendant cannot have completed a teen court program in the year before the current offense. Upon successful completion, the court shall dismiss the case, which may not be part of the defendant's record for any purpose. Art. 45.052(d), C.C.P. Completion of teen court for a traffic offense is still required to be reported to the Department of Public Safety. Art. 45.052(d), C.C.P. For additional discussion of Teen Court, see Chapter 5 of the Level II Study Guide.

## 3. Deferral of Proceedings for Chemically Dependent Persons

Deferral of proceedings for a chemically dependent person is similar to deferred disposition. The judge may grant a person, charged with an offense that may be related to chemical dependency, deferred disposition under Article 45.053 of the Code of Criminal Procedure. The following information outlines the steps involved with deferred disposition for a chemically dependent person.

### a. Time Period

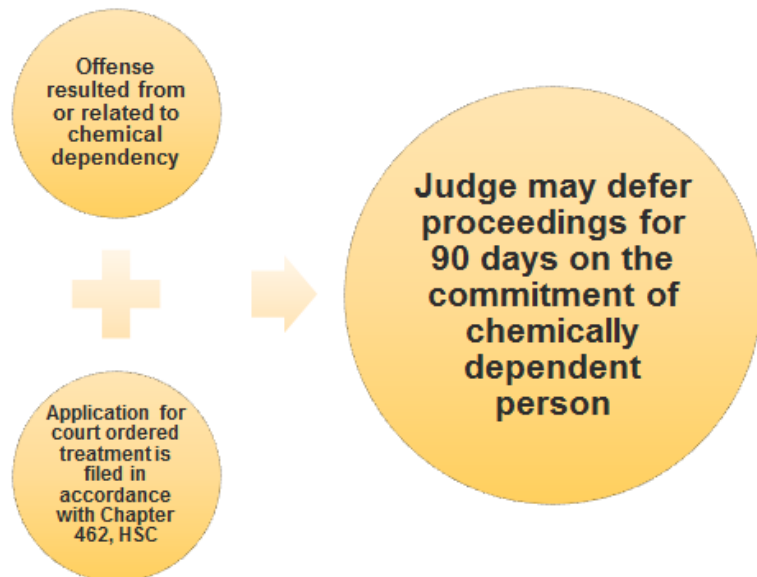
Unlike the regular deferred disposition statute, the court may only defer proceedings for 90 days upon commitment of a chemically dependent person. Art. 45.053(a), C.C.P.

### b. Application

The court must determine if an application for court-ordered treatment of the defendant is filed in accordance with Chapter 462 of the Health and Safety Code. Art. 45.053(a)(2), C.C.P.

### c. Successful Completion

Satisfactory evidence of completion would show that a defendant was committed for and completed a court-ordered treatment in accordance with Chapter 462 of the Health and Safety Code. Art. 45.053(b), C.C.P. If satisfactory evidence is presented at the end of the deferral period, the judge shall dismiss the case. The statute, unlike deferred disposition under Article 45.051 does not provide for a deferred fine.



**d. Failure to Complete**

If evidence is not presented that the defendant was committed and completed the court ordered treatment, the court may impose the potential fine assessed or impose a lesser fine. The imposition of the fine constitutes a final conviction of the defendant. Art. 45.053(c), C.C.P.

39.	What offenses are not eligible to be dismissed by completing a driving safety course? _____ _____ _____
40.	When must a defendant enter a plea to be eligible to take a driving safety course? _____ _____
True or False	
41.	The defendant must be allowed to take a driving safety course if he or she requests one after being found guilty at trial. _____
42.	A defendant who took a driving safety course four months earlier cannot take a driving safety course for ticket dismissal. _____
43.	A defendant must provide a valid Texas driver's license (or be military) and proof of financial responsibility to be eligible for a DSC. _____
44.	Defendants completing a driving safety course do not have to pay court costs. _____
45.	A defendant who is not entitled to take a driving safety course must pay an administrative fee equal to the amount of the fine that could have been imposed. _____
46.	For what offenses must the court order a specialized safety belt course? _____ _____
47.	How long does a defendant have to take a driving safety course and present evidence of course completion to the court? _____
48.	What evidence must a defendant present the court before a court can dismiss a charge for which a driving safety course was granted? _____ _____
49.	Who has authority to grant deferred disposition? _____
50.	List offenses for which a judge has no authority to grant deferred disposition. _____ _____ _____
51.	How may a court require a defendant to pay court costs when granting a defendant deferred disposition? _____ _____

52. What is the maximum amount of time that a judge may place a defendant on probation under deferred disposition? \_\_\_\_\_

True or False

53. The judge may require a defendant who successfully completes his or her deferred to pay the potential fine assessed in the case. \_\_\_\_\_

54. A judge may order a deferred fine when granting deferred. \_\_\_\_\_

55. When the judge grants deferred disposition for a defendant charged with an Alcoholic Beverage Code offense, the judge must require attendance at an alcohol awareness program. \_\_\_\_\_

56. When a defendant under the age of 25 charged with a moving violation is granted deferred, the judge must make the defendant take a driving safety course as a term of the deferred disposition. \_\_\_\_\_

57. When a defendant with a provisional driver's license charged with a moving violation is granted deferred, the only mandatory requirement is to take a driving safety course. \_\_\_\_\_

58. List the information a clerk should document in the docket when a judge grants a defendant deferred disposition. \_\_\_\_\_

59. When a defendant complies with all the terms of deferred disposition, what is the judge required to do? \_\_\_\_\_

60. What information should be entered in the docket when a defendant completes the terms of deferred disposition? \_\_\_\_\_

61. When deferred disposition is granted, when may the court impose the deferred fine (formerly called special expense fee)? \_\_\_\_\_

62. What is the amount of the deferred fine (formerly called the special expense fee)? \_\_\_\_\_

63. What must a judge do if a defendant fails to present evidence of completion of the terms of deferred disposition? \_\_\_\_\_

64. When is a judge required to submit to the Department of Public Safety a report of a conviction in a traffic case if deferred disposition has been granted? \_\_\_\_\_

65. For what offenses is the court required to report an order of deferred disposition? \_\_\_\_\_

66. When a defendant is placed on deferred disposition for an alcohol-related offense by a minor under Chapter 106 of the Texas Alcoholic Beverage Code, how many hours of community service are required for a first offense? \_\_\_\_\_

67. Up to how many days may a judge defer proceedings when a defendant is ordered to attend a teen court program? \_\_\_\_\_



68. What is required in order for a judge to defer proceedings against a committed chemically dependent person for 90 days? \_\_\_\_\_  
\_\_\_\_\_

## PART 5 APPEALS

### A. Right to Appeal

Appeal can mean several things, depending on the type of court and its jurisdiction. Appeal could mean the process of having a higher court conduct a new trial, or having a higher court review the facts and law, or even having a higher court review just questions of law from a proceeding held in the lower court. In certain pre-trial matters, it is even possible for the State to appeal. Art. 44.01, C.C.P. What is clear, however, is that a defendant in any criminal case has the right to appeal. Art. 44.02, C.C.P. This section will explore that right as it pertains to municipal courts.

### B. Appeals from Municipal Courts

Appeals from a municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court. If the municipal court sits in more than one county, the county court in the county where the municipal court is located has appellate jurisdiction to hear the case. *About v. Fuller*, 738 S.W.2d 297 (Tex. App. – Dallas 1987).

***About v. Fuller*, 738 S.W.2d 297 (Tex. App. – Dallas 1987)**

If a city sits in more than one county, the county court at law in the county where the municipal court is located has appellate jurisdiction.

When an appeal bond is not timely filed, the appellate court does not have jurisdiction over the case and shall remand, or send back, the case to the justice or municipal court for execution of the sentence. Art. 45.0426(b), C.C.P. When a defendant fails to file an appeal bond within the required time, the court must still send the case to the county court so that the appellate court may determine jurisdiction. If the case is refused by the county court, it is sent back to the municipal court for entry of final judgment. A writ of procedendo may be submitted by the prosecutor, allowing the county court to declare its lack of jurisdiction and return jurisdiction back to the municipal court to proceed to collect the judgment.

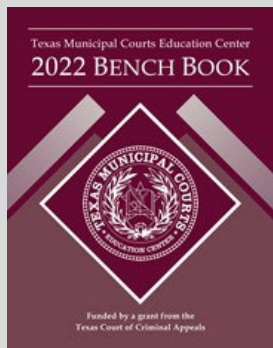
### C. Appeals from Non-Record Municipal Courts

If an appeal is from a non-record court, the trial in the appellate court shall be de novo, the same as if the prosecution had originally commenced in that court. Art. 45.042(b), C.C.P. A trial de novo is actually a completely new trial. This means that the entire case, questions of law, questions of fact, admission of evidence and testimony, is tried again as if there had been no first trial.

### D. Appeals from Municipal Courts of Record

An appeal to the county court from a municipal court of record may be based only on errors reflected in the record. Art. 45.042(b), C.C.P. Refer to Chapter 30 of the Government Code for specific provisions regarding appeals from municipal courts of record.

## Practice Note



Appeals from municipal court, much like the motions for new trial discussed earlier, require the court clerk to be familiar with very specific timelines and procedures. An error documenting one of the steps or relaying incorrect information could have serious legal consequences. A good resource in court is the TMCEC *Bench Book*. The *Bench Book* includes simple checklists for both appeals and motions for new trial.

## E. Appeal Bonds

### 1. Types of Appeal Bonds

Defendants may post either a cash bond or a surety bond with the court. A surety is a person that bonds and obligates himself or herself to guarantee the appearance of the defendant in court at times ordered to answer the charges. Should the defendant fail to appear, the surety is liable on the bond. The court may not require cash, but the defendant may post a cash bond in lieu of sureties. A judge may also permit the defendant to post a personal appeal bond.

### 2. Amount of Appeal Bond

The amount of a bail bond may not be less than two times the amount of fine and costs adjudged against the defendant and may not in any case be for less than \$50. The bond must be made payable to the State of Texas. Art. 45.0425, C.C.P.

## F. Appearance Not Required to Post Appeal Bond

Article 45.0425(b) of the Code of Criminal Procedure provides that without requiring a court appearance by the defendant, the court shall approve an appeal bond in the amount that the court, under Article 27.14(b), notified the defendant would be approved if it otherwise meets the requirements of the Code of Criminal Procedure.

## G. Time to Present Court with Bond

If the defendant appeared in open court, the defendant must give the appeal bond not later than the 10 days after the court rendered judgment. When the appeal bond is filed with the court that tried the case, the appeal is perfected. Art. 45.0426, C.C.P.

### 1. Computing Time

The standard formula for calculating time is to exclude the first day and include the last day. If the last day falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Sec. 311.014, G.C.

## Perfect

To take all legal steps needed to complete or secure.

## 2. Mailbox Rule

A bond is considered timely filed if it is mailed in a first-class postage prepaid envelope and is properly addressed to the clerk on or before the date that it is required to be filed and the clerk receives it not later than the 10th day after the date that it is required to be filed. Art. 45.013(a), C.C.P. The legible postmark affixed by the U.S. Postal Service is prima facie evidence of the date the document is deposited with the U.S. Postal Service. Art. 45.013(b), C.C.P. Clerks should file stamp the envelope and send it with the transcript on the appeal. Under the mailbox rule, a “day” does not include Saturday, Sunday, or a legal holiday. Art. 45.013(c), C.C.P.

### H. Effect of Appeal

When a defendant files the appeal bond required by law with the judge, all further proceedings in the case in the municipal court shall cease. Art. 45.043, C.C.P. This means that jurisdiction is now in the county court, which will hear all motions, pleadings, and hearings in the case.

### I. Sending the Case to Appellate Court

“The courts typically characterize the powers and duties of the district clerks as ministerial functions.” Tex. Atty. Gen. Op. JM-694 (1987). The Texas Court of Criminal Appeals has also characterized the role of the court clerk in the appellate process. The forwarding of appeals is a mandatory ministerial duty and not discretionary for the clerk or the judge for that matter. *Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986). See *Appendix A* for a Checklist for handling appeals—for both non-record courts and record courts.

#### Practice Note

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

In appeals from justice and municipal courts, all the original papers in the case, any appeal bond, and the certified transcript of all the proceedings had before the court shall be delivered without delay to the clerk of the court to which the appeal is taken, who shall file the same and docket the same. Art. 44.18, C.C.P. When a clerk certifies a transcript, the clerk authenticates it by attesting that the information contained in the transcript is true. An appeal by the defendant or the State may not be dismissed on account of any defect in the transcript. Art. 45.0426(c), C.C.P.

### J. Conviction or Affirmance of Judgment on Appeal

In a trial de novo on appeal, when there is a conviction, the fine stays with the county. There is no requirement for the county to return the fine money to the municipal court. When an appeal is taken from a municipal court of record and the judgment is affirmed on appeal, the fine imposed

on appeal and the costs imposed on appeal shall be collected from the defendant and paid into the municipal treasury. Art. 44.281, C.C.P.

### **K. Withdrawal of Appeal**

In non-record courts there is no way to withdraw or dismiss an appeal. In record courts, a defendant or his or her attorney is required to file a motion to withdraw the appeal.

69. Does someone charged with a city ordinance violation have the right to appeal his or her conviction? \_\_\_\_\_

70. Does someone who fails to appear and is later arrested and convicted have a right to appeal his or her conviction? \_\_\_\_\_

71. Which court typically has jurisdiction over municipal court appeals? \_\_\_\_\_

72. When a defendant fails to file his or her bond with the municipal court timely, what happens to the appeal? \_\_\_\_\_

73. What happens when an appellate court determines that it does not have jurisdiction to hear a case? \_\_\_\_\_

74. What happens to a case appealed from a non-record court? \_\_\_\_\_

75. What is the appeal based upon from a record municipal court? \_\_\_\_\_

76. List types of appeal bonds. \_\_\_\_\_

77. What must the amount of an appeal bond be? \_\_\_\_\_

#### True or False

78. In a municipal court, a defendant can mail to the court a plea of guilty or nolo contendere and appeal his or her conviction without making a personal appearance in court. \_\_\_\_\_

79. When a defendant appears in open court, how long does he or she have to file the appeal bond with the court? \_\_\_\_\_

80. When calculating when a defendant is to file an appeal bond, does the court count the day judgment was entered? \_\_\_\_\_

81. When calculating time to present the court with an appeal bond, does the court count the 10th day? \_\_\_\_\_

82. When calculating time to present the court with an appeal bond, does the court count the 10th day if it falls on a Saturday? \_\_\_\_\_

83. Explain the mailbox rule. \_\_\_\_\_

84. When is a defendant's appeal completed? \_\_\_\_\_

85. What is the role of a clerk in the appellate process? \_\_\_\_\_

86. If a clerk makes a mistake on the transcript, does this cause the appeal to be dismissed?  
\_\_\_\_\_
87. When a case is appealed, what does a non-record municipal court send to the appellate court? \_\_\_\_\_
88. What happens to municipal court proceedings when an appeal bond is filed with the court?  
\_\_\_\_\_
89. What happens to the fine assessed in the county court against a municipal court defendant who has appealed his or her case from a non-record municipal court?  
\_\_\_\_\_
90. May a defendant withdraw an appeal and pay the fine in a non-record municipal court?  
\_\_\_\_\_
91. If an appeal is from a court of record, can a defendant withdraw an appeal? \_\_\_\_\_

**APPENDIX A: CHECKLIST FOR HANDLING APPEALS**  
**APPEALS CHECKLIST**  
**FOR NON-RECORD MUNICIPAL COURTS**

- All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.
- Defendant is not required to go to trial in order to appeal.
- Judgment is entered (conviction). Art. 45.041, C.C.P.
  - Defendant can plead guilty or nolo contendere and appeal.
  - If defendant does not complete a driving safety course or the terms of deferred disposition, after the court enters final judgment, the defendant may still appeal.
- Defendant gives notice of appeal (but is not required to do so). Art. 45.0426(c), C.C.P.
- Defendant appeared at trial or in open court – 10 days from date of judgment to file appeal bond. Arts. 44.16 and 45.0426(a), C.C.P.
  - Mailbox Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed. (Keep envelope) Art. 45.013, C.C.P.
  - If the appeal bond is not timely, the municipal court must still send it to the appellate court.
- Defendant appears by mail or in person at the clerk’s window – court must either personally deliver notice of the amount of fine and appeal bond or notify the defendant by mail. Defendant has up to 31 days from the date of receiving the notice to file an appeal bond. Art. 27.14(b), C.C.P.
  - If appeal bond is not timely filed, the municipal court must still send it to the appellate court.
- Appeal appearance bond must be at least two times the amount of the fine and court costs, but in no case less than \$50. Art. 45.0425(a), C.C.P.
- Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond. Arts 17.38, 44.20, C.C.P.
  - Conditions of the appeal bond – Must recite that the defendant has been convicted and appealed and will make a personal appearance before the court to which the appeal is taken instanter, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the appealed case before the appellate court. Art. 45.0425(b), C.C.P.
- When court receives bond, clerk should date stamp day received.
  - Bond filed with court perfects appeal. Art. 45.0426(a), C.C.P.
- Give bond to judge to make a determination if the surety is sufficient. Art. 44.04(e), C.C.P. If appeal bond otherwise meets the requirements of the Code of Criminal Procedure, the court must approve the bond. Art. 45.0425, C.C.P.

- Clerk makes copies of all original papers in the case file.
- Clerk sends the case with all original papers and the bond with a certified transcript to the appellate court (usually county court). Art. 44.18, C.C.P.
- Case is tried de novo (new trial) in county court. Arts. 44.17 and 45.042(b), C.C.P.
- If defendant is convicted in appellate court, appellate court collects fine and deposits it in the county treasury.
- Withdrawal of appeal
  - Defendant may not withdraw appeal from a non-record municipal court.
- If bond filed after deadline, the appellate court shall remand the case to the municipal court to collect judgment. (If the court receives the case back, the court should notify the defendant that the fine and costs are due in the municipal court. If the defendant fails to pay the fine and costs, the municipal court can issue a capias pro fine for collection of the judgment.)
- If the bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.

## **CHECKLIST FOR APPEALS FROM MUNICIPAL COURT OF RECORD**

- All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.
- Defendant is required to go to trial and a record of the trial must be made.
- Judgment is entered (conviction). Art. 45.014, C.C.P.
- Defendant makes a written motion for a new trial not later than 10th day after date on which judgment is rendered. Sec. 30.00014(c), G.C.
  - The motion may be amended with permission of the court not later than the 20th day after the date on which the original motion is filed.
  - The court may extend the time for filing or amending not to exceed 90 days from the original filing deadline.
  - If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.
- If the motion for new trial is denied, the defendant must give notice of the appeal not later than the 10th day after the date on which the motion for new trial was overruled. Section 30.00014(d), G.C.
  - The notice of appeal may be given orally in open court if the defendant requested a hearing on the motion for new trial.
  - If there is no hearing on the motion for new trial, the notice of appeal must be in writing and must be filed with the court not later than the 10th day after the motion for new trial is overruled. The court may extend the time period not to exceed 90 days from the original filing deadline for good cause.
- The appeal bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. Sec. 30.00015(a), G.C.
- The appeal bond must be in the amount of \$100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater. Sec. 30.00015(b), G.C.
  - Conditions of appeal bond – Must state that the defendant was convicted in the case and has appealed; and be conditioned on the defendant’s immediate and daily personal appearance in the court to which the appeal is taken. Sec. 30.00015(c), G.C.
- Defendant must pay a fee for an actual transcription of the proceedings. Sec. 30.00014(g), G.C.
- Defendant must pay for a reporter’s record. Sec. 30.00019(b), G.C.
- Record on appeal – must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00016, G.C.
  - The clerk’s record must conform to the provision in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00017, G.C.



- The bills of exception must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Sec. 30.00018, G.C.) (A formal statement in writing of the objections or exceptions taken by a party during the trial of a cause to the decisions, rulings, or instruction of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and, in order to attest its accuracy, signed by the judge.)
- The reporter's record must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00019, G.C.
- Transfer of the record – Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file the reporter's record, a written description of material to be included in the clerk's record in addition to the required material, and any material to be included in the clerk's record that is not in the custody of the clerk. Sec. 30.00020(a), G.C.
  - On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals. Sec. 30.00020(b), G.C.
  - After the judge approves the record, the clerk shall promptly send the record to the appellate court clerk for filing. Sec. 30.00020 (c), G.C. The appellate court clerk notifies the defendant and prosecutor that the record has been filed.
  - The appellate court determines appeals from the municipal court of record on the basis of errors that are set forth in the appellant's motion for new trial and presented in the transcript and statement of facts. Sec. 30.00014(b), G.C.
- Brief on appeal
  - Appellant must file a brief with the appellate court clerk not later than the 15th day after the date on which the clerk's record and reporter's record are filed with the appellate court clerk.
  - The appellee must file the appellee's brief with appellate court clerk not later than the 15th day after the date on which the appellant's brief is filed.
  - Each party, on filing the party's brief with appellate court clerk, shall deliver a copy of the brief to the opposing party and to the municipal judge. Sec. 30.0021, G.C.
- Withdrawal of appeal
  - Defendant may submit a written motion to withdraw appeal.
- If bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.
- The appellate court clerk shall mail copies of the decision to the parties and to the municipal judge as soon as the decision is rendered.
- Disposition on appeal – Appellate court may:
  - Affirm the judgment of the municipal court of record;
  - Reverse and remand for a new trial;

- Reverse and dismiss the case; or
- Reform and correct the judgment.
- If appellate court grants a new trial, it is as if the municipal court of record granted the new trial. The new trial is conducted by the municipal court of record. Sec. 30.00026, G.C.
- If the judgment is affirmed, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant, and the fine of the municipal court when collected shall be paid into the municipal treasury. Art. 44.281, C.C.P.

## ANSWERS TO QUESTIONS

### PART 1

1. True.
2. False.
3. False.
4. False.
5. True.
6. True.
7. True.
8. False (there is no cap on restitution, except on the offense of issuance of bad check, when ordered as part of the sentence upon conviction; when ordered as a condition of deferred, restitution can be in an amount up to the fine that could have been assessed).
9. True.
10. True.
11. False.
12. The court is required to give the defendant credit on his or her sentence for the time that the defendant spent in jail from the time of his or her arrest and confinement until his or her sentence by the trial court.
13. “Period of time” is defined as not less than eight hours or more than 24 hours as specified in the judgment of a case.
14. As custodian of the records, clerks should properly record jail-time credit on a defendant’s case file and in the docket.
15. The processing fee may not exceed five percent of the amount of the fee, fine, court costs, or other charge being paid.
16. The amount of the service charge is the same as the fee charged for the collection of a bounced check (a check drawn on an account with insufficient funds).
17. True.
18. True.
19. False. The definition of community service is now broad. It may be a governmental entity, a nonprofit, or another organization that provides services to the general public that enhance social welfare and the well-being of the community. What qualifies is up to the judge.
20. True.
21. True.
22. True.
23. True.

### PART 2

24. True.
25. True.
26. True.
27. False (must be reported not later than the seventh day).

### **PART 3**

28. A *capias pro fine* is a writ issued after a hearing for failure to satisfy the judgment and sentence. The writ directs a peace officer to bring the person before the court immediately. See Article 43.015(2) and Article 45.045 of the Code of Criminal Procedure.
29. At a minimum, every case file should have a written, signed judgment post-conviction. Without this, the court cannot proceed to any of the enforcement mechanisms available under the law.
30. Only the judge.
31. The court has a duty to inquire into the defendant's ability to pay. There are alternative means through which the defendant can discharge the judgment; the judge may also determine that fine and costs should be completely waived.
32. Execution.
33. Any fine-only offense.
34. When a defendant perfects an appeal of the case for which the warrant of arrest was issued or judgment arose; when a defendant posts bond or gives other security to reinstate the charge for which the warrant was issued; when the defendant pays the fine and costs owed on the outstanding judgment or makes suitable arrangement to pay the fine and costs within the court's discretion; when the case is dismissed.
35. Current law allows any city type to contract.
36. Vehicle registration may be denied for certain traffic offenses that have a maximum possible penalty of \$200.
37. Article 103.0031 of the Code of Criminal Procedure provides authority for a city to contract with a private attorney or vendor to collect fines, fees, restitution, and other debts or costs.
38. The debt or failure to appear must be owed on the 61st day after the defendant was ordered to pay or failed to appear.

### **PART 4**

39. The following offenses cannot be dismissed through a driving safety course:
  - Speeding 25 mph or more over the speed limit;
  - Driving 95 mph or more;
  - Offense committed in a construction or maintenance zone when workers are present;
  - Passing a school bus loading or unloading children;
  - Leaving the scene of a collision after causing damage to a vehicle that is driven or attended;
  - Leaving the scene of a collision and failing to give information and/or render aid;
  - Serious traffic violation; and
  - Offense committed by a person who held a commercial driver's license at the time of the offense or holds a CDL at the time of the request for DSC, including when the person is driving his or her own vehicle
40. On or before the answer date on the citation.
41. False (the defendant must enter a plea on or before his or her appearance date; after trial, it is within the judge's discretion to grant).

42. False (the judge can grant a DSC in his or her discretion).
43. True.
44. False.
45. False (defendants entitled to take a DSC may be required to pay an administrative fee of up to \$10; those granted a DSC under the court's discretionary power may be required to pay an administrative fee up to the amount of the fine that could have been imposed).
46. Violation of the child safety seat offense under Section 545.412 or failure to secure a child in a safety belt under Section 545.413 of the Transportation Code.
47. 90 days.
48. Evidence of completing the course (uniform certificate); a certified copy of his or her driving record as maintained by the Department of Public Safety; and an affidavit. (Note: If the defendant is on active military duty, the court most likely will not have the defendant's driving record from DPS.)
49. Only the judge.
50. The following offenses are not eligible for deferred disposition:
- Offenses committed in a construction work zone when workers are present.
  - A minor charged with the offense of consuming an alcoholic beverage if the minor has been previously convicted twice or more of this offense.
  - A minor charged with the offense of driving under the influence of an alcoholic beverage if the minor has been previously convicted twice or more of this offense.
  - A minor who is not a child (under age 17) and who has been previously convicted at least twice of an offense to which Section 106.071 of the Alcoholic Beverage Code applies.
  - A defendant charged with a traffic offense that has a commercial driver's license or had one at the time the traffic offense was committed.
51. The judge can require the defendant to pay court costs before granting deferred disposition, or allow the defendant to pay in installments; by performing community service; or by both installments and community service during the probation.
52. 180 days.
53. False, generally fines as punishment for the offense are only imposed upon conviction. It is worth noting here, however, that defendant could have been ordered to pay a deferred fine (formerly called a special expense fee) as a condition of the probation. If the defendant is unsuccessful, then the potential fine possible in the case, as provided for in the fine range for the specific offense and set by the judge, could be assessed. Any money paid for the deferred fine would be applied to that amount.
54. True.
55. True.
56. True.
57. False (the defendant must be examined by the Department of Public Safety).
58. The following information should be entered in the docket when a judge grants deferred disposition: (1) the date the judge ordered the sentence to be suspended and the disposition deferred; (2) the deferral period; (3) the court costs paid; (4) the fine assessed; (5) whether

there was a plea of guilty or nolo contendere, or whether there was a finding of guilt after a trial.

59. Dismiss the case.
60. The clerk should note in the docket that the complaint is dismissed (after the judge signs the dismissal judgment).
61. The court may assess a special expense fee to be paid before the end of the deferral period.
62. The special expense fee may not exceed the amount of the fine that could be imposed.
63. When a defendant fails to present satisfactory evidence of compliance of the terms of the deferral within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to appear to show cause why the order of deferral should not be revoked.
64. The court does not submit to DPS a record of a traffic case where deferred disposition has been granted unless the defendant fails to complete the terms of deferred disposition and the judge enters a final judgment of guilty. Then the judge reports a conviction to DPS.
65. The court is required to report an order of deferred disposition for all minor Alcoholic Beverage Code offenses.
66. For a first offense, the court must require not less than eight or more than 12 hours community service.
67. A court may defer proceedings for up to 180 days as part of a teen court program for a defendant who is under age 18 or enrolled in a secondary school.
68. Proceedings against a committed chemically dependent person may be deferred for up to 90 days if the court finds (1) the offense resulted from or was related to defendant's chemical dependency; and (2) an application for court ordered treatment of the defendant is filed in accordance with Chapter 462 of the Health and Safety Code.

## **PART 5**

69. Yes.
70. Yes.
71. The county court.
72. If the defendant fails to file an appeal bond within the required time limit, the municipal court sends the appeal to the county court. The county court has to make the decision whether or not to take jurisdiction of the case. If the county court decides that it does not have jurisdiction, it sends the case back to municipal court.
73. The appellate court sends the case back to municipal court, which can then collect its judgment.
74. The trial in the appellate court is de novo, a new trial as if the case had originally commenced in that court.
75. The appeal is based upon errors reflected in the record of the trial.
76. The types of appeal bonds are: cash appeal bond, surety appeal bond, and personal appeal bond.
77. An appeal bond may not be less than two times the amount of the fine and court costs, but it may be more. In no case can it be less than \$50.
78. True.

79. If the defendant appears in open court, the defendant has 10 days after the judgment is entered to present the court with an appeal bond.
80. No (the court counts the following day as day one).
81. Yes.
82. No.
83. The mailbox rule provides that a document may be filed with the court by mailing it in a first class postage prepaid envelope, properly addressed to the clerk, on or before the date the document is required to be filed. It is considered timely filed if the clerk receives it not later than the 10th day after the date that it is required to be filed. Hence, an appeal bond is timely filed if it is received timely under the mailbox rule.
84. A defendant's appeal is completed when the defendant presents the court with an appeal bond in the required time period.
85. The clerk's role is characterized as ministerial. When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it with the date it was filed with the court and then give it to the judge. The clerk has a mandatory ministerial duty to send the appeal to the appellate court.
86. No.
87. Along with the transcript, the court is required to send all the original documents in the case. The court keeps copies for its file.
88. All proceedings in municipal court cease.
89. If there is a conviction in the county court, the county keeps the fine money and reports the court costs to the State.
90. No, not without a writ of procedendo.
91. Yes.