Texas Municipal Courts Education Center

Level Two Guide

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Municipal Court Guide: Level II

Thirteenth Edition

Funded by a grant from the Texas Court of Criminal Appeals

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PREFACE

About this Book

Many of today's court clerks will no doubt be surprised by this statement, but once upon a time there was no organized training available for municipal court clerks. In those days, there was no Regional Clerk Seminar, no Court Clerk Certification Program, and no single guide for municipal court practice. This changed more than 20 years ago when TMCEC, with a committed group of court clerks and judges, embraced the idea that it was not only judges that needed access to continuing education. Individuals like Margaret Robbins, the first Clerk Program Director for TMCEC, led the effort to provide guidance to court clerks at a time when even judicial education was still developing. The result of these efforts included the original edition of the book that you now have in your hands.

This book is one of the oldest continuous publications offered by TMCEC. The Guide predates the *Judge's Book*, the *Class C and Fine-only Misdemeanors Handbook* (the "Green Book"), and even (just barely) the Certification Program itself. In the early days, the Guide was solely tied to the Certification Program. Attend a test review session and you could get a copy of the Guide in a 3-ring binder. Traces of this remain, as the Guide is still known informally as the "Study Guide." In fact, up to 2013, the title on the cover still read, a bit cryptically, "Municipal Court Clerk Certification Program: Level I." The group that created the original Guide, of course, knew what they were doing. This book is easily the most important single resource for preparing to take the certification test. Times have changed, though, and while it remains primarily a study tool, the Guide is also used as quick reference or as a knowledge base by court clerks, judges, and prosecutors across Texas. The perception of the court clerk has changed as well. More and more cities are looking at the court clerk as a court professional. Professionals deserve an equally professional publication that guides them, not only to pass a test, but also to gain a level of understanding of municipal court that is expected of a professional. Looking back at the progression of editions, the development and professionalization of court clerk education is obvious. From the first edition in a 3-ring binder, to the ninth edition as a collection of loose-leaf papers topped by a blue cardboard cover, to the current thirteenth edition with actual spiral binding, the Guide has evolved with the development of court clerk education.

The Thirteenth Edition

First, it is important to note that compared to the last two editions, there have been considerably less changes to this Guide following the 87th legislative session. Changes to look for in Level II include updates to jail-time credit and revisions to improve the clarity of information and to remove information that is outdated or no longer relevant,

Second, every two years revisions to this book are approached with an eye to what is happening around the state. TMCEC staff and attorneys have the opportunity to travel and visit with clerks and judges at our seminars from El Paso to Houston, from Amarillo to McAllen, and every point in between. There are certain recurring questions, and topics, that often jump out as areas that need further education or explanation. This is not to mention the legal calls that TMCEC attorneys receive. Oddly, every call can generally be categorized, and there have been times that unrelated callers have asked the same question within minutes of each other. There are only four to five attorneys that answer these calls for every municipal court in Texas; you can bet TMCEC hears about current recurring issues. Consequently, in this edition you will find certain sections have been edited to address confusion. These include areas such as the right to counsel, court records requests, and the classic number one question asked on the 800 line from 2014 – 2016: "how do I know it's a commercial driver's license?"

Third, those familiar with prior editions will note formatting changes that were first rolled out in the Eleventh Edition. Considerable efforts have been made to both Guides to provide for different learning types and also to make the material more accessible. Due to the fact that many clerks not only use this book to study for a test, but also as a quick reference, practice notes continue to be added throughout the texts. These can be found in shaded boxes titled "Practice Note" within the chapters. Some are provided to give clerks

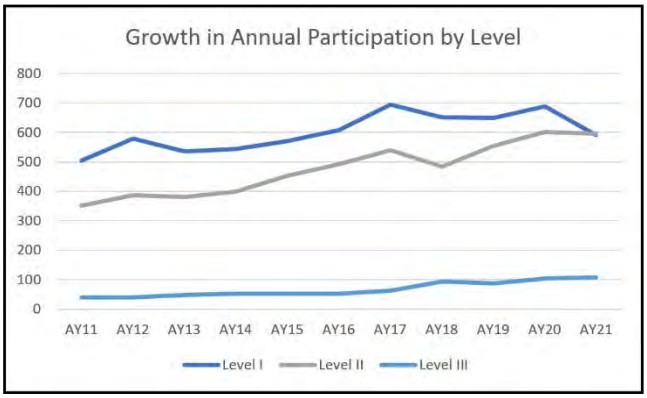
additional background in the subject matter, and some provide suggested practices or interesting legal issues on a topic.

Fourth, in Level II it is assumed that the reader has read and mastered concepts first presented in Level I. Some chapters will "get the reader up to speed" by reviewing legal concepts. Most of the chapters in this book, however, such as Children and Minors or Bond Forfeitures, will jump right into the material assuming basic concepts were mastered in Level I.

Finally, do not forget about the Appendix. The glossary of defined terms has been expanded in Appendix A and quick legal reference cards have been added to Appendix B. These are by no means meant to be a comprehensive dictionary; rather, they are meant to be another resource to assist in understanding certain concepts. These resources are also intended to give new court clerks foundational knowledge. There are literally enough Latin terms to fill a legal dictionary. The goal with the quick reference is to get new clerks started with some basic knowledge to help them begin to grasp the language of the law. It is highly recommended that new clerks reference these at the New Clerks Conference. For Level II, the resources may provide a quick reminder or refresher on the material.

Court Clerk Certification Program

The Municipal Court Clerk Certification Program celebrated its 25th anniversary in 2021 and is still going strong in 2022. Considering it is only a little more than two decades old, the program has grown by leaps and bounds. Part of this can be attributed to a greater understanding among municipal courts around the state as to the importance of court clerk education and part to the growing perception in cities that a certified court clerk may help run the municipal court more efficiently, professionally, and accurately. The days of plugging in any city employee into the court are long past. Today's court clerks handle tasks that require an increasingly professional workforce. This includes handling confidential juvenile records, processing both criminal and civil cases, and accurately reporting dispositions of certain cases to the state and national criminal databases that effect a person's ability to possess firearms.



Participation in the certification program is consistently on the rise, with the exception of a downturn in 2020 due to COVID-19. There has been nearly a 45% increase in participation over the last 10 years. Certification at the highest level, Level III, has almost tripled in the last 10 years. It is highly recommended that new court clerks or those that are not yet certified participate in the program. San Antonio, which requires all court clerks to be at a minimum certified at Level I celebrated its first ever Level III clerk in 2020. The Municipal Courts of Georgetown, Katy, League City, Richardson, Round Rock, and Webster are all tied for the greatest number of Level III Certified Clerks with three each. Anecdotal evidence also suggests that cities are looking for certified court clerks increasingly in job postings.

The certification program curriculum that court clerks are tested on is tied to this book, the New Clerks Conference, and individual presentations in the Fundamentals Track at every Regional Clerk Seminar. That is to say, the goal is to take common areas of the law encountered in municipal court, as outlined in the Guide, and then provide multiple avenues to learn the area. A clerk will encounter a discussion on the right to counsel in municipal courts at New Clerks, for example, and then may read about important legal concepts governing the right in this Guide, and then participate in a breakout class discussion at Regional Clerks on the topic. In the words of writer Douglas Adams's fictional detective Dirk Gently, "everything is connected."

How to Use the Guides

One goal of this book is to help municipal court clerks prepare for the court clerk certification exam. Using this book as a study guide and answering the practice questions is the single best method to prepare for the certification exam. The practice questions are not the exact same questions that appear on the exam, but they test on similar concepts and are generally of a similar style to those that clerks will encounter on the exam. The material in the guide is divided into chapters with related questions following each topic or section. Answers to the questions may be found at the end of each chapter. To help clerks find specific topics, a table of contents is found at the start of each chapter. As stated, the most efficient way to prepare for the exam with this guide is to read and review the material in each section then work through all the questions. Upon completion of each section, check your answers with the answer key and correct your work.

Not Legal Advice

Every effort has been made to ensure the accuracy and completeness of this work; however, the guide is a summary of applicable law and is not an authority. Throughout the text, the law is frequently paraphrased to facilitate understanding. This study guide is for educational purposes only and may not be used as a substitute for legal advice or counsel. Should any material in this publication conflict with constitutional, statutory, or case law, the law provided by the constitution, statute, or case prevails.

This book is intended to be a guide; and as such, it is not a substitute for thorough legal research and the advice of legal counsel or your police advisor. It is not intended to provide legal advice. If you are using this book as a secondary reference, this book should be the starting point to your research. Individual statutes may have additional requirements, including culpable mental states, specific elements, or defenses that this book does not explore in depth or as comprehensively as to be substituted for legal advice provided by an attorney. As always, consult your legal counsel for specific questions of law or application.

Acknowledgements

This book would never have come into being or lasted as long as it has without the incredible efforts of many individuals throughout the years. This includes the original efforts of Margaret Robbins and the court clerks that worked together to create this book. Clerks everywhere remain grateful to this day. In addition, every Clerk Program Director in the last 20 years has had the pleasure of editing this book in very short order following a legislative session. It is not an easy task by any means. We also remain grateful to TMCEC staff, faculty, and the many individuals who have made suggestions, offered edits, or provided opinions on the use of this book throughout the years.

Special thanks go to the contributions of the TMCEC staff that contributed to this edition: Ben Gibbs, Mark Goodner, Regan Metteauer, Ned Minevitz, Lily Pebworth, Elaine Riot, and Ryan Turner.

TMCEC
May 2022

Municipal Court Guide: Level II

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Rights and Roles

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INTRODUCTION

Municipal courts in Texas are state courts and handle criminal offenses. It is important to remember, as with any level of criminal charge, that the defendant has important rights under both state and federal law. These rights govern most aspects of the defendant's interactions with the police and the state andextend to that person's appearance in court. This chapter will take a closer look at the rights of the accused. In addition, the chapter will discuss the role that the court plays with regard to the treatment of court users and the perception of the court.

PART 1
RIGHTS

A. Rights of the Accused

Under our American system of criminal justice, all persons are presumed innocent until proven guilty. Both the U.S. and Texas Constitutions also require that the government provide due process of law to those accused of a crime. Due process of law is a legal concept embodied in the 5th and 14th Amendments that requires states to use fair procedures when depriving a person of life, liberty, or property. This includes a host of procedural protections, including notice as to a criminal charge, admonishments, and a right to be heard in open court. Following the requirements of due process prevents arbitrary, unreasonable decisions by the state. This is true not only at the trial level, but from the moment that a defendant encounters law enforcement.

1. Rights upon Arrest

A law enforcement officer's decision to arrest a person does not terminate that person's due process rights. The law provides protections for those that have been arrested for a criminal offense. First, whether arrested on a warrant or without a warrant, the defendant must be taken without unnecessary delay before a magistrate. Arts. 14.06 and 15.17, C.C.P. The magistrate must, in accordance with Article 15.17 of the Code of Criminal Procedure, inform the defendant of the:

- charges against him or her;
- right to counsel;
- right to remain silent and, if the defendant decides to waive that right, that any statement made by the person arrested can be used against him or her;
- right to have an attorney present during interrogation;
- right to terminate any interrogation;
- right to the appointment of counsel if indigent or the procedures for requesting appointed counsel; and
- right to an examining trial to determine whether probable cause exists.

If allowed by law, the magistrate then sets bail. As a general rule, bail may not be denied. There are exceptions to this general rule listed in the Texas Constitution, including capital cases, for violating a magistrate's order of emergency protection or a protective order; or for certain sexual offenses involving a child, among others. Art. 17.153, C.C.P.

Bail is "the security given by the accused that he will appear and answer before the proper court the accusation brought against him… ." Art. 17.01, C.C.P. The magistrate determines the amount of bail and may consider the following factors:

- that bail and any condition of bail shall be sufficient to give reasonable assurance that the undertaking will be complied with;
- that bail is not to be used as an instrument of oppression;
- the nature of the offense and the circumstances under which it was committed;
- evidence of the accused's ability to make bail;
- the future safety of the victim of the alleged offense, law enforcement, and the community;
- the criminal history record of the defendant; and
- the citizenship status of the defendant. Art. 17.15, C.C.P.

Bail may be secured through a bail bond, cash bond, or a personal bond. In addition to setting the amount of bail, the magistrate may place certain conditions upon the defendant, such as a curfew or counseling. Art. 17.02, C.C.P.

2. Rights in Criminal Trials

In all criminal trials, the burden of proof to find a defendant guilty is "beyond a reasonable doubt." It is ultimately up to the factfinder to decide whether the State has met this burden after considering the facts of the case. The defendant also has the right to representation by counsel. (although in fine-only misdemeanor cases, the defendant does not have the right to *appointed* counsel) and the right to remain silent and not be compelled to give evidence against himself or herself. Following trial, a defendant may seek a new trial or appeal the ruling of the court.

Practice Note

For more than a hundred years, Texas courts did not require that a definition of "beyond a reasonable doubt" be provided to jurors. However, in *Geesa v. State*, the Court of Criminal Appeals held that a definition was mandatory. From 1991-2000, courts struggled with the definition offered in *Geesa*, with one comparing it to saying, "A white horse is a horse that is white." Later, the Court decided in *Paulson v. State* to overrule the part of *Geesa* requiring the definition, leaving it up to jurors to decide what beyond a reasonable doubt means. Although it has now been almost 20 years since *Paulson*, courts may want to review old jury charges to ascertain whether the old definition lives on and should be struck.

a. Due Process

The U.S. and Texas Constitutions provide that the defendant in a criminal case is entitled to due process of law. Due process of law is a broad concept, but it is easier to understand when it is divided into two types: procedural due process and substantive due process. Procedural due process requires states to use fair procedures in reaching decisions that deprive a person of life, liberty, or property. This means that fair procedures must be used to enforce the law. Substantive due process requires the government to have adequate justification for such deprivation. In other words, it requires the law itself to be fair.

Procedural due process can be further divided into two areas: Notice and a Hearing. The defendant has the right to notice of a hearing or trial that adequately informs the accused of the charges against him or her. The right to a hearing or trial includes the right to present evidence on the

accused person's behalf before an impartial judge or jury, the right to the presumption of innocence until proven guilty by legally obtained evidence, and the right to have the verdict supported by the evidence presented at trial.

b. Fair Trial

(1) Notice of Charges

In municipal courts, notice of charges is provided to the accused by either the issuance of a citation or the filing of a sworn affidavit called the complaint and subsequent service of a summons. As the charging instrument, a complaint alleges the act the defendant is said to have committed and that the particular act is unlawful. Art. 45.019(a)(4), C.C.P. The filing of the complaint puts the defendant on notice as to what criminal offense is charged and what the state must prove. The defendant, however, may waive the right to have a complaint made and may plead to or proceed to trial on the citation. Art. 27.14(d), C.C.P. Barring this affirmative waiver by the defendant, he or she is entitled to notice of the complaint not later than the day before the date of any proceeding in the prosecution of the defendant. Art. 45.018, C.C.P.

The complaint must use plain and intelligible language to establish all of the elements of an offense. *Bynum v. State*, 767 S.W.2d 769 (Tex. Crim. App. 1989). Usually, language tracking the law or ordinance is sufficient. *Kaczmarek v. State*, 986 S.W.2d 287 (Tex. App.—Waco 1999, no pet.). The facts of the complaint must be specific enough to avoid double jeopardy, as the defendant can only be tried once for what is alleged in the complaint. Stated differently, the complaint must identify the conduct clearly enough that the defendant could defend himself or herself against another charge for the same violation of the law. There are many statutory requirements of the complaint contained in Article 45.019 of the Code of Criminal Procedure.

If the defendant wants to object to any defects in the complaint, the defendant must do so before trial or any error is waived. Art. 45.019(f), C.C.P. The motion challenging the complaint is called a motion to quash.

(2) Speedy and Public Trial

The 6th Amendment to the U.S. Constitution requires trials be "speedy and public." The public and the press generally should never be directly excluded from open court. Art. 1.24, C.C.P. The court should avoid excluding the public by holding court at unusual places or times. The defendant has the right to a trial before memories fade and making a defense is hampered by the passage of time. A complaint must be filed within two years of the commission of an offense or the prosecution is barred by the statute of limitations. Art. 12.02(b), C.C.P. Further, a general due process right exists to a speedy trial. The court should consider four factors in determining whether the defendant's right to a speedy trial is violated:

- length of delay from accusation to trial;
- State's reasons for the delay;
- effort made by the defendant to obtain a speedy trial; and
- prejudice to the defendant's ability to defend himself or herself.

Mandatory deadlines set out by the Legislature to assure speedy trial in Chapter 32A of the Code of Criminal Procedure were declared unconstitutional. *Barker v. Wingo*, 407 U.S. 514 (1972); *Phillips v. State*, 650 S.W.2d 396 (Tex. Crim. App. 1983). The court need only consider the issue if raised by the defendant.

(3) Neutral and Detached Judge

In order for a trial to be fair, the judge must be neutral and detached. This means that the judge should not favor one side or the other. It may also mean that the judge should not be connected to the case in some way that would tilt it in favor of one side or the other. Look at the requirements for disqualification and recusal of judges. Article V, Section 11 of the Texas Constitution provides three grounds for disqualifying a judge from sitting in any case:

- the judge was counsel in the case;
- the judge "may be interested" in the outcome of the case; or
- one of the parties is related to the judge.

Similarly, Article 30.01 of the Code of Criminal Procedure provides instances in which the judge is disqualified regardless of the judge's discretion. The judge is disqualified as a matter of law when a judge:

- is the injured party;
- has been counsel for the State or the accused; or
- is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined by Chapter 573 of the Government Code.

Disqualification is mandatory even if the judge did not know about the relationship. *Ex parte Vivier*, 699 S.W.2d 862 (Tex. Crim. App. 1985). While disqualification is mandatory, recusal lies in the judge's honest appraisal of the individual situation. Judges must recuse themselves if they feel they have a conflict of interest that would affect their ability to be fair and impartial. While this determination can only be made in light of the specifics of a situation, Texas Rule of Civil Procedure 18b(2) states that a judge shall recuse when:

- the judge's impartiality might reasonably be questioned;
- the judge has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;
- the judge or a lawyer with whom the judge previously practiced law is a material witness;
- the judge participated as counsel, adviser, or material witness in the matter in controversy or expressed an opinion concerning the merits of it while acting as an attorney in government service;
- the judge, judge's spouse, or a person within the 3rd degree of relationship to either the judge or judge's spouse is:
- a party to the proceeding or an officer, director, or trustee of a party;
- known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
- to the judge's knowledge likely to be a material witness in the proceeding; or
- the judge, judge's spouse, or a person within the 1st degree of relationship to either the judge or judges' spouse is acting as a lawyer in the proceeding.

(4) Impartial Jury

The right to a trial by an impartial jury is found in the U.S. Constitution, the Texas Constitution, and the Code of Criminal Procedure. While federal law may limit the right to cases in which

incarceration is a potential punishment, Texas law extends the right to all criminal proceedings, including proceedings in municipal courts. Art. 1, Sec. 15, Tex. Const. A failure to request a jury trial is not a waiver. If a jury trial is not desired, a written waiver of jury trial must accompany any plea before the court. Arts. 1.14 and 45.025, C.C.P. Special rules apply to defendants who plea by mail: tendering the fine to the court by mail constitutes a plea and written waiver of a jury trial. Art. 27.14(c), C.C.P. If the defendant fails to properly waive a jury trial, a jury trial must be held. Art. 45.027(a), C.C.P.

True or False

1. In municipal courts all persons are presumed guilty until proven innocent. ____
2. Only when arrested without a warrant must a defendant appear before a magistrate without unnecessary delay. ____
3. Bail is the security given by an accused to guarantee the appearance of the accused before the proper court. ____
4. Bail may be secured only through a bail bond or a cash bond. ____
5. If a defendant requests a trial, the state must prove the defendant guilty beyond a reasonable doubt of an offense charged in the complaint. ____
6. A municipal judge may grant a new trial if the judge is persuaded that justice has not been done in a specific case. ____
7. Defendants have a right to appeal a conviction in a municipal court. ____

Short Answer

8. List two components of procedural due process. _____
9. What does the right to a fair hearing or trial include? _____

   _____

True or False

10. A complaint provides notice to a defendant of charges against him or her. ____
11. A defendant cannot waive the right to proceed to trial on a complaint. ____
12. If a complaint uses plain and intelligible language, it does not have to establish all the elements of the offense. ____
13. For a hearing to be fair, it must be conducted publicly and without needless delay. ____
14. Although the Texas speedy trial provision was declared unconstitutional, there is still a general due process right to a speedy trial. ____
15. A failure to request a jury trial is a waiver of the right to a jury trial. ____
16. What is the time limit under the statute of limitations for filing a complaint? _____

Short Answer

17. When is a judge disqualified from hearing a case? _____

(5) Right to Counsel

Two distinct issues are raised by the grant of the right to counsel by the U.S. and Texas Constitutions. The first involves the defendant's right to have an attorney appear for him or her in court and to have the advice and assistance of that attorney. The second part involves the right for persons without the means for employing counsel to have counsel appointed by the court.

While a defendant in a criminal case has no right to appointment of counsel under federal or state law when accused of a fine-only offense, the court may appoint counsel if it concludes the interests of justice requires representation. *Scott v. Illinois*, 440 U.S. 367 (1979); Art. 1.051(c), C.C.P. This, of course, includes all cases over which the municipal court has jurisdiction.

The right to representation by counsel is the right to have an attorney appear in court proceedings and assist the accused in decision-making including in cases involving fine-only misdemeanors. This right cannot be denied in the trial of fine-only misdemeanors and is recognized in the rules specifically governing proceedings in municipal courts. Art. 45.020, C.C.P. The defendant may waive the right to counsel but must do so intelligently and knowingly. This means that the court must make sure the defendant understands his or her right to counsel and the disadvantage of proceeding pro se. *Johnson v. State,* 760 S.W.2d 277 (Tex. Crim. App. 1988). The court has the obligation to make sure a waiver of counsel is voluntarily and intelligently made by providing admonitions and questioning the defendant. *Blankenship v. State*, 673 S.W.2d 578 (Tex. Crim. App. 1984). Presuming waiver from a failure to request counsel is not permitted. *Carnley v. Cochran*, 369 U.S. 506 (1962).

The right to counsel does not extend to assistance or representation by an individual who is not an attorney licensed by the State Bar of Texas. To allow a non-attorney to assist a defendant or advise him or her at trial violates the law against unauthorized practice of law. As discussed in Level I, it is important to understand that the term "attorney at law" indicates a person authorized to practice law. This should not be confused with powers granted through a "power of attorney." A "power of attorney" cannot authorize a non-attorney to practice law, no matter the relationship to the defendant.

(6) Right to Confront Witnesses

The defendant's rights at trial include the right to confront witnesses and the right to call witnesses. Confrontation necessitates the presence of the defendant at trial, the right to question witnesses, and the right to impeach witnesses. The right to confront witnesses is found in the U.S. Constitution, Texas Constitution, and Code of Criminal Procedure. This means that the defendant has a right to cross-examine the witnesses against him or her when they testify at trial. The defendant may also present witnesses of his or her own. These witnesses would then be subject to cross-examination by the prosecutor.

Essential to the right to confront witnesses is also the right to be present at trial. In the trial of all cases, except fine-only misdemeanors, the defendant must be personally present. Art. 33.03, C.C.P. The exception to the rule requiring the defendant's presence is when the defendant appears and then is voluntarily absent during trial. In that instance, the trial may continue. In trials for fine-only misdemeanors, the defendant still has the right to be present but can waive that right and appear by counsel alone if the prosecutor agrees to the defendant's absence. Art. 33.04, C.C.P. The defendant can also lose the right to be present by disrupting the proceedings and being held in

contempt of court. Even when the defendant is removed for misbehavior, he or she may be entitled to readmission on the promise of proper behavior. *Illinois v. Allen*, 397 U.S. 337 (1970).

The defendant's right to be present also includes the right to be competent at trial. *Pate v. Robinson*, 383 U.S. 375 (1966). The defendant must have the ability to consult with a lawyer and have a rational and factual understanding of the proceedings. *Dusky v. United States*, 362 U.S. 402 (1960).

(7) Right to Present Evidence

In addition to the right to confront witnesses, a defendant has the right to call competent witnesses. Competence means being able to appreciate and take the oath and having personal knowledge of relevant evidence as required by the Code of Criminal Procedure and the Rules of Evidence. The evidentiary rules apply equally to defense witnesses. The procedures for obtaining witnesses in court are the same as the State's procedure. The law of subpoenas, subpoenas duces tecum, and attachment are available to the defense. The court should make sure that law enforcement gives equal consideration to serving legitimate defense subpoenas.

(8) Right to Object

The defendant has the right to make objections to evidence and to obtain a ruling from the court. Failure to object in a court of record will cause any error to be waived during appellate review. *Gutierrez v. State*, 36 S.W.3d 509 (Tex. Crim. App. 2001)*;* Rule 33.1(a), Rules of Appellate Procedure. The court may require objections to be made outside of the jury's hearing and may limit the time that an offer of proof is made.

(9) Right to Remain Silent

A criminal defendant has the right to remain silent and not be a witness against oneself or to give evidence against oneself. Invoking the right against self-incrimination is often called "pleading the 5th" in reference to the 5th Amendment. Defendants do not need to invoke their right to remain silent; the State may not call the defendant as a witness. Witnesses must invoke their rights not to answer questions after being sworn, but if the witness voluntarily testifies about a matter, he or she may not plead the 5th during cross-examination on the same issue. *Draper v. State*, 596 S.W.2d 855 (Tex. Crim. App. 1980). Jurors should be instructed that the defendant's silence in a trial cannot be used against him or her as any evidence of their guilt. *Carter v. Kentucky*, 450 U.S. 288 (1981). The prosecutor should not be allowed to argue that it indicates guilt in any way. *Sanchez v. State*, 707 S.W.2d 575 (Tex. Crim. App. 1986).

(10) Presumption of Innocence

No defendant may be convicted of a criminal offense unless the State proves every element of the case beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979). Since the State must prove each element, it necessarily follows that every defendant must be presumed innocent until proven guilty. It is important not only that the court adheres to this mandate, but that juries follow it as well. A court must instruct the jury to presume a defendant innocent until proven guilty and to find a defendant guilty only if persuaded by the evidence beyond a reasonable doubt.

c. Search and Seizure

The 4th Amendment to the U.S. Constitution guarantees protection against "unreasonable searches and seizures." The Texas Constitution and state law also make the same guarantee.

(1) Exclusionary Rule

Federal courts created a rule excluding from evidence the fruits of unreasonable searches. The U.S. Supreme Court made the rule applicable to state prosecutions in 1961. Some states, including Texas, have their own exclusionary rule as well. The courts, in order to deter police from making unreasonable searches and arrests, enforce this "Exclusionary Rule." The right to be free from unreasonable searches and arrests is protected not by dismissal of the prosecution, but by exclusion of the evidence gathered by the unreasonable search or seizure. It is a remedy that is still debated today.

Practice Note

The "Exclusionary Rule" is the rule that excludes any evidence that is obtained in violation of the defendant's constitutional rights. To understand the rule, it may help to consider real events. In one of the seminal cases on illegal search and seizure, police forced their way into a home without a warrant and confronted the occupant, Miss Mapp, inside her house. When she asked if there was a warrant, the police claimed a piece of paper was the warrant. Miss Mapp grabbed the paper and "placed it in her bosom." The police then roughed up Miss Mapp and forced her into a bedroom, where they found obscene materials, which were later offered as evidence against her. The evidence was suppressed, with the court noting that "security of one's privacy against arbitrary intrusion by the police is implicit in the concept of ordered liberty." *Mapp v. Ohio*, 367 U.S. 643 (1961).

(2) Standing

Under the Exclusionary Rule, defendants must first establish that they were personally subjected to the unconstitutional conduct. This principle is called "standing." A defendant must establish their interest or standing in order to object to the legality or reasonableness of the search or arrest. *Rawlings v. Kentucky*, 448 U.S. 98 (1980). The defendant must show that he or she had a reasonable expectation of privacy in the property or person searched or seized to establish standing. *United States v. Salvucci*, 448 U.S. 83 (1980). Standing must also be established to invoke the statutory Exclusionary Rule found in Article 38.23 of the Code of Criminal Procedure. *Chavez v. State*, 9 S.W.3d 817 (Tex. Crim. App. 2000).

True or False

18. Defendants in municipal courts have the right to a court appointed attorney. ____
19. If a defendant does not request counsel, the defendant is presumed to have waived the right to counsel. ____
20. The municipal court can allow non-attorney friends and family members to legally represent defendants at trial. ____
21. In municipal courts, defendants can waive the right to be present at trial and appear by counsel only if the prosecutor agrees. ____
22. Before defendants can be tried in a municipal court, they must be competent and understand the proceedings. ____
23. In municipal courts, the defendant can ask the court to subpoena witnesses. ____
24. The defendant has both the right to testify and the right to choose not to testify. ____

Short Answer

25. What rules govern the presentation of evidence? _____
26. What does it mean when a defendant "pleads the 5th?" _____

    _____
27. What must the State prove for a jury or a judge to find a defendant guilty? _____

    _____ _____
28. What does the 4th Amendment to the U.S. Constitution guarantee? _____

    _____ _____
29. What is the "Exclusionary Rule?"_____

    _____ _____
30. What is the principle of "standing?" _____

    _____ _____

d. Defendants with Disabilities

It is imperative that judges and clerks ensure that defendants with disabilities are provided reasonable accommodations required by law and necessary to equal justice under law.

(1) Interpreters for Deaf and Hard of Hearing

Over 24 million Americans may have some form of hearing disability that ranges from mild hearing loss to profound deafness. It is important that judges and court personnel are aware of the wide variety of communication modes used by these individuals so that barriers to effective communication can be reduced in court. There are several recognized methods or modes of communication used by individuals who are deaf or hard of hearing. These include speech reading

(lip-reading), gesturing, written communication including computer-aided real-time transcription, and several kinds of sign language.

Sign language is the use of visual signs to convey information and ideas. There are three basic categories of sign language:

- independent languages such as American Sign Language (ASL);
- speech-equivalent signing systems; and
- finger-spelling systems.

These vary in complexity and range of utility. ASL, for example, uses 4,000 signs and has a completely different vocabulary, grammar, idiom, and syntax from English. ASL's linguistic units and structure consist of facial expressions, body posture, and the shape and movements of hands, arms, eyes, and head. Judges and court personnel should, for example, allow an interpreter's use of facial grammar or body shifting in court, as these are part of the grammatical structure of ASL. A verbatim or "word for word" translation is neither necessary nor possible and might lead to a distortion of meaning. The interpreter's job is to preserve the meaning of the speaker's statement without omissions and additions. This includes preserving the style and register of the speaker (tones, emotions, and language used).

Individuals who are hard of hearing and prefer speech reading as their chosen mode of communication may require "oral interpreters" who are trained to present information through mouth movements only. Only about 26 percent of speech is visible on the lips for those who rely on lip-reading (Deafness and Interpreting," New Jersey Department of Human Services, Division of the Deaf and Hard of Hearing (October 1991)). If lip-reading is relied upon in court, clear lines of vision between the speaker and listeners must be maintained. The distances between speakers and listeners should be between three and six feet.

Practice Note

"Minimally Language Competent" (MLC) refers to individuals who are deaf and have never made meaningful ties with either the culturally deaf or the oral language cultures. They have no systematic way of communicating ideas or feelings, but use idiosyncratic gestures often only understood by their family. In these instances, the court should contact relay or intermediate interpreters who are familiar with these individuals' home signs or are specially trained to interpret such communication.

Practical Techniques:

- Designate a staff person as an ombudsman who can become familiar with how the court can best serve this population.
- Purchase a text telephone (TDD or TTY) to permit this population to call the court.
- When persons who are hard of hearing appear in court, reduce environmental noise from fans, air conditioners, outside traffic or construction, and, if you still use a keyboard or adding machine in court, do all typing in an adjacent room, if possible.

- Make sure that assisted listening devices are fully charged and an extra set of batteries is available.
- When remodeling the court, consider using carpeting and padded walls to reduce noise in the courtroom.
- Suggest to the judge the adoption of a local rule requiring that attorneys who know that a witness or party has a special communication need to contact the court well in advance. A similar note can be placed on jury notices and witness subpoenas.
- If your court is small and there are budget constraints, locate a source to rent or borrow the equipment when needed.
- Writing out instructions for an individual who is hard of hearing is a simple, interim solution until the necessary equipment arrives.

A court procedure brochure will assist deaf persons, but it does not substitute for the services of an interpreter. The court must appoint an interpreter at all court proceedings if notified that the defendant is deaf or hard of hearing. Art. 38.31(a), C.C.P. An interpreter must be appointed to translate between counsel and the defendant. Art. 38.31(b), C.C.P. The interpreter must be able to use the language or means of communication used by the defendant. Art. 38.31(a), C.C.P. The interpreter must be sworn in by the judge, or by the clerk if so directed by the judge, before performing interpretation. Rule 604, Rules of Evidence. The interpreter is entitled to a fee determined by the court in consultation with the Commission for the Deaf and Hard of Hearing. If the interpreter is required to travel, all actual expenses of travel, lodging, and meals incurred must be paid at the same rate as state reimbursement. The court should establish a clear set of policies and procedures for how the court interpreter will be appointed for defendants and witnesses who are unable to hear.

If a defendant or witness is hard of hearing, Article 38.31 of the Code of Criminal Procedure requires the court to appoint a qualified interpreter and provide the auxiliary aids and services of their choice. "Qualified interpreter" is defined as an interpreter for the deaf who holds a current legal certificate issued by the National Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters at the Department of Assistive or Rehabilitative Services.

Some cities have adopted a computer-aided real-time transcription (CART) device that requires skilled court reporters to key shorthand notes of the spoken language into a stenotype machine. This process concurrently translates the spoken words in court into English text. CART systems send the shorthand output from the stenotype machine directly into a personal computer that translates the shorthand instantaneously and displays it on a monitor or large screen where it can be read.

In 2013, the Legislature amended Section 57.002 of the Government Code to require a court to appoint a certified court interpreter or certified CART provider for an individual who is hard of hearing, making use of these CART devices a viable option. Chapter 57 of the Government Code contains many other provisions relating to the appointment of interpreters for deaf or hard of hearing individuals. A person who violates the requirements in Chapter 57 relating to deaf or hard of hearing interpreters commits a Class A misdemeanor offense and may be assessed an administrative penalty. Sec. 57.027, G.C.

True or False

31. All persons who are deaf and hearing impaired learn American Sign Language. ____

32. Court interpreters should always offer verbatim translations. ____

33. A court procedure brochure and signs explaining a defendant's rights are a proper substitute for the services of an interpreter. ____

Short Answer

34. What group constitutes the largest group of Americans with disabilities? _____

_____

35. What are the three basic categories of sign language? _____

_____

_____

36. Why is an oral interpreter sometimes needed for defendants who read lips? _____

_____

37. Define minimally language competent persons. _____

_____

38. Give three examples of environmental noise that should be reduced when hard of hearing persons appear in court. _____

_____

39. Explain how CART works. _____

_____

(2) Language Interpreters

Courts are required to appoint an interpreter when a defendant or witness does not understand the English language. Art. 38.30, C.C.P. The need for an interpreter may be raised by a motion of either party or by the court. The interpreter is required at any court proceeding, and is subject to subpoena or attachment like any other witness, but must be paid for interpreting. Art. 38.30, C.C.P. The defendant is not responsible for paying for an interpreter; rather, the interpreter's fee is paid by the city along with all actual expenses.

Chapter 57 of the Government Code contains an exception to this rule for "spoken language interpreters" in counties with a population of less than 50,000. Sec. 57.002(c), G.C. Under this exception, the interpreter must still be qualified under the Rules of Evidence, be over 18 years of age, and not be a party to the cause. Trial judges in counties with populations over 50,000 may appoint non-licensed interpreters when the language is one other than Spanish and the court makes a finding that there are no licensed interpreters within 75 miles who can interpret in the language

that is necessary. Sec. 57.002(d), G.C. These non-licensed interpreters are referred to as "spoken language interpreters."

The role of the interpreter is to translate and explain the proceedings and to give the defendant a voice in the proceedings. Article 38.30(a-1) of the Code of Criminal Procedure authorizes the swearing in of a "qualified telephone interpreter" in any criminal proceeding before a judge or magistrate. Article 38.30(a-1) can only be used in instances where an interpreter is not available to appear in person or if the only interpreter available does not possess adequate skills for the situation or is unfamiliar with the use of slang.

Practice Note

Many courts employ clerks that are bilingual, and there may be a temptation to dispense with a licensed court interpreter for court proceedings. The Court of Criminal Appeals has cautioned, however, that "[o]ne is not necessarily competent to translate legal proceedings because he or she is bilingual. On the contrary, courtroom interpretation is a sophisticated art, demanding not only a broad vocabulary, instant recall, and continuing judgment as to the speaker's intended meaning, but also the ability to reproduce tone and nuance, and a good working knowledge of both legal terminology and street slang." *Garcia v. State,* 149 S.W.3d 135 (Tex. Crim. App. 2004).

Laws regulating court interpreters for persons who can hear but do not comprehend or communicate in the English language are found in Chapter 157 of the Government Code. Oversight of the licensed court interpreter program was moved from the Texas Department of Licensing and Regulation to the Judicial Branch Certification Commission under the Office of Court Administration in 2015. Chapter 157 provides for a licensing program for foreign language interpreters.

There are two designated levels of court interpreters: a basic level and a master level. An interpreter with a basic designation is authorized to interpret court proceedings in justice and municipal courts that are not courts of record, unless the judge is acting as a magistrate. A master level interpreter is permitted to interpret in all courts in Texas, including municipal and justice courts.

Practice Note

Many courts employ clerks that are bilingual, and there may be a temptation to dispense with a licensed court interpreter for court proceedings. There are several resources available to courts regarding court interpreters. Comprehensive information on the Judicial Branch Certification Commission, including frequently asked questions, can be found at www.txcourts.gov/jbcc.aspx. The site has a link to significant information on court interpreters, located at http://www.txcourts.gov/jbcc/licensed-court-interpreters/. In addition, TMCEC maintains some links and secondary resources at http://tmcec.com/programs/court-interpreters/.

True or False

40. Defendants must pay the costs of an interpreter. ____
41. Interpreters must be appointed by the court if a defendant or witness cannot understand English. ____
42. A family member or friend can be a language interpreter as long as he or she knows both English and the other language that requires interpreting. ____
43. An interpreter with a basic designation can interpret in a municipal court of record. ____

(3) Mental Illness or Intellectual Disability

The Code of Criminal Procedure has special provisions for persons with mental illness or intellectual disability. During magistration, a magistrate who has reasonable cause to believe a defendant has a mental illness must order an interview by a qualified expert. A magistrate is required to release, on personal bond, a defendant with a mental illness if the defendant has not been charged with or previously convicted of a violent offense, such as murder or kidnapping, and has been examined by a mental health expert. The expert must conclude that the defendant is mentally ill, competent to stand trial, and make a recommendation for mental health treatment. The magistrate then determines if appropriate health services are available. The magistrate may require as a condition of release on personal bond that the defendant submit to outpatient or inpatient mental health treatment if the illness is chronic in nature or the ability to function independently will continue to deteriorate if the defendant is not treated. Art. 17.032, C.C.P.

Special protections are afforded persons with mental illness or intellectual or developmental disability because too often they forfeit their rights because of misplaced trust, limited vocabulary, difficulty reading or recalling facts, undue influence of authority figures, and a desire to avoid being labeled. Large print brochures or pictures to describe court services are recommended, as well as an ombudsman to help identify their needs.

(4) Physical Disabilities (ADA)

The Americans with Disabilities Act (ADA) was enacted on July 26, 1990 to protect qualified individuals with disabilities from discrimination solely on the basis of their disability. 42 U.S.C, Sec. 12131, *et seq*. Its passage increased awareness of disability issues and reduced stereotypes and misrepresentations of the past. People living with disabilities continue to desire accurate portrayals that present a respectful, positive view of them as active participants of society.

The following are key terms and provisions that one must know to understand the ADA.

- *A person with a disability.* (1) An individual who has a physical or mental impairment that substantially limits one or more of the individual's major life activities (such as walking, talking, or caring for oneself); (2) has a record of such an impairment; or (3) is regarded as having such an impairment. 42 U.S.C., Sec. 12102(2). Excluded from this definition are persons currently engaging in the illegal use of drugs. 42 U.S.C., Sec.12111(8).

- *A qualified individual with a disability.* An individual who regardless of their disability meets the essential requirements for the receipt of services or participation provided by the public entity. This includes defendants, witnesses, attorneys, and spectators.
- Title II prohibits state and local government from policies and practices that have the effect of barring persons who are disabled from participation in or access to public services, programs, and activities. These provisions cover all courts, regardless of size.
- Title III focuses on public accommodations and services operated by public entities.
- The ADA provisions are enforceable under the remedies set forth in the earlier enacted Section 505 of the Rehabilitation Act of 1973.

Title II went into effect in 1992 and requires state and local entities, including courts, to modify policies, practices, and procedures to prevent disability discrimination, remove architectural and communication barriers, and provide accessible services. Each program or service, when viewed in its entirety, must be readily accessible. Physical barriers must be removed, if necessary, to make services accessible. Extensive remodeling, however, is not necessary if programs can be made available in other ways. Alternatives include relocating services to other areas; providing an aide or personal assistant; moving services to an individual's home or other accessible site; and giving information by audiovisual means. Action is not required if it demands undue financial or administrative burden.

Court managers should examine closely the following physical and communication barriers in their courts.

- Access to the building—inaccessible parking spaces, high curb cuts, slippery exterior steps, lack of or poor ramps, and areas accessible only through service areas.
- Use of facilities—interior stairs; a lack of accessible elevators; slippery floors; high public counters; water fountains and telephones; narrow hallways; poor lighting; and inaccessible restrooms or law libraries.
- Participation in court—judges' benches, jury boxes, witness boxes, counsel table, and public seating too often cannot accommodate wheelchairs. Often there is an absence of technology to help persons with vision, hearing, and cognitive impairments.
- Train staff in eliminating stereotypes and biased language towards persons with disabilities.
- Appoint a staff person to serve as the accessibility ombudsman to assist in arranging individualized accommodations.
- Make sure all court employees understand how to receive a relay call, where a person who is deaf calls a relay operator who serves as the speaker to the recipient of the call.

Local, state, and national groups are available to help courts become accessible. Contact local or state disability groups such as protection and advocacy agencies, mental health associations, elderly advocacy groups, and Alzheimer's associations to form a multi-disciplinary planning committee.

True or False

44. The law requires that a person with mental illness or intellectual or developmental disability be treated the same as those without disabilities when bond is set. ____

45. A municipal court must only comply with ADA requirements if it employs more than 15 persons. ____

46. The ADA protects jurors and witnesses, as well as court employees. ____

47. Even if it costs an excessive amount and poses an administrative hardship, a municipal court must accommodate the needs of one employee with a disability. ____

Short Answer

48. How does federal law define a person with a disability? _____

_____

49. In the clerk's area and the court's window or counter, what accessibility problems often exist?

_____

_____

50. Within the courtroom, what areas must be accessible?_____

_____

51. Give four examples of what an accessibility ombudsman might do in your court. _____

_____

_____

_____

B. Equal Protection and Discrimination

The 14th Amendment to the U.S. Constitution provides that all persons be afforded equal protection of the law. Two major applications of this principle have developed since its adoption. Any law that applies unequally to the governed must have a rational basis. Any law that has a disparate impact on a protected class (racial minorities, religious groups, and other recognized protected classes) must satisfy a compelling state interest. Finally, the rights and recourses of the law cannot be denied to any person based on his or her belonging to a protected class of individuals.

1. Bias or Prejudice

Although perceptions of bias neither confirm nor disprove the actual existence of bias, all municipal courts should examine their policies and practices for evidence of bias. Unequal treatment of court users may also be perceived as bias or prejudice. It is important to periodically review and assess court practices to ensure equal treatment of all court users. This may even include practices concerning defense attorneys and prosecutors as compared to pro se defendants. Court personnel can formally or informally conduct court assessments of how court users are

treated in areas such as wait time at the window, access and placement on court dockets, and wait time to speak with the prosecutor. Questionnaires, court user surveys, or interviews can be used to determine if patterns of interaction reflect the same degree of courtesy to all that appear before the court. Exit interviews with employees may reveal perceptions or incidents of bias in the court.

In addition to awareness and sensitivity regarding cultural or ethnic bias, court personnel should also be aware of language used in references to persons with disabilities. Certain terms and phrases traditionally used to refer to persons with disabilities are now considered by some to be demeaning and hurtful. Part of maintaining decorum is correcting inappropriate language and actions, including expressions of bias. If the court fails to correct biased behavior, the courtroom audience might presume the court condones such behavior. The Commission on Judicial Conduct has publicly sanctioned a Texas judge for racially biased statements made during a trial. Judges and court personnel must protect the court from the appearance of impropriety as well as actual disparate treatment. Canon 3(B) of the *Code of Judicial Conduct* prescribes the elimination of biased behavior in court.

52. What policies or practices could be evaluated either formally or informally for evidence of potential bias occurring in the courts?_____

_____

2. Indigence

The law provides for the equal treatment of court users, no matter that person's ability to pay the fine or costs ordered by the court. The U.S. Supreme Court has declared that the Equal Protection Clause of the 14th Amendment mandates there is a "ceiling placed on imprisonment" that must be the same regardless of a person's economic or financial status. *Tate v. Short*, 401 U.S. 395 (1971). This means that there is unequal treatment where a person with financial means may simply pay a citation, while a person unable to pay is imprisoned without any alternative. Alternative methods of discharge include delayed payment, time payments, and community service. It is important to note, however, that equal protection goes both ways. Absolving those too poor to pay of any criminal liability simply because of their economic status also violates equal protection. As the court also pointed out in *Tate*, "[t]he 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."

The role of the clerk is to assist the judge with documentation regarding indigence. For example, if the judge offers the defendant the opportunity to use community service to discharge the fine, the clerk may be asked to provide the defendant with a list of approved non-profit organizations where the community service can be fulfilled. Or, if the defendant requests to pay over time, the clerk will assist with the documentation needed for the transmittal of monthly or weekly payments. Judicial orders, defendants' requests, and any other documentation should be placed in the case file so that if a question arises, the record is well documented. In some cases where the defendant cannot pay and cannot do community service, the only alternative may be waiver of the fine or costs. Art. 45.0491, C.C.P. In these cases, the clerk may also be asked to document the file.

Finally, approving or extending a time payment plan is a judicial duty, not a ministerial one that can be done by the clerk. If a defendant defaults on a payment agreement, he or she should be given an opportunity to explain the situation to the judge. The judge and clerk should develop a consistent plan to process persons who are indigent and must satisfy a judgment by a payment plan or community service. Importantly, judges should not have a schedule of payments that apply to all defendants who are indigent. The judge must practice judicial oversight and be able to individually consider the ability of each defendant that indicates possible indigence or lack of sufficient resources to pay what has been ordered.

C. Juveniles and Their Parents

Under Texas law, juveniles are generally treated differently than adults. Title 3 of the Family Code creates juvenile courts that have jurisdiction over children ages 10 to 17. Usually, a juvenile enters the justice system for delinquent conduct or conduct in need of supervision. Delinquent conduct generally involves violations of the penal laws that are punishable by imprisonment or jail. Conduct in need of supervision refers to the lower grade of penal offenses and behaviors such as running away from home. Juvenile court proceedings are hybrid proceedings combining substantive criminal law with procedural civil law. The terminology is different. For example, an adjudication hearing for a juvenile is the equivalent of the sentencing phase for an adult. More juveniles are charged with fine-only offenses in municipal and justice courts, however, than go through juvenile courts for delinquent conduct or conduct indicating a need for supervision. Special rules also apply to juveniles in municipal courts. These rules are further discussed in the *Children and Minors* chapter of this book.

D. Rights of the Victim

It is important to recognize that victims of crimes also have rights when it comes to the trial of criminal offenses. Although most people immediately think of assault victims, a victim could be anyone who is injured in some manner as a result of a crime. In municipal courts, this could also include a person that has suffered a property crime, such as theft or criminal mischief, or a driver involved in a traffic collision. Victims of property crimes will likely have an interest in getting their property back or repaired, while victims of assaults will likely have an interest in personal security. Whether the person is a victim of an assault or property damage, however, courts should be cognizant that a victim should be treated appropriately.

1. Victims' Bill of Rights

In 1989, the Legislature passed a resolution proposing a consitutional amendment relating to the rights of crime victims. This amendment was passed by voters the following November and became law on November 7, 1989. The "Victims' Bill of Rights" broadly outlines these rights:

> The Texas Constitution
>
> Article I, Section 30: Rights of Crime Victims
>
> (a) A crime victim has the following rights:
>
> (1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and
>
> (2) the right to be reasonably protected from the accused throughout the criminal justice process.

(b) On the request of a crime victim, the victim has the following rights:

(1) the right to notification of court proceedings;

(2) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;

(3) the right to confer with a representative of the prosecutor's office;

(4) the right to restitution; and

(5) the right to information about the conviction, sentence, imprisonment, and release of the accused.

Practice Note

The statutory crime victims' rights outlined in Article 56.01 of the Code of Criminal Procedure, by definition, generally includes higher level crimes, thus excluding cases heard in municipal courts; however, municipal courts and prosecutors may be well served to consider the rights spelled out in this article when working with crime victims in their courts. These include important safeguards, such as the right of victims to be provided with a waiting area separate from the defendant and relatives of the defendant before testifying in any proceeding, the right to prompt return of any property of the victim that is held by a law enforcement agency or attorney for the State as evidence when the property is no longer required for that purpose, and the right to have a magistrate take the safety of the victim or victim's family into consideration as an element in fixing the amount of bail for the accused.

2. Prosecutor's Role

As the representative of the State, it is the prosecutor's role to secure witnesses for the case. This includes contacting and discussing the case with the victim. Often the victim and a police officer are the only witnesses in the case. Consequently, it is important that, while respecting the victim's rights, court clerks maintain neutrality as with any other witness or court user. The Victims' Bill of Rights outlines basic rights that involve a victim in the trial of his or her case, but it is not authorization for a court clerk to provide legal advice.

3. Special Issues in Domestic Violence

In recent years, the trend has shifted to a tougher stance against domestic violence. In fact, the definition of "family violence" has been expanded beyond the definition of spouses to include partners in a dating relationship and former partners in a marriage or dating relationship. Secs. 71.0021 and 71.004, F.C. The system's traditional response had been one of non-intervention unless severe injury or death resulted. In the past, offenders were rarely arrested or convicted of their crimes, and victims were given little, if any, protection or support. Typically, a preoccupation existed with the victim's choices and responsibilities rather than those of the perpetrator. Arrests and prosecution of offenders are now more common. Increasingly, prosecutors are encouraging

women to proceed with their cases, and fewer misdemeanor cases are being dismissed. Victim advocates serve as a link between the system and the victim.

Many of the cases involving domestic violence seen by municipal judges involve them in their capacity as magistrates. In this capacity, judges handle the warnings and clerks process the accompanying paperwork. If an individual has been arrested for a family violence offense, the magistrate may issue an order for emergency protection at the detention hearing. The order prohibits the arrestee from committing family violence or a stalking-related act; communicating directly with a member of the family or household in a threatening or harassing manner; posing a threat to a member of the family or household; or going near the residence, place of employment, business, child care facility, or school where the person protected under the order attends or resides. Pets or assistance animals can be included in the protection order. Sec. 85.021, F.C. Only a magistrate may sign such an order, although it may be initiated on the motion of the judge, prosecutor, victim, or law enforcement.

If a victim is not present when an emergency protection order is issued, the clerk is required to send a copy of the emergency protection order to the victim. Emergency protection orders may last between 31 to 61 days, or in cases of assault involving a deadly weapon, up to 91 days. Art. 17.292(j), C.C.P.

Practice Note

In November 2017, an individual shot and killed congregants at the First Baptist Church in Sutherland Springs, Texas. The individual should have been prohibited from possessing firearms due to a family violence conviction while in the military, but the conviction was never reported to the FBI by the military. The Texas Legislature then reviewed state practices the following session to determine how state courts were reporting such convictions. H.B. 1528, passed by the 86th Legislature, expanded reporting requirements to convictions for fine-only misdemeanors involving family violence. H.B. 1528 added Article 45.0211 to the Code of Criminal Procedure, requiring that the judge take a defendant's plea in open court if the person is charged with this type of assault. In addition, it amended Article 66.252 of the Code of Criminal Procedure to require not only the fingerprints of those charged with fine-only misdemeanors involving family violence, but also the reporting of case disposition by the court clerk.

Short Answer

53. Under Texas law, does the definition of family violence include "dating violence"? _____

54. What is an emergency protection order?_____

_____

55. Who can make a motion for an emergency protection order? _____

_____

56. Can a clerk issue an emergency protection order? _____

57. What must be done if the victim is not present when the emergency protection order is signed?

E. Witnesses

Witnesses or jurors come to the courthouse not because they necessarily want to, but because they are issued a subpoena or summons requiring them to appear. Witnesses and jurors with disabilities must be protected under the ADA just as others with disabilities. Translation and physical accommodation are also necessary. The needs of the individual with disabilities must be balanced with the defendant's constitutional right to confront the witness or be tried by a jury of his or her peers. It is important to have a plan to handle these situations in advance.

F. Jurors

Personal information about jury members is generally confidential and may not be disclosed by the court, prosecuting attorney, or defense attorney, with limited exception. Art. 35.29, C.C.P. This includes the following information that may have been collected during the jury selection process: juror's home address, home telephone number, social security number, and driver's license number. This does not include the jurors' names. Attorney General Opinion GA-0422 (2006). There is an exception for parties to the case, attorneys for the parties, the judge and court personnel, and possibly the media if there is good cause.

The clerk shall provide a jury handbook to each juror who is required to read it before jury service begins. Sec. 23.202, G.C. Copies of the handbook may be ordered from the State Bar of Texas. Not all rules listed in the handbook apply to municipal courts. If a juror is deaf or hearing impaired, the juror may request an auxiliary aid or service. The interpreter must be sworn in before performing interpretation. Rule 604, Rules of Evidence.

While deliberating, the jury may communicate with the court in writing via the presiding juror and bailiff. The court may answer in writing. In a court of record, if the juror disagrees as to the statement of the witness, the juror may apply to the court to have the statement read from the court reporter's notes. Other than in these two situations, no one may converse with the jury while it is deliberating. Jurors, too, should be free from harm or threat of harm due to their service. To harm or threaten to harm a juror because of their service is a second-degree felony. Sec. 36.06(c), P.C.

Practice Note

The court may enforce decorum and proper dress to maintain an orderly court. Judges should be careful to separate their personal cultural familiarities or bias from the concept of court decorum. Decorum may be enforced by a posted rule, oral admonishment, reprimand, or in extreme cases, contempt.

True or False

58. Witnesses do not qualify for accommodation under the ADA. ____

59. There is a juror handbook that the clerk is responsible for providing to all jurors. ____

Short Answer

60. What type of crime is threatening or harming a juror? _____

61. A member of the militia requests the home addresses and telephone numbers of jurors who heard his or her traffic case. Do you release this information?_____

True or False

62. The clerk may sit in and converse with the jury during its deliberations. ____

PART 2
ROLE OF THE STATE

Prosecutors represent the State of Texas and are responsible for preparing the case against criminal defendants. The prosecutor in a municipal court may be the city attorney, deputy city attorney, or the county attorney acting without compensation. Art. 45.201, C.C.P. The prosecutor makes ultimate decisions on who to charge, matters concerning witnesses, and which cases to prosecute. The exact wording of complaints is within the providence of the prosecutor, as are decisions concerning the number and nature of complaints. The prosecutors must also decide which witnesses to subpoena and in which order they testify. Except where explicitly permitted by statute or rule of law, cases may not be dismissed without a motion by the prosecution.

Since the prosecutor represents the State, discussions by the prosecutor and court personnel about the merits of a case outside of the presence of the defendant or defense counsel are ex parte and unethical. The prosecutor represents the people of the State of Texas, not the judge or the court.

Attempts to control the prosecutor, outside of proper rulings on the law and requiring decorum, have led to public sanctions of judges. Although the State does not have the same rights that are accorded to a criminal defendant, the prosecutor does have the right to independence and the right to the judge's timely, patient, and well-studied rulings. Prosecutors, as attorneys, are also subject to the Texas Disciplinary Rules of Professional Conduct.

True or False

63. The prosecutor makes decisions about who to charge and what cases to dismiss. ____

64. Judges may dismiss cases anytime they determine it is necessary. ____

65. The prosecutor may discuss a case with a judge before trial. ____

PART 3
ROLE OF THE COURT

A. Court Administration

The role of the court, and its administration, is a unique one within the criminal justice system. Every one of the other parties mentioned above in the discussion of rights (defendants, victims, prosecutors) has a side and an adversarial viewpoint (i.e,, a person's self interest, the interest of a person's client, or the interest of the State). The judge and court clerk, however, are tasked with administering a fair forum for all court users. This may sometimes be a tough task, and attention must be constantly paid to both due process and the fair treatment of court users. There is no "bill of rights" for court personnel or statutory definitions for court clerks to point to, but perhaps the closest that the code comes to directly addressing this responsibilty is in the objectives of the Code of Criminal Procedure. The four objectives listed in Article 45.001 of the Code of Criminal Procedure are:

1) to provide fair notice to a person appearing in a criminal proceeding and a meaningful opportunity for that person to be heard;
2) to ensure appropriate dignity in court procedure without undue formalism;
3) to promote adherence to rules with sufficient flexibility to serve the ends of justice; and
4) to process cases without unnecessary delay.

B. Treatment of Court Users

Some courts have adopted a management philosophy of treating all users of the court system as customers. This concept grew out of court efforts to reinvent government by improving public sector operations and customer service. As part of a quality management movement, staff members are trained to identify customers and their needs and are taught methods for improving court procedures. For a municipal court, customers or "end-users" include defendants, victims, witnesses, prosecutors, defense lawyers, bail bondsmen, and jurors. In offering those who appear in court the courtesy that a business might offer its clients or customers, a court clerk must be careful to never offer legal advice which might subject the city to liability and the clerk to charges of unauthorized practice of law.

Practice Note

Satisfaction Guaranteed or Your Money Back? When one thinks of customer service, typically this slogan springs to mind. It is the idea that equates good customer service with a happy customer. This customer service philosophy, which was promoted in the late nineteenth century by retailer Montgomery Ward and later adopted by Sears Roebuck, implied that the customer should be made happy at any cost. Some cities have taken a similar approach when training employees. Courts should be cautious. A court clerk may be a city employee, but the court must be mindful of its proper role as the judiciary. Court users oftentimes are not happy with the result of court cases, even when the case result is favorable. That person may still have had to appear and may still have lost money and time. It is important to treat court users fairly and respectfully, but overly accommodating that person could get the court into trouble. Courts are simply unable to provide many things that would make a court "customer" happy, including legal advice, not appearing, or even their money back.

C. Liability and Immunity

Liability and immunity are legal concepts that are most often litigated under Title 42 of the United States Code, Section 1983: Civil Action for Deprivation of Rights. This allows lawsuits to be brought against officials and employees of the states and their political subdivisions in federal or state court. There are four types of lawsuits that can be filed against judges and court personnel under Section 1983:

- A suit for money damages for past wrongs in an official capacity;
- A suit for money damages in an individual or personal capacity;
- A suit for injunctive or declaratory relief in an official capacity; and
- A suit for injunctive or declaratory relief in an individual or personal capacity.

A judgment against an officer or city employee in an official capacity imposes liability on the city as long as the city's policy or custom was involved. For an aggrieved party to prevail and collect damages for an alleged violation of Section 1983, the party must establish: (1) that there is deprivation of a right, privilege, or immunity secured by federal law and (2) that the defendant committed the deprivation while acting under a statute, ordinance, regulation, or practice of a state or a political subdivision of the state including municipalities.

A judge under certain circumstances is afforded judicial immunity from personal liability for lawsuits brought against the judge in his or her individual capacity under Section 1983. As a general rule, judicial immunity is accorded only for "judicial acts" that are not clearly in excess of the judge's jurisdiction. Administrative and ministerial acts, such as the hiring and firing of personnel, are not judicial acts and are not entitled to judicial immunity although some lesser immunity may apply.

66. List five end-users in municipal courts. _____

_____

True or False

67. Once a defendant has been found guilty, he or she should be treated as a criminal and no longer as a court customer. ____

68. Judicial immunity only covers judicial acts, not ministerial duties of the clerk. ____

69. Cities can be held liable for procedural errors made by court clerks following city policy. ____

ANSWERS TO QUESTIONS

PART 1

1. False (all persons are presumed innocent until proven guilty).
2. False (also when arrested with a warrant).
3. True.
4. False (or a personal bond).
5. True.
6. True.
7. True.
8. The right to notice of a hearing or trial that adequately informs the accused of the charges against him or her and the right to a hearing.
9. The right to a hearing or trial includes the right to present evidence on the accused person's behalf before an impartial judge or jury, the right to the presumption of innocence until proven guilty by legally obtained evidence, and the right to have the verdict supported by the evidence presented at trial.
10. True.
11. False.
12. False.
13. True.
14. True
15. False.
16. Two years from the date of the offense.
17. The judge is disqualified as a matter of law when a judge is the injured party; has been counsel for the State or the accused; or is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined under Chapter 573 of the Government Code.
18. False.
19. False.
20. False.
21. True.
22. True.
23. True.
24. True.
25. The Texas Rules of Evidence.
26. The defendant is invoking the right against self-incrimination.

27. The State must prove each element of the offense charged beyond a reasonable doubt.

28. It guarantees protection against unreasonable searches and seizures.

29. This rule excludes evidence obtained from unreasonable searches and arrests.

30. A claim that a defendant was personally subjected to the unconstitutional conduct.

31. False.

32. False (it might lead to a distortion of meaning).

33. False.

34. Those with hearing disabilities.

35. Independent languages, such as American Sign Language; speech-equivalent-signing systems; and finger-spelling systems.

36. Only 26 percent of speech can be understood through lip-reading.

37. Persons who do not have a systematic way of communication and need relay or intermediary interpreters.

38. These may include reducing noise from fans, air conditioners, outside traffic or construction, and typing in an adjacent room.

39. A court reporter keys in the spoken language, which then can be read on a personal computer.

40. False.

41. True.

42. False.

43. False (a master designation is required for a court of record).

44. False (the magistrate is required to release on personal bond in most cases).

45. False (all municipal courts must comply).

46. True.

47. False (action is not required if it demands undue financial or administrative burden).

48. A person with a disability:
    - has a physical or mental impairment that substantially
    - has a record of such an impairment; or
    - is regarded as having such an impairment.

49. This answer may include high public counters, water fountains, and telephones; no accessible elevators; stairs instead of ramps; and inaccessible restrooms.

50. Judge's bench, jury boxes, witness boxes, counsel table, public seating, and microphones.

51. The accessibility ombudsman may assist in arranging reasonable individualized accommodations such as making physical changes to the work environment, restructuring jobs, modifying schedules, or providing qualified readers.

52. Court assessments of how court users are treated can be formally or informally conducted by court personnel in areas such as:
    - wait time at the window;
    - access and placement on court dockets;
    - wait time to speak to the prosecutor.

53. Yes.

54. A court order that prohibits the arrestee from committing family violence, stalking, communicating directly with or threatening the victim or a member of her family, going near the residence, place of employment, business, child care facility, or school where the person protected under the order reside or attend. This is also called a MOEP (magistrate's order of emergency protection).

55. Any of the following: a victim; a guardian of the victim; a police officer; a prosecutor; or a magistrate. Art. 17.292, C.C.P.

56. No. This magisterial function must be performed by a judge or magistrate.

57. The clerk must mail him or her a copy.

58. False.

59. True.

60. Second degree felony.

61. No.

62. False.

PART 2

63. True.

64. False.

65. False.

PART 3

66. End-users include: defendants; victims; witnesses; prosecutors; defense lawyers; bail bondsmen; and jurors.

67. False.

68. True.

69. True.

2

Municipal Court Processes

Table of Contents

INTRODUCTION

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

PART 1
MUNICIPAL COURT JURISDICTION

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

A. Types of Criminal Jurisdiction

1. Original Jurisdiction

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

2. Exclusive Original Jurisdiction

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

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

3. Concurrent Jurisdiction

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

a. Justice Courts

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

b. District Courts or County Courts

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

B. Types of Geographic Jurisdiction

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

1. Municipal Courts of Record

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

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

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

2. Municipal Courts of Non-Record

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

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

Practice Note

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

C. Subject Matter Jurisdiction

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

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

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

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

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

2. Violations of Statutes

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

D. Jurisdiction over Juveniles and Minors

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

True or False

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

PART 2
CHARGING INSTRUMENTS

A. Purpose

1. Notifies Defendant of Charge

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

2. Initiates Proceedings

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

B. Complaint

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

1. Requirements

a. Beginning and Ending

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

b. Elements of Offense

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

c. Location

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

d. Culpable Mental States

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

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

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

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

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

e. Property

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

f. Name of Victim

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

g. Manner and Means

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

h. Date of Offense

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

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

i. Sworn and Signed

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

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

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

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

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

j. Municipal Court Seal

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

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

2. Defects in the Complaint

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

3. Motions to Quash Complaint

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

Practice Note

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

4. Amendment to Complaint

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

5. Enhancements

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

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

Practice Note

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

C. Citation

1. Authority of Peace Officer to Issue

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

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

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

2. When Citation Serves as the Complaint

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

3. When Defendant Pleads Not Guilty

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

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

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

4. When Defendant Fails to Appear

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

True or False

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 3
DISMISSALS

A. General Authority to Dismiss

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

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

B. Duty to Dismiss

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

Examples of this type of dismissal include:

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

C. Discretion to Dismiss

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

D. Defense to Prosecution

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

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

True or False

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

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

PART 4
DOCKET

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

A. Format

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

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

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

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

B. Judgment

1. Entered

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

2. Electronically Recorded Judgment

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

True or False

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

PART 5
NON-CONTESTED PROCEEDINGS

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

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

A. Pleas of Guilty or Nolo Contendere

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

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

Practice Note

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

B. Appearances

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

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

1. Open Court

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

2. Delivery of Plea in Person

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

3. Mailed Plea

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

Practice Note

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

4. Payment of Fine Without Plea

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

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

C. Sentencing

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

True or False

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

PART 6
FAILING TO APPEAR

A. Failure to Appear (FTA)

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

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

B. Violation of Promise to Appear (VPTA)

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

Practice Note

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

C. Contracts

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

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

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

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

D. Nonresident Violator Compact

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

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

True or False

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

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

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

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

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

PART 7
WARRANTS, CAPIASES, AND SUMMONSES

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

A. Probable Cause

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

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

B. Service of Process

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

C. Warrant of Arrest

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

Practice Note

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

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

D. Capias

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

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

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

E. Summons

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

1. For a Defendant

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

Practice Note

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

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

2. For a Corporation or Association

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

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

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

F. Warrant for Seizure of Animals

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

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

G. Warrant for Nuisance Abatement

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

Practice Note

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

True or False

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 8
TRIAL PROCESSES

A. Rights

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

1. Trial by Jury

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

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

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

2. Public Trial

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

3. Speedy Trial

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

Practice Note

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

4. Right to Counsel

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

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

Practice Note

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

True or False

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

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

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

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

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

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

B. Scheduling

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

C. Subpoenas

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

Practice Note

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

DOCKET NO. 123456789

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

STATE'S REQUEST FOR WITNESS SUBPOENAS

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

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

1. Types of Subpoenas

a. For Out-of-County Witnesses

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

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

b. For Child Witnesses

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

c. Subpoena Duces Tecum

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

2. Service of the Subpoena

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

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

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

3. Refusal to Obey Subpoena

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

4. Bail for the Witness

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

True or False

92. Clerks have the authority to issue subpoenas. ____

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

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

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

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

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

D. Court Reporter

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

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

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

True or False

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

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

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

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

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

E. Appearance and Plea

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

F. Pre-Trial

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

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

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

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

Practice Note

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

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

True or False

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

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

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

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

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

G. Continuances

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

1. Operation of Law

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

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

2. Agreement

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

3. Sufficient Cause

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

4. Religious Holy Days

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

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

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

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

Practice Note

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

True or False

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

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

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

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

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

H. Jury Trials

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

1. Prospective Jurors

a. Jury Summons

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

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

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

b. Qualifications

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

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

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

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

c. Exemptions

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

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

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

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

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

Practice Note

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

d. Providing False Information and Failing to Appear

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

e. Personal Information

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

f. Compensation

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

2. Day of Trial

a. Jury Selection

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

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

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

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

b. Jury Shuffle

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

c. Challenge to the Array

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

Practice Note

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

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

True or False

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

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

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

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

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

d. Bench Trials

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

e. Administrative Considerations

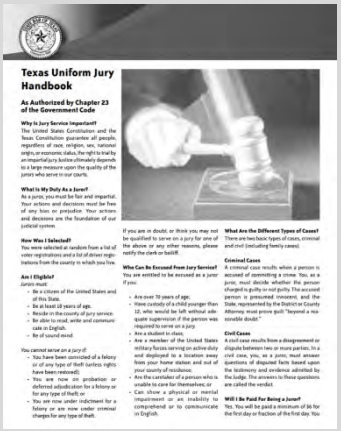
Generally, the overall process for jury trials and trials before the judge is similar, but there are some differences. The opening announcement is typically the same and the order of proceedings starting after the jury selection is the same. The biggest difference is that in a jury trial, the jury decides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

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

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

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

Practice Note


Texas Uniform Jury Handbook

As Authorized by Chapter 23 of the Government Code

Why Is Jury Service Important?

What Is My Duty As a Juror?

How Was I Selected?

Am I Eligible?

Who Can Be Excused From Jury Service?

What Are the Different Types of Cases?

Criminal Cases

Civil Cases

Will I Be Paid For Being a Juror?

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

3. Defendant's Appearance

a. Appears for Trial

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

b. Failure to Appear for Trial

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

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

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

4. Opening Announcement

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

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

5. Explanation of Rights, Options, and Court Proceedings

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

6. Docket Call in Non-Jury Trials

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

7. Jury Selection in Jury Trials

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

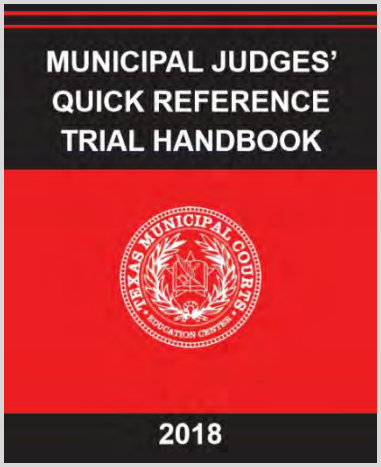
8. The Trial

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

- The prosecutor reads the complaint aloud in the courtroom.

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

Practice Note



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

9. Judgment in Bench Trial

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

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

10. Verdict in Jury Trial

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

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

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

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

11. New Trial

a. Municipal Court of Non-Record

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

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

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

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

b. Municipal Court of Record

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

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

True or False

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 9
CONTEMPT

A. Types of Contempt

1. Direct and Indirect Contempt

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

2. Civil and Criminal Contempt

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

B. Penalty

1. General Penalty

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

2. Against Sheriff or Officer

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

3. Failure to Appear for Jury Duty

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

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

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

5. Failure to Pay Costs of Impaneling Jury

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

True or False

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

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

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

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

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

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

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

PART 10
POST-TRIAL PROCEDURES

A. Penalties

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

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

Practice Note

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

B. Restitution

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

C. Payment of Fine and Costs

1. Jail-Time Credit

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

2. Payment by Credit Card

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

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

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

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

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

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

3. Ability to Pay and Required Hearing

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

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

Practice Note

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

4. Payment by Community Service

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

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

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

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

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

Practice Note

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

5. Waiver of Fine or Costs

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

True or False

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

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

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

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

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

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

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

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

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

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

_____

PART 11
FINE ENFORCEMENT AND COLLECTION

A. Default in Payments

1. Capias Pro Fine

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

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

Practice Note

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

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

2. Commitment

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

True or False

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

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

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

_____

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

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

_____

B. Collection by Civil Process

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

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

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

1. Collection by Execution

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

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

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

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

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

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

2. Abstract of Judgment

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

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

True or False

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

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

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

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

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

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

C. Contracts

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

1. Department of Public Safety

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

2. Texas Department of Motor Vehicles

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

3. Collection Vendors

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

Practice Note

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

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

_____

PART 12
DSC AND DEFERRED

A. Driving Safety Courses

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

1. Application

a. Offenses to Which DSC/MOC Applies

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

b. Exceptions

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

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

2. Course Requirements

a. Courses

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

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

b. Special Safety Belt Course

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

3. Eligibility and Requirements

a. Mandatory DSC and MOC

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

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

b. Eligibility Requirements for Judge's Discretion

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

4. Costs

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

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

5. Time Requirements

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

6. Evidence Required for Dismissal

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

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

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

7. Failure to Complete Course

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

8. Payment of Fine

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

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

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

B. Deferred Disposition

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

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

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

1. Terms

a. Discretionary Terms

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

b. Mandatory Terms

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

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

2. Satisfactory Completion

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

3. Failure to Comply with the Terms

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

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

4. Docket Entries

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

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

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

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

5. Reports to Department of Public Safety

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

Practice Note

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

C. Deferral of Proceedings for Chemically-Dependent Persons

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

True or False

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 13
APPEALS

A. Right to Appeal

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

B. Appellate Courts

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

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

C. Appeals from Non-Record Courts

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

D. Appeals from Courts of Record

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

E. Appeal Bonds

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

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

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

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

Practice Note

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

F. Role of the Clerk

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

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

Practice Note

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

G. Conviction or Affirmance of Judgment on Appeal

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

H. Withdrawal of Appeal

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

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

True or False

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANSWERS TO QUESTIONS

PART I

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

PART 2

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

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

PART 3

48. True.
49. False.

PART 4

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

PART 5

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

59. True.

60. True.

61. False.

62. False.

63. True.

PART 6

64. False.

65. False.

66. True.

67. True.

68. True.

PART 7

69. True.

70. False.

71. True.

72. True.

73. True.

74. True.

75. False.

76. False.

77. True.

78. True.

79. True.

80. False.

81. True.

82. True.

83. True.

84. True.

85. True.

PART 8

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

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

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

PART 9

150. True.

151. True.

152. False.

153. True.

154. True.

155. True.

156. False.

PART 10

157. True.

158. False.

159. False.

160. False.

161. True.

162. False.

163. True.

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

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

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

PART 11

167. True.

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

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

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

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

172. True.

173. True.

174. False.

175. False.

176. False.

177. True.

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

PART 12

179. True.

180. False.

181. True.

182. True.

183. True.

184. True.

185. True.

186. False.

187. False.

188. True.

189. True.

190. False.

191. True.

192. False.

193. True.

194. False.

195. True.

196. True.

197. True.

198. True.

199. False.

200. True.

PART 13

201. False.

202. True.

203. False.

204. True.

205. True.

206. True.

207. True.

208. True.

209. True.

210. True.

211. True.

212. True.

213. False.

214. True.

215. True.

216. True.

3

Applying Criminal Codes

Table of Contents

INTRODUCTION

Most court procedures, processes, and offenses can be found in two criminal codes: the Code of Criminal Procedure and the Texas Penal Code. To determine if a statute in the codes applies to all courts or to a court other than a municipal court, clerks need a basic understanding of the Code Construction Act, which helps courts interpret statutes. This chapter provides an overview of the Code of Criminal Procedure, the Penal Code, and the Code Construction Act. Although some of the content will look familiar, the practice questions will help apply what has already been covered. Short summaries of the relevant codes covered in depth elsewhere are included here for quick reference.

PART 1
CODE CONSTRUCTION ACT

A. Purpose

The Code Construction Act, found in Chapter 311 of the Government Code (G.C.), applies to all laws passed since the 60th Legislative Session, including amendments, repealed sections, revisions, or reenactments of all provisions of Texas statutes. The purpose of the Code Construction Act is to help courts ascertain and appropriately enforce the legislative intent of statutes. Courts do not have the power to legislate, but they do have a duty to adhere to statutory provisions and rules. The Code Construction Act helps courts reasonably construe statutes so that they implement procedures, follow rules, and properly handle cases in accordance with general principles of law.

B. Code Construction Act Rules

1. Words and Phrases

According to the Code Construction Act, words and phrases should be read in context and interpreted according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, are read to include that meaning. Sec. 311.011, G.C. Moreover, Article 3.01 of the Code of Criminal Procedure states that words, phrases, and terms used in the Code of Criminal Procedure are to be used and understood in typical common language, except where specifically defined.

2. Tense, Number, and Gender

When reading a statute, words in the present tense are intended to also include the future tense. Singular words include the plural and vice versa. Words of one gender are also meant to include the other genders. Sec. 311.012, G.C.

3. Counting Days and Months

The general rules for the computation of time are explained below.

a. Days

When computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday. Sec. 311.014(a) and (b), G.C.

Section 311.014 governs municipal court procedures, such as appeals, which have time deadlines. For example, defendants convicted at trial in a municipal court of record must file an appeal bond with the court within 10 days. In calculating the deadline, the court would not count the first day−the day judgment was entered−but would count the last day unless it fell on a Saturday, Sunday, or a legal holiday. If the last day fell on one of those days, the 10-day period would be extended to include the next working day of the court.

For example, if the trial and conviction occurred and judgment was entered on a Wednesday, the 10th day would fall on a Saturday. Thus, the defendant would have until the following Monday to give notice of an appeal and post an appeal bond, unless Monday was a legal holiday, in which case the deadline would be extended to the next day which was not a legal holiday.

b. Months

By contrast, when computing months by counting a set number of months from a particular day, the period ends on the same numerical day of the final month as the day of the month from which the counting begins. If there are not that many days in the concluding month, then the period ends on the last day of the concluding month. Sec. 311.014(c), G.C.

4. Reference to a Series

If a statute refers to a series of numbers or letters, the first and last numbers or letters are included. Sec. 311.015, G.C.

5. Intention in Enactment of Statutes

In enacting a statute, it is presumed that:

- there is compliance with the U.S. and Texas Constitutions;
- the entire statute is intended to be effective;
- a just and reasonable result is intended;
- a result feasible of execution is intended; and
- public interest is favored over private interest. Sec. 311.021, G.C.

6. Statute Construction Aids

Section 311.023 provides that whether or not a statute appears on its face to be ambiguous, a court, when interpreting statutes, may consider among other matters the:

- object or purpose sought to be achieved;
- circumstances under which the statute was enacted;
- legislative history;
- common law or former statutory provisions, including laws on the same or similar subjects;
- consequences of a particular construction;

- administrative construction of the statute; and
- title (caption), preamble, and emergency provision.

However, the Texas Court of Criminal Appeals has held that in discerning legislative intent or purpose, they focus on the literal text of the statute in question because "it is the only thing actually adopted by the legislators, probably through compromise, and submitted to the Governor for [his] signature." *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991). The Court held that "although Section 311.023 of the Government Code invites, but does not require, courts to consider extra-textual factors when the statutes in question are not ambiguous, such an invitation should be declined." *Id*. Under this line of reasoning, the Court of Criminal Appeals will only look to the factors described by Section 311.023 if the statute in question is ambiguous.

7. Statute Heading

When researching a particular topic in any code, the chapter, article, and section headings can aid in finding certain information. The title headings, however, are not intended to limit or expand the meaning of a statute. Sec. 311.024, G.C. For example, Article 27.14 of the Code of Criminal Procedure is titled "Plea of Guilty or Nolo Contendere in Misdemeanor." The heading seems to imply that only rules on those two pleas are contained in the statute, but the statute also provides guidance on the filing of a sworn complaint when a plea of not guilty is entered.

8. Severability of Statutes

Severability provisions, or savings clauses, save part of a statute when other parts are declared unconstitutional. Section 311.032 provides that "if a statute contains a provision for severability, that provision prevails in interpreting that statute." Therefore, should a court declare part of a statute containing a severability provision unconstitutional, the other parts would still be valid if they are self-sustaining and capable of separate enforcement without regard to the invalid portion. Some statutes have a provision for non-severability, which means that if part of the statute is declared unconstitutional, the whole statute is invalid. Other statutes do not contain severability clauses. If any provision of one of those statutes or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute if the provisions can be effective without the invalid provisions or application. Sec. 311.032(c), G.C. Hence, the provisions of those statutes that are not held invalid are severable.

An example in which a court declared an entire act unconstitutional is *Meshel v. State*, 739 S.W.2d 246 (Tex. Crim. App. 1987). This case held that the "Speedy Trial Act" (Chapter 32A of the Code of Criminal Procedure) was entirely unconstitutional. Hence, no portion of Chapter 32A could be enforced. Eighteen years later, in 2005, the Legislature finally repealed Chapter 32A. It should be noted, however, that municipal court defendants still have a constitutional right to a speedy trial.

Since case law interprets statutes or declares statutes or portions of statutes unconstitutional, it is important to research all sources of law when trying to determine how to interpret or apply a certain statute.

9. Latest in Date of Enactment

The Legislature has the opportunity to change all codes, including the Code of Criminal Procedure and Penal Code, each time it convenes. If two laws conflict, but one is more recent than the other, the more recent law applies. Sec. 311.025(a), G.C. This is referred to as the "date rule."

If amendments to the same statute are enacted at the same session, the amendments shall be harmonized if possible so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails. Sec. 311.025(b), G.C.

Thus, as entire statutes are intended to be effective and a result feasible of execution is intended, courts should first attempt to reconcile amendments. If the statutes or amendments are so conflicting that they cannot be harmonized, then courts must look to the date of enactment to determine which statute/amendment prevails. Generally, the date of enactment is the date on which the last legislative vote is taken on the bill. Sec. 311.025(d), G.C. Conflicting statutes and amendments are not a rarity; there is a need to determine the latest in date of enactment between conflicting bills almost every session.

10. General vs. Specific Statutes

General statutes are ones that apply to all courts unless there is a specific statute that makes an exception. Article 45.002 of the Code of Criminal Procedure provides that municipal court proceedings are to be conducted according to the rules in Chapter 45. If, however, there is not a rule in Chapter 45 that applies, the court must apply other general provisions in the Code of Criminal Procedure to ensure that the objectives of Chapter 45 are met. Within Chapter 45 or even outside of the Code of Criminal Procedure altogether, whenever two provisions seem to cover the same topic and one is specific to municipal court, the court must follow the specific provision. Section 311.026(a) provides that if a general provision conflicts with a special or local provision, the provisions shall be interpreted, if possible, to give effect to both. But, if the conflict is irreconcilable, the special or local provision prevails as an exception to the general provision. Sec. 311.026(b), G.C. This is referred to as the "rule of the specific."

The following list gives examples of this "rule of the specific" using Chapter 45 of the Code of Criminal Procedure and its rules that apply specifically to municipal courts but not to county or requesting courts.

- Articles 27.01 and 45.018 of the Code of Criminal Procedure provide rules regarding charging instruments. Article 27.01 states that the primary pleading (charge) in a criminal action by the State is the indictment or information. Article 45.018 provides that a complaint is a sworn allegation charging the accused with the commission of an offense. Since Article 45.018 is in the specific chapter for municipal and justice courts, municipal court defendants are charged by complaint instead of by indictment or by information.
- Articles 45.019(b) and 45.019(c) of the Code of Criminal Procedure provide rules regarding complaints. Article 45.019(b) provides that a complaint filed in justice courts must allege that the offense was committed in the county in which the complaint was made. Article 45.019(c) provides that a complaint filed in municipal courts must allege that an offense occurred in the territorial limits of the city.
- Article 35.15(c) and 45.029 of the Code of Criminal Procedure provide rules on peremptory challenges. Article 35.15(c) provides that in misdemeanor cases both the State and the defendant are entitled to five peremptory challenges each. Article 45.029 provides that the State and defendant are each entitled to three peremptory challenges in municipal court jury trials. Because the latter provision is in Chapter 45, it controls in municipal courts.

- Articles 35.01 and 45.027(c) of the Code of Criminal Procedure provide rules regarding a juror's failure to appear. Article 35.01 specifies a fine of not less than $100 or more than $500. Article 45.027(c) specifies a fine not to exceed $100. Because the latter provision in located in Chapter 45, municipal courts must follow it.
- Articles 35.23 and 45.034 of the Code of Criminal Procedure provide rules for juries. Article 35.23 provides authority for a court to permit jurors to separate before a verdict in a misdemeanor. Article 45.034 states that a jury in municipal court is to be kept together until it agrees to a verdict, is discharged, or the court recesses.
- Section 311.014 of the Government Code and Article 45.013 of the Code of Criminal Procedure provide rules for computation of time. Section 311.014 states that the computation of time does not exclude Saturdays, Sundays, or legal holidays unless the last day of the period falls on one of those days. Municipal courts, however, have a specific provision regarding the filing of documents by mail. Article 45.013 provides that a document is timely filed if it is mailed first class in a postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed. The clerk must receive the document within 10 days after the date the document is required to be filed with the clerk. Article 45.013 defines "day" not to include Saturdays, Sundays, or legal holidays. That specific provision prevails for items received by mail.
- Section 38.10 of the Penal Code [Failure to Appear (FTA)] creates an offense for defendants who fail to appear to answer for a criminal charge, assuming additional elements are met, while Section 543.009 of the Transportation Code [Violate Promise to Appear (VPTA)] creates an offense for defendants who fail to appear to answer for a Rules of the Road offense. As VPTA is a more specific charge, if the defendant could be charged with VPTA, then the defendant must be charged with that specific offense over the general offense of FTA.

An example of a general statute is Article 35.16 of the Code of Criminal Procedure, which provides reasons for why a judge may grant a motion to remove a juror for cause. This statute does not state specifically that it applies to municipal courts, but because Chapter 45 does not provide specific rules on this subject, Article 35.16 will apply to all courts.

Another example of a general statute is Article 17.38 of the Code of Criminal Procedure, which states that the rules in Chapter 17 (regarding appearance bonds) apply to any court, judge, magistrate, or other officer who requires bail of a person accused of an offense or of a witness in a criminal action. Since Chapter 45 does not contain specific rules for setting appearance bonds, municipal judges must use Chapter 17 rules for setting bonds. Chapter 45 does, however, have specific rules regarding appeal bonds for convictions being appealed from municipal court.

1. What is the purpose of the Code Construction Act?_____

   _____

2. Where is the Code Construction Act located? _____

   _____

3. How are statutes to be interpreted?_____

_____

4. How does the Code Construction Act require that words and phrases be interpreted? _____

_____

_____

5. How are words with a technical or particular meaning to be interpreted? _____

_____

6. Summarize the Code Construction Act rules regarding tense, number, and gender. _____

_____

7. Explain the Code Construction Act rule for the computation of time. _____

_____

_____

8. What is presumed when a statute is enacted?_____

_____

_____

_____

9. List the statute construction aids in Section 311.023 of the Government Code._____

_____

_____

_____

_____

_____

10. When are the statute construction aids to be used according to the Court of Criminal Appeals?

_____

_____

_____

True or False

11. The Code Construction Act applies to all current statutes. ____

12. The heading of a statute limits the meaning of the statute. ____

13. If part of any statute is unconstitutional, the rest of the statute is also invalid. ____

14. Since case law interprets statutes, courts should research all sources of law when determining how to administer statutes. ____

15. Chapter 45 of the Code of Criminal Procedure is an example of a chapter containing specific statutes. ____

16. Documents mailed to the municipal court must follow the specific rule in Chapter 45 for filing documents through the mail. ____

17. Chapter 17 of the Code of Criminal Procedure, which provides rules for bonds, contains general statutes that apply to all courts. ____

18. What is a severability clause commonly called? _____

19. What is the purpose of a severability provision? _____

_____

_____

_____

_____

20. Define the "date rule." _____

_____

21. What does latest in date of enactment mean? _____

_____

22. Define general statutes._____

_____

23. Define the "rule of the specific." _____

_____

PART 2
CODE OF CRIMINAL PROCEDURE

A. Introduction to the Code of Criminal Procedure

The Code of Criminal Procedure is a collection of statutes governing procedures in criminal investigations and trials. Texas criminal cases have been conducted using a code of procedure since 1925. Throughout the years, the Texas Legislature has added new rules, changed existing rules, and repealed rules. In 1965, the Legislature restructured previous codes and created the Code of Criminal Procedure, and the basic format has remained the same since. The present code constitutes the law that must be applied in criminal cases, including fine-only misdemeanor cases in municipal court.

Article 1.03 sets out the code's intent, provides objectives, and establishes rules for the prevention and prosecution of crimes in Texas:

- adopt measures to prevent crime;
- create rules to prevent criminals from escaping;

- set out trial procedures;
- make available as much evidence as possible;
- guarantee guidelines for fair and impartial trials; and
- provide rules to make sure sentences are properly executed.

The code is divided into two parts, which are further divided into chapters and articles containing definitions, procedures, and rules pertaining to investigations, trials, and appeals. The code applies to criminal cases in all criminal courts: the Court of Criminal Appeals, the courts of appeal, district courts, county courts, county courts at law with criminal jurisdiction, county criminal courts, magistrates appointed in certain counties, justice of the peace courts, and municipal courts. Art. 4.01, C.C.P.

24. What types of investigations and trials does the Code of Criminal Procedure govern? ___
_____

25. List the objectives of the Code of Criminal Procedure. _____
_____
_____

26. List the courts that the Code of Criminal Procedure applies to. _____
_____
_____

B. Structure of the Code of Criminal Procedure

The Code of Criminal Procedure is divided into two parts−Title I and Title 2.

1. Title I

The specific provisions of Title I are listed here by chapter groupings.

- Introductory Provisions (Chapters 1-3): These chapters list objectives of the code; defendants' rights; duties of peace officers, prosecutors, magistrates, investigators, and clerks; and other general provisions, including those on racial profiling.
- Courts and Criminal Jurisdiction (Chapter 4): This chapter lists the criminal courts, along with crimes that may be tried in each court. Municipal court jurisdiction is found in Article 4.14.
- Prevention and Suppression of Crimes (Chapters 5-10): These chapters involve family violence and protective orders, peace bonds, and suppression of riots. The previous Chapter 10, regarding obstructions of public highways, was repealed and relocated to Chapter 473 of the Transportation Code.

- Habeas Corpus (Chapter 11): This chapter contains provisions relating to writs of habeas corpus, which are issued when someone is held in jail or under restraint without adequate probable cause.
- Limitation and Venue (Chapters 12 and 13): These chapters provide time periods, or limitations, by which a person must be charged with an offense as well as provisions on venue, which is the location where a particular offense must be prosecuted. The time limitation is commonly called the "statute of limitations."
- Arrest, Commitment, and Bail (Chapters 14-17): These chapters govern arrests without warrants, arrests with warrants, examining trials, magistrate warnings, and bail.
- Corporations and Associations (Chapter 17A): This chapter discusses the criminal responsibility of corporations and associations.
- Search Warrants (Chapters 18-18B): These chapters contain rules relating to search warrants, including blood draws, with specific provisions for disposing of abandoned or unclaimed property, paraphernalia, and weapons; detection, interception, and use of communications; and installation and use of tracking equipment.
- After Commitment or Bail and Before the Trial (Chapters 19-31): These chapters contain provisions relating to grand juries; indictments and information; bond forfeitures; capiases, summons, subpoenas, and writs of attachment; arraignment; pleadings in a criminal case, including the defendant's plea and any motions; continuances; and venue changes.
- Trial and Its Incidents (Chapters 32-39): These chapters contain provisions about trials, including whether a defendant must be present for trial, bail during trial, the criminal docket, and special rules relating to capital murder cases. Also included in these chapters are rules concerning the formation of the jury, such as qualifications of a juror, who may be excused, and how voir dire (jury selection) should be conducted. Chapter 32 contains provisions on the dismissal of cases. Chapter 36 contains provisions for trial procedures, including order of argument, jury charge, and jury deliberations. Chapter 37 contains rules about the verdict. Chapter 38 contains evidence rules applicable to criminal cases. (A separate collection of rules called the Texas Rules of Evidence also applies to criminal trials.) Chapter 39 contains rules for taking depositions and handling motions for discovery.
- Proceedings after the Verdict (Chapters 40-43): These chapters contain rules for handling motions for new trial, judgments, pronouncing sentences, adult probation laws, and execution of the judgment by paying fines or by imprisonment.
- Appeal and Writ of Error (Chapter 44): This chapter contains rules for appeals, which includes some rules for municipal court appeals, though most rules governing municipal court appeals are in Chapter 45.
- Justice and Municipal Courts (Chapter 45): This chapter provides specific rules for justice and municipal courts. It includes rules for complaints, warrants, docketing, pleas, trials, judgments, new trials, appeals, capias pro fines, deferred disposition, driving safety courses, and special handling provisions for persons under the age of 17.

Clerks should become familiar with this chapter and always look first to Chapter 45 when researching any municipal court procedure.

- Miscellaneous Proceedings (Chapters 46-67): These chapters contain provisions not usually affecting municipal courts, including: the defense of insanity; incompetence to stand trial; disposition of stolen property; forfeiture of contraband; criminal history record system; pardons and parole; inquests; fugitives from justice; courts of inquiry; gang, sex offender, and missing persons/children databases; and AIDS/HIV and DNA testing. Chapter 55 provides for expunction rights applicable to municipal courts of record and other courts. Chapter 56 provides for the rights and compensation of victims of crime, while Chapters 57, 57A, 57B, 57C, and 57D provide for confidentiality of sex offense, family violence, child, and human trafficking victims.

2. Title 2

Title 2 contains four chapters: 101 through 104. These chapters relate to costs, collection of costs, recordkeeping, and private and public vendor collection contracts. Some provisions relate directly to justice and municipal courts.

- General Provisions (Chapter 101): This chapter contains the purpose of Title 2, provides that the Code Construction Act applies to the construction of Title 2, and general provisions about references to chapters and articles.
- Costs Paid by Defendants (Chapter 102): This chapter provides for fees and certain court costs. Not all the fees are applicable to municipal courts, but the following fees are:
  - reimbursement fees for services of peace officers (Articles 102.001 and 102.011);
  - fees in expunction proceedings (Article 102.006);
  - fines for Child Safety Fund (Article 102.014);
  - Municipal Court Building Security Fund (Article 102.017); and
  - Municipal Court Technology Fund (Article 102.0172)
- Collection and Recordkeeping (Chapter 103): This chapter contains provisions for the collection and recordkeeping of certain court costs. It provides authority for a municipality to enter into a contract for collection of fines, fees, restitution, and failures to appear that are more than 60 days past due.
- Certain Expenses Paid by State or County (Chapter 104): This chapter provides for paying certain jury, prisoner, and prosecution expenses. This chapter does not apply to municipal courts.

27. Explain the basic format of the Code of Criminal Procedure. _____

_____

28. Where in the Code of Criminal Procedure can municipal courts find their jurisdiction?__

_____

29. Where in the Code of Criminal Procedure are the rules regarding the statutes of limitation?

_____

_____

30. Where in the Code of Criminal Procedure can you find criminal responsibility of corporations and associations?_____

31. Where in the Code of Criminal Procedure are most rules found governing municipal court appeals? _____

32. What is the title of Chapter 45 of the Code of Criminal Procedure? _____

_____

33. What information is contained in Chapter 101 of the Code of Criminal Procedure?_____

_____

34. Which fees in Chapter 102 of the Code of Criminal Procedure are applicable to municipal court proceedings? _____

_____

35. In which chapter of the Code of Criminal Procedure is information on collection contracts for fines, fees, and restitution? _____

C. Provisions that Apply to Municipal Courts

Although there are many provisions discussed throughout the chapters in this book, the following is a summary of some of the pertinent statutes in the Code of Criminal Procedure that apply to municipal courts.

1. Public Servants

Article 3.04(2) defines public servants by referring to the definition located in Section 1.07 of the Penal Code, which states that a public servant is a person who is elected, selected, appointed, or employed even if he or she has not yet qualified for office or assumed his or her duties and includes:

- an officer, employee, or agent of the government;
- a juror or grand juror;
- an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;
- an attorney at law or notary public when performing duties of a governmental function;
- a candidate for nomination or election to public office; or
- a person who is performing a governmental function under a claim of right although he or she is not legally qualified to do so.

Since municipal judges, court clerks, and deputy court clerks are elected, appointed, or employed by a governmental agency, they are public servants.

2. Jurisdiction

Jurisdiction is a court's legal power or authority over certain geographical areas and certain crimes and cases. The municipal courts' jurisdiction is defined in Articles 4.14 and 4.16. Article 4.15 provides that the municipal court may sit at any time to try a criminal case in its jurisdiction.

3. Rights of All Defendants

Municipal court defendants have the same rights as defendants charged in any criminal court in Texas. The following is a listing of some of those rights in the Code of Criminal Procedure.

- Article 1.05: Rights of the Accused. All municipal court defendants have:
  - the right to a speedy public trial by an impartial jury;
  - the right to know the nature and cause of the accusation against them and to have a copy of the complaint;
  - the right not to give evidence against themselves;
  - the right of being heard;
  - the right to be confronted with witnesses against them; and
  - the right to compulsory process (subpoenas) for obtaining witnesses in their favor.
- Article 1.051: Right to Representation by Counsel. All defendants have the right to be represented by counsel, which includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding. An indigent defendant is entitled to have an attorney appointed to represent him or her in any adversarial judicial proceeding that may result in punishment by confinement or in any other criminal proceeding if the court concludes it is in the interest of justice. Thus, municipal court defendants are entitled to hire and consult with counsel and have representation but are not entitled to appointed counsel. The court may, however, appoint counsel for an indigent defendant if the interest of justice requires representation.
- Article 1.06: Searches and Seizures. No warrant to seize any person shall issue without probable cause supported by oath or affirmation.
- Article 1.07: Right to Bail. All prisoners shall be bailable unless for capital offenses when the proof is evident. Thus, all municipal court defendants have a right to bail.
- Article 1.09: Cruelty Forbidden. The judge cannot require excessive bail or impose excessive fines.
- Article 1.10: Jeopardy. No person may be tried twice for the same offense after a verdict of not guilty in a court of competent jurisdiction. This is called double jeopardy.

- Article 1.12: Right to a Jury. The right of a trial by jury shall remain inviolate. Inviolate means that the right cannot be violated and is free from any impairment. Thus, municipal court defendants have a right to a jury trial.
- Article 1.24: Public Trial. The proceedings and trials in all courts shall be public.

4. Persons Under the Age of 17

Chapter 45 contains many statutes that apply to defendants under the age of 17. Examples include:

- Article 45.0215 requires the court to summon the parent, guardian, or managing conservator and have him or her appear in court with their child who is younger than 17 years of age.
- Article 45.0216 requires courts to admonish persons under the age of 17 charged with a penal offense of their right to expunction and give a copy of the statute to the child and parent.
- Article 45.050 provides options for the court for enforcement of judgments or orders against persons under the age of 17 who fail to comply and how to proceed in enforcement through contempt.
- Article 45.056 allows municipal courts, with the consent of the city council, to employ a juvenile case manager.
- Article 45.057 provides rehabilitative sanctions that the court may require of a person under the age of 17 upon conviction.
- Article 45.058 provides rules for taking children into custody.
- Article 45.059 provides rules for taking children into custody who are in violation of a juvenile curfew order.

5. Citations and Complaints

Articles 45.018 and 45.019 define what a complaint is in municipal court and the requisites of a valid complaint.

Article 1.05 states that defendants have a right to know the nature and cause of an accusation against them and to have a copy of the complaint. Article 45.018 provides that a defendant in municipal or justice court is entitled to notice of a complaint not later than the day before any proceeding in the prosecution. The defendant, however, may waive the right to notice.

Article 45.019 states that a complaint "is sufficient without regard to its form if it substantially satisfies the requisites" in that article. Clerks should rely on the prosecutor to draft the wording and form of complaints. If a defendant does not object to defects in the complaint before the date in which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect. Art. 45.019(f), C.C.P.

A written notice, or citation, may be accepted to serve as the complaint to which a defendant can plead guilty, nolo contendere, or not guilty. Art. 27.14(d), C.C.P. The defendant must have been given a legible duplicate copy of the citation. If a defendant pleads not guilty, a sworn complaint must be filed unless the defendant and prosecutor agree to go to trial on the written notice (citation). The agreement must be in writing and filed with the court.

The provision authorizing a peace officer to issue a citation to an offender in lieu of taking the person before the magistrate is Article 14.06(b). Certain information must be included in the wording of the citation. Special provisions exist for officers releasing an individual detained for public intoxication. Art. 14.031, C.C.P.

6. Docket

Article 45.017 requires each judge, or clerk if directed by the judge, to keep a docket and enter certain proceedings in the docket. A docket is a formal record with brief entries of the proceedings in a case. Articles 45.017(b) and 45.012(b)(3) provide authority for courts to maintain a docket by electronic means.

7. Pleas and Appearances

Appearance is a proceeding in which a defendant submits to the jurisdiction of the court by entering a plea. Further court proceedings depend on the plea entered. The following Code of Criminal Procedure statutes indicate how defendants may make appearances to enter a plea.

- Article 45.021 provides that all pleadings in municipal courts may be oral or in writing "as the court may direct."
- Article 45.0215 requires persons under 17 to enter a plea in person in open court with a parent, guardian, or managing conservator. It also requires a person under 17 to enter a plea, with permission of the judge of the court of original jurisdiction, in the county where the juvenile lives.
- Article 45.023 provides that a defendant may enter a plea of guilty, nolo contendere, not guilty, or a special plea after a jury is empaneled or after the defendant has waived trial by jury. Judges may also permit a defendant who is detained in jail to enter a plea; however, if the defendant who enters a plea in jail makes a motion for new trial not later than 10 days after judgment is rendered, the judge shall grant the motion.
- Article 27.14(a), (b), and (c) provide rules for making an appearance and for entering pleas of guilty or nolo contendere.
  - Subsection (a) provides that a defendant or his or her counsel may make a plea of guilty or nolo contendere in open court.
  - Subsection (b) provides that in cases of fine-only misdemeanors, defendants may mail or deliver in person a plea of guilty or nolo contendere and a waiver of jury trial to the court. Article 45.013, the "Mailbox Rule," provides rules for handling documents filed with the court through mail. The Mailbox Rule establishes when a document is considered timely filed with the clerk. It says that once a document is mailed on or before the due date and the clerk receives it not later than the 10th day after the required filing date, it is considered timely filed.
  - Subsection (c) of Article 27.14 permits a defendant to pay a fine and costs without entering a plea. If the court accepts the amount offered by the defendant, it constitutes a finding of guilty in open court as though a plea of nolo contendere had been entered by the defendant. The payment also constitutes a written waiver of jury trial. The payments may be made in open court, mailed to the court, or

delivered in person to the court as provided in subsections (a) and (b) of Article 27.14.

- Article 27.16 provides that a plea of not guilty may be made orally by the defendant or by his or her counsel in open court. In fine-only misdemeanors, the defendant may also mail to the court a plea of not guilty.
- Article 45.024 requires a judge to enter a not guilty plea when a defendant refuses to enter a plea.

8. Warrant, Capias, and Summons

Article 45.014 states that when a written and sworn complaint or affidavit based on probable cause is filed with the court, the judge may issue a warrant for the arrest of the accused. Article 45.014 also provides requirements for the form of the warrant issued under Chapter 45. This statute is the authority for judges to issue warrants for defendants charged in the judge's court.

Article 2.09 lists Texas magistrates and the list includes municipal judges. Chapter 15 provides authority for a magistrate to issue a warrant of arrest for all classifications of offenses. The chapter also provides requirements for a warrant of arrest issued by a magistrate. Because municipal judges are magistrates, they have additional authority to issue this type of warrant, in their capacity as magistrates.

A capias is a written order issued by a judge of a court having jurisdiction of a case after commitment or bail and before trial. Art. 23.01, C.C.P. The rules for issuing a capias are included in Chapters 23 and 43. Article 23.05 requires the court to issue a capias for a defendant when a bail forfeiture is declared.

Article 23.04 provides that a court, instead of issuing a capias, may issue a summons. The summons must be in the same form as a capias except that it shall summon the defendant to appear before the court at a stated time and place. Before a summons can be issued, the prosecutor must request that it be issued. Art. 23.04, C.C.P. Chapter 23 also provides procedures for serving a summons. Chapter 15 provides authority for a magistrate to issue a summons instead of a warrant.

Article 45.202 states that all process issuing out of a municipal court shall be served when directed by the court by a peace officer or marshal of the municipality within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable. Subsection (b) of Article 45.202 states that a peace officer or marshal may serve all process issuing out of a municipal court anywhere in the county in which the city, town, or village is situated. If a city is situated in more than one county, the city police officer or marshal may serve the process throughout those counties.

The following Code of Criminal Procedure statutes address when warrant fees may be assessed.

- Article 102.011(a)(2) requires courts to collect a $50 warrant reimbursement fee for the services of a peace officer either executing or processing a warrant, capias, or capias pro fine.
- Article 102.011(a)(4) requires a $35 reimbursement fee for serving a writ not otherwise listed, which would include the fee for the service of a summons for a defendant or for the parents of a juvenile.

9. Bail

Chapter 17 defines bail as the security given by the accused guaranteeing his or her appearance before the proper court to answer the accusations against him or her and includes a bail bond or a personal bond. Article 17.15 provides rules for setting bail. Article 17.38 states that the rules in Chapter 17 are applicable to all courts, judges, magistrates, or other officers who require bail.

If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his or her personal bond must forward a copy of the bond to the personal bond office in that county. Art. 17.031(b), C.C.P.

Article 4.14 provides authority for municipal courts to forfeit the bail of defendants charged in their courts.

Chapter 22 requires courts to forfeit bail when defendants fail to appear and provides procedures for forfeiting bail. These procedures apply to surety, cash, and personal bonds.

Article 45.044 provides an alternate method of forfeiting a cash bond. It states that a judge may enter a judgment of conviction and forfeit a cash bond for fine and costs. To engage these procedures, the defendant must have entered a written and signed conditional plea of nolo contendere and a waiver of jury trial and failed to appear according to the terms of release.

10. Pre-Trial

Article 28.01 states that a court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits. See Chapter 28 for specific time requirements for notification and other procedures.

11. Trial Processes

a. Subpoenas

A subpoena is the process issued by a court to summons a witness to testify before the court in a criminal action. The court may subpoena a parent or guardian to bring a child witness to court. A subpoena duces tecum requires that a witness bring to court some instrument, written document, or other tangible item desired as evidence.

b. Continuances

The defendant or the State may request that the court postpone the case to a later date. Continuances may be granted if the trial falls on a religious holy day, by agreement in open court, or upon written motion stating a reason for the request. A defendant can request a continuance for any reason. Chapter 29 provides rules for requesting, granting, or denying continuances.

12. Judgment

The judgment, in a fine-only misdemeanor case, is the written declaration of the court signed by the trial judge ordering the defendant to pay a fine and certain costs to the State, or do some other sanction as authorized by law. The requirements for the judgment are generally contained in Article 42.01 of the Code of Criminal Procedure.

a. Fines, Costs, and Restitution

When a defendant is found guilty in municipal court, the court will order the defendant to pay a fine and certain costs to the State. In addition, the court may require restitution at any amount, except for the offense of issuance of bad check in which case the maximum amount of restitution is $5,000. Art. 45.041, C.C.P. Article 45.041 provides authority for a judge to require payment of fines and costs immediately, at a later date, or in intervals. If the judge determines that the defendant is unable to immediately pay the fine and costs, the judge shall allow the defendant the opportunity to pay in intervals. Art. 45.041(b-2), C.C.P.

b. Rendered in Open Court and Signed

Article 45.041 requires all judgments, sentences, and final orders of the judge be rendered in open court. Article 42.01 defines a judgment as the written declaration of the court signed by the trial judge. Article 45.012 provides that an electronically recorded judgment has the same force and effect as a written signed judgment. A document which must contain the signature of any person, including a judge, clerk of the court, or defendant, is satisfied if the document contains the signature as captured by an electronic device.

c. Jail-Time Credit

The judge must credit a defendant for time served in jail on that charge. Arts. 42.03 and 45.041, C.C.P. This includes time served in jail from the time of arrest to conviction and time served after conviction, whether for the same offense or another, provided the person was confined after the date of the offense. Arts. 45.041(c) and (c-1), C.C.P. The rate of credit is not less than $150 for a period specified in the judgment. The court may specify a period 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 at the specified rate.

13. Appeal

Article 44.02 states that a defendant in any criminal action has the right of appeal. Article 45.042 states that municipal court appeals shall be heard by the county court except in cases where the county court has no jurisdiction. In those counties, the appeal would be to the proper appellate court.

In courts of non-record, the appeal is trial de novo. In municipal courts of record, the appeal is based on errors reflected in the record of the trial court. Art. 44.17, C.C.P.

Article 45.0425 provides rules for setting the amount of an appeal bond. Articles 27.14(b) and 45.0426 provide time deadlines for filing an appeal bond with non-record municipal courts. Defendants appearing in open court must file an appeal bond within 10 days after the date judgment is entered. Adult defendants appearing by mail or delivering a plea and waiver of jury trial to the court must file an appeal bond before the 31st day after receiving notice of the amount of fine and appeal bond. This provision allows an adult defendant to bypass a trial in a non-record municipal court without ever making a personal appearance in court. Remember also, the Mailbox Rule, which extends the time by an additional 10 working days for documents filed by mail.

The rules and deadlines for appeals from courts of record are found in Chapter 30 of the Government Code.

Article 44.18 states that all the original papers of a case must go to the appellate court. Article 44.281 states that when a case is affirmed (municipal court of record appeals), the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant and paid into the municipal treasury. There is no statute providing that the fine money collected on a de novo appeal from a non-record municipal court be remitted to the city.

14. Collection and Enforcement of the Judgment

a. Community Service

Article 45.049 states that a judge may require a defendant who fails to pay a previously assessed fine or costs or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge the judgment by performing community service. The article also provides rules for the judge's community service order, types of allowable community service, amount to be credited to the fine, and immunity for the judge and other court employees.

A defendant is considered to have discharged not less than $100 of fines or costs for each eight hours of community service performed. Other provisions govern community service for defendants younger than 17 years of age.

b. Waiver

Article 45.0491 gives a judge authority to waive all or part of a fine if the defendant is indigent, does not have sufficient resources or income to pay, or was a child at the time of the offense, and performing community service would cause an undue hardship. A judge may waive all or part of the costs if the court determines that the defendant is indigent, does not have sufficient resources or income to pay, or was a child at the time of the offense. Waiver of court costs does not require a finding of undue hardship.

c. Civil Execution

Article 45.047 provides authority for the judge to order a fine and costs to be collected by execution against the defendant's property in the same manner as a judgment in a civil suit. This court order is called a writ of execution.

d. Capias Pro Fine

A capias pro fine is a written order of the court. Article 45.045 provides authority for a municipal judge to issue a capias pro fine for the judgment, after a hearing, if the defendant fails to satisfy a judgment. The capias pro fine must state the amount of the judgment and sentence.

15. Probation Statutes

a. Deferred Disposition

Article 45.051 provides judges with discretion to grant deferred disposition. A defendant must plead guilty or nolo contendere or be found guilty before a judge may grant it. When granting an order of deferred disposition, the judge places a defendant on probation for a period of time, not to exceed 180 days, and sets forth terms with which the defendant must comply within that time period. If the defendant successfully completes the probationary terms, the case is dismissed. The judge has broad discretion in most cases regarding the conditions of the deferred disposition.

Among those conditions, the judge can order the defendant to pay a deferred fine, pay restitution, submit to counseling, attend a class, or comply with any reasonable condition imposed by the judge. Art. 45.051(a-1), C.C.P. There are a few instances where the judge, when granting a deferred disposition, does not have discretion over some of the probationary conditions which must be satisfied; for example, a judge is required to have a defendant under the age of 25 years, charged with committing a moving violation, take a driving safety course as a condition of deferred disposition. Art. 45.051(b-1), C.C.P.

b. Driving Safety Courses

Article 45.0511 provides that if defendants charged with traffic offenses meet certain criteria, they have a right to take a driving safety course or a motorcycle operator course to have the charge dismissed. The defendant has 90 days to complete a course and present the court with evidence of completion, a certified copy of his or her driving record from DPS that shows he or she was eligible, and an affidavit stating that the defendant was not taking a course for dismissal and had not requested to do so within 12 months preceding the date of the offense.

c. Teen Court

Article 45.052 provides a judge discretion to grant teen court to a defendant who meets criteria established by the statute.

16. Magistrates

Article 2.09 lists persons who are magistrates. Included in that list are municipal judges and mayors. Being a magistrate increases the authority of municipal judges. The authority of a magistrate is countywide, while a municipal judge's jurisdiction only extends to the territorial limits of the city and to property owned by the city in the city's extra-territorial jurisdiction. The following is a list of some of the statutes contained in the Code of Criminal Procedure providing for magistrate duties that municipal judges as magistrates may perform:

- issue peace bonds (Chapter 7);
- accept complaints and issue warrants for Class A and B misdemeanors and felonies (Chapter 15);
- inform defendants of their rights regardless of the classification of the offense (commonly called magistration) (Article 15.17);
- conduct examining trials (for the purpose of determining probable cause in a felony) (Chapter 16);
- set bail (Chapter 17);
- issue orders of emergency protection (Article 17.292);
- issue search warrants (Chapter 18); and
- issue a warrant for a fugitive from justice from another state (Chapter 51).

D. Conclusion of the Code of Criminal Procedure

The Code of Criminal Procedure sets out procedural rules to be applied in all criminal cases. Chapter 45 governs proceedings in justice and municipal courts and takes precedence over other rules that apply to criminal proceedings generally or to rules applicable to other misdemeanor or felony proceedings. Article 45.002 states that proceedings in municipal court must be conducted in accordance with Chapter 45 rules and that if the chapter does not provide a rule, the judge shall apply the other general provisions of the Code of Criminal Procedure. Although reason must be used to determine how to find information, the rules expressed in this part of the study guide should help provide a road map to finding procedures applicable to municipal courts.

36. Explain who is a public servant._____

_____

37. What is jurisdiction? _____

_____

38. What statute lists the rights of all criminal defendants? _____

39. Is an indigent municipal court defendant entitled to have an attorney appointed to represent him or her? _____

40. What must be determined before a warrant of arrest may be issued? _____

_____

41. Why do all municipal court defendants have a right to bail? _____

_____

42. What is double jeopardy?_____

_____

43. Why do municipal court defendants have a right to a jury trial? _____

_____

44. Why are all municipal court proceedings and trials open to the public? _____

_____

45. Why must a municipal court provide a copy of the complaint to the defendant? _____

_____

46. How much notice is a defendant entitled to if a complaint is filed against him or her? ___

_____

47. What can serve as the complaint for a defendant to plead to? _____

_____

48. When must a sworn complaint be filed with the court? _____

_____

49. Define “docket.” _____

_____

50. List the different ways in which a defendant can make an appearance to enter a plea. ___

_____

_____

_____

_____

51. Who can enter a plea for a defendant? _____

52. What types of pleas can be entered by a defendant? _____

_____

53. When a defendant refuses to plea, what must the judge do? _____

_____

54. Before a warrant can be issued, what must be filed with the court? _____

_____

55. What type of warrants does Article 45.014 of the Code of Criminal Procedure authorize a judge to issue? _____

56. Define a capias. _____

_____

57. When is a capias required to be issued? _____

_____

58. When can a summons be issued? _____

59. Which statute provides the geographical jurisdiction for city peace officers to serve municipal court process? _____

60. If there is a personal bond office in the county, what must the court do when a personal bond is granted? _____

_____

61. Must the court set a case for pre-trial? _____

_____

62. Why may municipal court clerks issue subpoenas? _____

_____

63. Define “judgment.” _____

_____

64. What article states that a defendant in any criminal action has the right of appeal? _____

_____

65. What process may be issued to collect a fine and costs in the same manner as a judgment in a civil suit? _____

66. Which city officials are magistrates? _____

PART 3
PENAL CODE

A. Introduction to the Penal Code

The Penal Code is a collection of statutes defining criminal offenses and setting penalties. Texas has had a penal code since the late 1880s. In 1925, the criminal offenses were gathered into a code that was used until 1973. In that year, the old code was re-codified, and the offenses were re-arranged into a new code called the Penal Code. The format set out in the 1973 version has remained unchanged by the Legislature, although some offenses have been modified, repealed, or added.

Just as in the Code of Criminal Procedure, the Penal Code has a statement of objectives in the first section, which includes the following goals:

- to ensure public safety through deterrence, rehabilitation of offenders, and punishment of those who commit offenses;
- to define and grade offenses so citizens will know what they can and cannot do;
- to define punishments appropriate for each particular offense;
- to safeguard innocent conduct;
- to guide law enforcement officials; and
- to make the criminal laws apply to everyone in the same way.

These objectives explain the intent of the Legislature to prevent crime through deterrence, rehabilitation, and punishment and to limit the power of the State from unduly interfering with innocent citizens.

67. What is the Penal Code? _____

_____

68. List the goals included in the statement of objectives of the Penal Code. _____

_____

_____

69. What do the objectives in the Penal Code show about the intent of the Legislature? _____

B. Structure of the Penal Code

The Penal Code is divided into 11 titles that are further divided into chapters, subchapters, and sections. Generally, the Penal Code contains offenses, definitions, procedures, defenses, and exceptions. The following is a list of major topics in the Penal Code, divided by title and chapter.

- Title 1. Introductory Provisions
  - Chapter 1: Contains the objectives of the Penal Code; the territorial jurisdiction of this State concerning where offenses are committed in order to be prosecuted in Texas; construction of the Penal Code; and basic definitions of terms used in the code.
  - Chapter 2: Contains burdens of proof; exceptions, defenses, and affirmative defenses to offenses; and presumptions used in prosecutions.
  - Chapter 3: Defines "criminal episode" and sets forth sentencing provisions for an accused found guilty of more than one offense arising out of a criminal episode.
- Title 2. General Principles of Criminal Responsibility
  - Chapter 6: Defines the criminal intent necessary for commission of criminal acts.
  - Chapter 7: Outlines ways in which one person may be responsible for the criminal acts of another person and includes provisions relating to corporate responsibility.
  - Chapter 8: Contains general defenses to criminal responsibility, such as insanity, intoxication, duress, entrapment, or age.
  - Chapter 9: Lists justifications for criminal acts, including public duty, necessity, self-defense, and defense of another person; defense of property; and the amount of force that can be used by officers, parents, educators, or guardians against persons who have broken the law.
- Title 3. Punishments
  - Chapter 12: Divided into five subchapters dealing with punishments for different classes of offenses.
    - Subchapter A: Classifies offenses as felonies (capital, first degree, second degree, third degree, or state jail) or misdemeanors (Class A, B, or C).
    - Subchapter B: Details the punishments for different classifications of misdemeanors.

- Subchapter C: Details the punishments for the different classifications of felonies.
- Subchapter D: Classifies offenses outside the Penal Code and defines exceptional sentences for repeat or habitual offenders.
- Subchapter E: Describes the punishments available when a corporation or association has been found guilty of an offense.

- Title 4. Inchoate Offenses (An inchoate offense means one that is attempted but not completed.)
  - Chapter 15: Defines criminal attempt, conspiracy, and solicitation; and provides a renunciation defense when a person attempts to commit an offense but abandons the attempt and renounces the effort before the offense is actually committed.
  - Chapter 16: Defines offenses related to unlawful telephone interceptions, pen registers, or telephone taps.
- Title 5. Offenses Against the Person
  - Chapter 19: Defines homicide offenses, which include capital murder, murder, manslaughter, or criminally negligent homicide.
  - Chapter 20: Defines offenses related to kidnapping and false imprisonment.
  - Chapter 20A: Defines offenses related to trafficking of persons.
  - Chapter 21: Defines sexual offenses such as public lewdness, indecent exposure, indecency with a child, improper educator and student relationships, and improper photography or visual recording.
  - Chapter 22: Defines assaultive offenses that result in injury but not death, including assault, sexual assault, assault of a child, the elderly, or a disabled individual; endangering or abandoning a child; deadly conduct; terroristic threat; aiding suicide; tampering with consumer products; harassment of a public servant; and leaving a child in a vehicle.
- Title 6. Offenses Against the Family
  - Chapter 25: Defines offenses such as bigamy, incest, interference with child custody, sale of a child, harboring of a runaway; criminal nonsupport; and violation of certain protective orders or conditions of bond.
- Title 7. Offenses Against Property
  - Chapter 28: Contains the offenses of arson; criminal mischief; reckless damage to property; interference with railroad property; and graffiti.
  - Chapter 29: Defines the offense of robbery (theft from a person).
  - Chapter 30: Defines burglary of a habitation, building, vehicle, coin-operated or coin collection machines; and criminal trespass.
  - Chapter 31: Contains theft offenses, including theft of services or trade secrets, unauthorized use of motor vehicle, theft of cable services, theft by appropriation or

worthless check; and unauthorized acquisition or transfer of certain financial information. The value of the property unlawfully appropriated determines the grade of offense and punishment.

  - Chapter 32: Defines the offenses of fraud, which include forgery, credit card abuse, and issuance of a bad check; commercial bribery; illegal recruitment of an athlete; and the passing of certain fraudulent documents.
  - Chapter 33: Defines computer crimes.
  - Chapter 33A: Defines telecommunications crimes.
  - Chapter 34: Defines money laundering crimes.
  - Chapter 35: Defines insurance fraud.
  - Chapter 35A: Defines Medicaid fraud.

- Title 8. Offenses Against Public Administration
  - Chapter 36: Defines bribery offenses and includes coercion of public servants or voters, improper influence, tampering with a witness, obstruction or retaliation, acceptance of an honorarium, and gifts to public servants.
  - Chapter 37: Defines perjury and falsification offenses including knowingly tampering with or making a false entry in a governmental record, false report to a peace officer, fraudulent filing of financial statements, impersonating a public servant, and false identification as a peace officer.
  - Chapter 38: Defines offenses relating to obstructing a governmental operation, such as failure to identify, resisting or evading arrest, escape, bail jumping and failure to appear, barratry, possession of prohibited substances or items in a correctional facility, interference with public duties, unauthorized practice of law, and preventing execution of civil process.
  - Chapter 39: Defines offenses regarding abuses of office, such as official misconduct or oppression, misuse of official information, and violations of the civil rights of persons in custody.
- Title 9. Offenses Against Public Order and Decency
  - Chapter 42: Includes the offenses of disorderly conduct; riot; obstructing a highway; false alarm; silent or abusive calls to 9-1-1 service; harassment; stalking; abuse of corpse; cruelty to animals; dog fighting and cock fighting; destruction of the flag; disrupting a public meeting, procession, or funeral; use of laser pointers; and discharge of a firearm in certain municipalities.
  - Chapter 43: Contains offenses related to public indecency such as prostitution; obscenity; display or distribution of obscene material; sexual performance by a child; sexting; and possession of child pornography.
- Title 10. Offenses Against Public Health, Safety, and Morals
  - Chapter 46: Contains offenses such as unlawfully carrying a weapon; hoax bombs; and making firearms accessible to a child.

- Chapter 47: Contains offenses of gambling and gambling paraphernalia.
- Chapter 48: Contains smoking offenses and the prohibition of the purchase and sale of human organs.
- Chapter 49: Contains offenses related to intoxication and other alcoholic beverage offenses including: public intoxication; possession of an alcoholic beverage in a motor vehicle; driving, flying, boating, or operating an amusement ride while intoxicated; and intoxication assault and manslaughter.
- Chapter 50: Contains offenses related to unlawful use of fireworks with the intent to interfere with the duties of a law enforcement officer or flee from a law enforcement officer in arresting or detaining the person.

- Title 11. Organized Crime
  - Chapter 71: Creates and provides defenses for the offense of engaging in organized criminal activity.

70. How is the Penal Code organized?_____

_____

71. In what chapters of the Penal Code are the general principles of criminal responsibility located? _____

72. In what chapter of the Penal Code are punishments defined? _____

73. What is an inchoate offense? _____

_____

74. What is the chapter in the Penal Code that prohibits public servants from accepting an honorarium?

_____

_____

75. Where is the offense of "failure to appear" located in the Penal Code?_____

_____

76. What chapter in the Penal Code contains offenses relating to abuse of office? _____

_____

77. Where is the offense of "disorderly conduct" located in the Penal Code?_____

_____

78. Where is the offense of "public intoxication" located in the Penal Code?_____

_____

C. Basic Definitions

Definitions can be found throughout the Penal Code. When researching a particular offense, look at the beginning of the chapter to see if there are specific definitions for certain words.

Understanding how a word is defined is helpful in determining how the offense is filed and what wording should be included on a complaint (charging instrument). General definitions are listed in Section 1.07 of the Penal Code.

79. Where are definitions found in the Penal Code? _____

_____

D. How to Find Offenses

There are many ways to use the Penal Code. There are a few questions to consider that can help narrow the scope of the search of the Penal Code:

- Who or what has been harmed? First, decide who or what has suffered because of the act. There are at least three possibilities.
  - If a person has been harmed, look to Titles 5 and 6 for the applicable offense.
  - If property has been harmed, look to Title 7.
  - If the harm is to public decency, safety, or health, look to Titles 8 through 11.
- What is the degree of harm?
  - More serious offenses, such as murder, manslaughter, and kidnapping, are found at the beginning of Titles 5 and 6. In some instances, the seriousness of the injury determines the classification of the offense. An example of this is the offense of assault. An assault that causes bodily injury is a Class A misdemeanor. If the assault was only physical contact with no injury, and the person regarded the contact as offensive or provocative, the offense is a Class C misdemeanor. Municipal courts would have jurisdiction over the latter assault offense.
  - If property has been damaged, the amount of pecuniary loss determines the classification of the offense. For example, municipal courts have jurisdiction over the offense of criminal mischief if the damage is less than $100.
- What if harm is to society as a whole?
  - If no one person or thing has been harmed, check to see if the offense involved a public official, governmental operation, or a witness. These are crimes against public administration, which are found in Title 8.
  - If the offense involved disorderly conduct or public indecency, look to Title 9.
  - If the offense involved weapons, gambling, public health, or intoxication or alcoholic beverages, look to Title 10. This is where the offense of public intoxication is found.
  - If the offense involved organized crime activity, look to Title 11.

E. Presumption of Innocence

In a criminal case, the defendant does not have to prove that he or she is innocent but is presumed to be innocent. A common opening statement by defense attorneys at trial is that the defendant could present no argument or evidence whatsoever and still be found not guilty. It is solely the burden of the State, represented by the prosecutor, to prove that the person is guilty beyond a reasonable doubt.

80. Explain presumption of innocence. _____

_____

_____

F. Conduct Constituting an Offense

Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioner's court, or rule authorized by and lawfully adopted under a statute. Sec. 1.03, P.C.

1. An Act or an Omission

A person commits an offense only if he or she voluntarily engages in conduct, including an act, an omission, or possession. Sec. 6.01, P.C. An act means a bodily movement, whether voluntary or involuntary, and includes speech. Sec. 1.07(a)(1), P.C. An omission means a failure to act when the person had a duty to act. Secs. 1.07(a)(34) and 6.01(c), P.C. Possession means actual care, custody, control, or management. Sec. 1.07(a)(39), P.C.

2. Culpable Mental State

A culpable mental state is the state of mind in which a person voluntarily engages in certain conduct or omits an act when there is a duty to act. Unless the definition of an offense does not require a culpable mental state, a person does not commit an offense unless he or she intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires. Sec. 6.02, P.C. If an offense does not prescribe a culpable mental state, but one is required because the definition of the offense does not dispense with the need for a culpable mental state, intentionally, knowingly, or recklessly is sufficient to establish criminal responsibility. Sec. 6.02(c), P.C. Offenses defined by municipal ordinances must have a culpable mental state if the offense is punishable by a fine of more than $500. Sec. 6.02(f), P.C.

Listed below are four culpable mental states.

- A person acts intentionally when it is his or her conscious objective or desire to engage in conduct or to cause the result. Sec. 6.03(a), P.C.
- A person acts knowingly when he or she is aware that the conduct is reasonably certain to cause the result. Sec. 6.03(b), P.C.
- A person acts recklessly when he or she is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross

deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. Sec. 6.03(c), P.C.

- A person acts with criminal negligence when he or she should be aware of a substantial and unjustifiable risk that the circumstances exist, or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. Sec. 6.03(d), P.C.

3. Criminal Attempt

A person commits an offense if the person specifically intends to commit the offense and does an act amounting to more than mere preparation that tends, but failed, to effect the commission of the offense intended. An offense that is attempted, but fails, is one category lower than the offense attempted. Sec. 15.01, P.C.

4. Criminal Responsibility

a. Persons

A person is criminally responsible if the result would not have occurred but for his or her conduct. Sec. 6.04, P.C.

b. Corporations and Associations

When conduct constituting an offense is performed by an agent acting on behalf of a corporation or association and within the scope of his or her office or employment, the corporation or association is criminally responsible for the offense unless a statute plainly does not impose criminal responsibility on the corporation or association. Sec. 7.22, P.C. An agent means a director, officer, employee, or other person authorized to act on behalf of a corporation or association. Sec. 7.21, P.C.

81. When does conduct constitute an offense? _____

_____

82. Explain what constitutes committing an offense._____

_____

83. How does the Penal Code define the words act, omission, and possession? _____

_____

_____

84. What is a culpable mental state? _____

_____

85. List the four culpable mental states._____

_____

_____

_____

86. What is criminal attempt? _____

_____

87. When is a person criminally responsible? _____

_____

88. When is a corporation or association criminally responsible? _____

_____

G. Defenses

Chapter 8 contains general defenses to criminal responsibility. A defense to prosecution is labeled by a phrase such as "It is a defense to prosecution." The prosecutor is not required to negate a defense in the charging instrument (complaint). The defendant must raise the defense, and it is not submitted to the jury (or considered by the judge) unless some evidence of the defense has been admitted to support it. With the evidence supporting the defense, the jury must acquit the defendant if there is any reasonable doubt that the defendant committed the offense. Sec. 2.03, P.C. It is a defense to prosecution that:

- the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense (Sec. 8.02, P.C.); or
- the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense (Sec. 8.06, P.C.).

Some defenses are called affirmative defenses. The prosecutor need not negate affirmative defenses in the charging instrument (complaint), and the existence of an affirmative defense is not submitted to the jury unless the defendant introduces evidence supporting the defense. If the existence of an affirmative defense is submitted to the jury, the court shall charge the jury that the defendant must prove the affirmative defense by a preponderance of the evidence. Sec. 2.04, P.C. It is an affirmative defense to prosecution that:

- the actor, at the time of the conduct charged, as a result of severe mental disease or defect did not know that his or her contact was wrong (Sec. 8.01, P.C.);
- the actor reasonably believed the conduct charged did not constitute a crime and acted in reasonable reliance upon a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law, such as the Texas Attorney General (Sec. 8.03, P.C.); or
- the actor was compelled to engage in the conduct by threat of imminent death or serious bodily injury to himself, herself, or another, or, if the conduct does not constitute a felony, was compelled by force or threat of force (Sec. 8.05, P.C.).

The following are not defenses to prosecution:

- that the actor was ignorant of the provisions of any law after the law has taken effect;
- that the actor was voluntarily intoxicated; and
- that the actor acted at the command or persuasion of his or her spouse, unless he or she acted under threat of imminent death, serious bodily injury to the actor or another, force, or threat of force.

Defenses are something the defendant must raise, or the defense is waived.

True or False

89. It is an affirmative defense if a defendant relied upon an interpretation of a statute by an opinion issued by an Attorney General. ____

90. It is not a defense if a person is compelled by a threat of force to commit a Class C misdemeanor offense. ____

91. A person cannot be convicted of a crime when he or she is unaware that the act was a violation of law. ____

92. A person who is charged with public intoxication can be prosecuted because the intoxication is voluntary. ____

H. Preemption

No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by the Penal Code an offense subject to a criminal penalty. Sec. 1.08, P.C. This means that a city could not pass a city ordinance criminalizing public intoxication because it is already an offense under state law.

93. Explain why cities cannot enact ordinances for conduct covered by the Penal Code. ____

_____

_____

I. Punishments

Chapter 12 lists punishments for different classifications of offenses. Offenses are designated as felonies or misdemeanors.

1. Misdemeanors

Misdemeanors are classified into three categories according to the relative seriousness of the offense: Class A misdemeanors, Class B misdemeanors, and Class C misdemeanors. Secs. 12.21, 12.22, and 12.23, P.C. A misdemeanor offense in the Penal Code without specification as to punishment or category is a Class C misdemeanor. 12.03(b) P.C. Class A misdemeanor offenses shall be punished by a fine not to exceed $4,000, confinement in jail for a term not to exceed one

year, or both fine and confinement. Class B misdemeanors shall be punished by a fine not to exceed $2,000, confinement in jail for a term not to exceed 180 days, or both fine and confinement. Class C misdemeanors shall be punished by a fine not to exceed $500.

2. Felonies

Felonies are also classified according to relative seriousness of the offense. There are five categories: capital felonies; felonies of the first degree; felonies of the second degree; felonies of the third degree; and state jail felonies. The range of punishment for felonies is life imprisonment or death for capital felonies; imprisonment for up to 99 years but not less than five years and may also include a fine not to exceed $10,000 for first degree felonies; imprisonment for up to 20 years but not less than two years and may also include a fine not to exceed $10,000 for second degree felonies; imprisonment for up to 10 years but not less than two years and may also include a fine not to exceed $10,000 for third degree felonies; and confinement in a state jail for not more than two years but not less than 180 days and may include a fine not to exceed $10,000 for state jail felonies. Secs. 12.31, 12.32, 12.32, 12.34, and 12.35, P.C. A felony offense in the Penal Code without specification as to punishment category is a state jail felony. 12.04(b) P.C.

3. Offenses Outside of the Penal Code

Section 12.41 classifies offenses outside the Penal Code. If imprisonment in a penitentiary is affixed to the offense as a possible punishment, the offense is a felony of the third degree. If the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment, the offense is a Class B misdemeanor. If the offense is punishable by fine only, the offense is a Class C misdemeanor. Keep in mind that if the Class C misdemeanor is defined in the Penal Code, the maximum fine is $500. A Class C misdemeanor outside of the Penal Code is not controlled by the $500 maximum fine in the Penal Code.

4. Punishments for Corporations and Associations

If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the statute. Sec. 12.51(a), P.C.

If a corporation or association is found guilty of an offense that provides a penalty including imprisonment or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

- $20,000 if the offense is a felony of any category (if the court finds that the corporation or association gained money or property or caused personal injury or death, property damage or other loss, the court may require a fine in an amount fixed by the court not to exceed double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater);
- $10,000 if the offense is a Class A or a Class B misdemeanor (if the court finds that the corporation or association gained money or property or caused personal injury or death, property damage, or other loss, the court may require a fine in an amount fixed by the court not to exceed double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater);
- $2,000 if the offense is a Class C misdemeanor; or

- $50,000 if as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.

The court may also require a corporation or association to give notice of the conviction to any person the court deems appropriate. On conviction of a corporation or association, the court shall notify the Texas Attorney General of that fact.

94. How are offenses designated? _____

_____

95. List the three classifications of misdemeanors. _____

_____

_____

96. If a misdemeanor offense in the Penal Code does not specify a punishment or a category, what classification of offense is it? _____

97. How does the Penal Code define Class C misdemeanor? _____

98. List the five classifications of felony offenses. _____

_____

99. If an offense outside of the Penal Code is punishable by fine only, what classification of offense is it? _____

100. If a corporation or association is adjudged guilty of a Class C misdemeanor offense that does not provide for a specific penalty, what is the maximum possible punishment? ____

_____

101. When a corporation is convicted of an offense, who can the court require the corporation or association to notify? _____

102. Who is the court required to notify when a corporation or association is convicted? ____

_____

J. Age Affecting Criminal Responsibility

Section 8.07 describes the age a person must be before facing prosecution in a criminal court. A person may not be prosecuted for or convicted of any offense that he or she committed when younger than 15 years of age except for:

- perjury or aggravated perjury;
- violation of a traffic offense under Chapter 729 of the Transportation Code, which involves the operation of a motor vehicle by a minor and which defines a minor as anyone under the age of 17, except for an offense punishable by any time in jail or:
  - under Section 550.021, T.C. (accident involving personal injury or death);
  - under Section 550.022, T.C. (accident involving damage to vehicle);

- under Section 550.024, T.C. (duty on striking unattended vehicle);

- a violation of a motor vehicle traffic ordinance;
- a misdemeanor punishable by fine only;
- a violation of a penal ordinance of a political subdivision;
- a violation of a penal statute that is a lesser included offense of a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02 of the Family Code for prosecution if the person committed the offense when 14 years of age or older.
- a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.

Unless the juvenile court waives jurisdiction under Section 54.02 of the Family Code and certifies the individual for criminal prosecution, or the juvenile court has previously waived jurisdiction under that section and certified the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except for an offense listed above. Sec. 8.07(b), P.C.

In 2013, the 83rd Legislature amended Section 8.07 to make clear that although children under the age of 15 can be criminally prosecuted for the offenses listed above, children under the age of 10 are not to be prosecuted or convicted of fine-only offenses or city ordinance violations. Sec. 8.07(d), P.C. The 83rd Legislature also created a presumption that children ages 10 to 14 (inclusive) are presumed not to be criminally responsible for any misdemeanors punishable by a fine only, or for a violation of a penal ordinance of a political subdivision with the exception of juvenile curfew ordinances. This presumption can be refuted by a preponderance of evidence showing that the child is morally blameworthy. Notably, the presumption would have no application to fine-only traffic offenses created by state law or city ordinance, and the prosecution would neither be required to prove that the child knew that the act was illegal at the time it occurred nor that the child understood the legal consequences of the offense. Sec. 8.07(e), P.C.

No person in any case can be punished by death for an offense committed while he or she was younger than 18 years of age. Sec. 8.07(c), P.C.

The 83rd Legislature also added Section 8.08, which provides guidance for cases in which the child defendant has a mental illness or developmental disability. On motion by the State, the defendant, a person standing in parental relation to the defendant, or on the court's own motion, a court with jurisdiction of a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision shall determine if there is probable cause to believe that a child, including a child with mental illness or developmental disability, (1) lacks the capacity to understand the proceedings or to assist in their own defense and is unfit to proceed or (2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform their conduct to the requirements of the law. If the court determines that probable cause exists, after giving notice to the prosecution, the court may dismiss the complaint. The prosecution has the right to appeal such determinations. The scope of Section 8.08 is limited to Class C misdemeanors (other than traffic offenses).

103. What section of the Penal Code defines the age of a person who can be prosecuted? ____

_____

104. For what fine-only misdemeanor offenses can persons under the age of 15 be prosecuted in municipal court? _____

_____

_____

105. What is the youngest age that a person can be prosecuted for a criminal offense? _____

106. Children between the ages of 10 and 14 are presumed not to be what? _____

_____

_____

K. Elements of an Offense

The elements of an offense include the following:

- the forbidden conduct;
- the required culpability;
- the required result; and
- the negation of any exception to the offense.

The forbidden conduct includes facts that establish a particular act as an offense. Each offense will have its own set of facts. A peace officer or prosecutor has to determine during an investigation if a person's act falls within the forbidden conduct established for a particular offense.

In a municipal court, the offense must have occurred in the territorial limits of the city to give the municipal court jurisdiction over the crime. Art. 45.019, C.C.P. Some crimes must be committed in a public place and would not be a crime if committed in a private residence, such as the offense of disorderly conduct–vulgar language.

Each and every element of a crime must be alleged in a complaint. See the following two examples.

The elements of a Class C assault by threat would be:

- a person;
- location (city and county) (jurisdiction);
- date of offense;
- intentionally or knowingly (the culpable mental state); and
- threatens another, including the person's spouse, with imminent bodily injury (the forbidden conduct).

The elements of the offense of disorderly conduct–vulgar language would be:

- a person;
- location (city and county) (jurisdiction);
- date of offense;
- intentionally or knowingly (the culpable mental state);
- in a public place;
- uses abusive, indecent, profane, or vulgar language (the forbidden conduct); and
- which, by its very utterance, tends to incite an immediate breach of the peace (the result).

Although it is important to review the elements of the offense to better understand the law behind charging criminal offenses, note that the prosecutor is responsible for actually drafting the complaint language.

107. What are the elements of an offense?_____

_____

_____

108. Must all acts that are considered crimes be committed in a public place? _____

109. List the elements of the offense of a Class C assault._____

_____

_____

_____

L. Class C Misdemeanor Offenses

The following is a partial list of Class C misdemeanor offenses in the Penal Code. When researching a particular offense, check the statute for specific information on the elements of the offense, definitions, defenses, exceptions, and in some instances, specific handling procedures.

- Section 22.01(a)(2) and (3) – Assault
  - (a)(2) A person commits an offense if the person intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse.
  - (a)(3) A person commits an offense if the person intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.
  - If Subsection (a)(3) is committed against an elderly or disabled person, it is a Class A misdemeanor. It is a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either while the participant is performing duties or responsibilities in the

participant's capacity as a sports participant or in retaliation for a duty or responsibility within the participant's capacity as a sports participant.

- Section 22.08 – Aiding Suicide
  - A person commits an offense if, with intent to promote or assist the commission of suicide by another, he or she aids or attempts to aid the other to commit or attempt to commit suicide.
  - If the person's conduct causes suicide or attempted suicide that results in serious bodily injury, the offense is a state jail felony.
- Section 22.10 – Leaving a Child in a Vehicle
  - A person commits an offense if he or she intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is younger than seven years of age, and not attended by an individual in the vehicle who is 14 years of age or older.
- Section 28.03 – Criminal Mischief
  - A person commits an offense if, without the effective consent of the owner, he or she intentionally or knowingly damages or destroys the tangible property of the owner, tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person, or makes markings, including inscriptions, slogan, drawings, or painting on the tangible property of the owner.
  - If the pecuniary loss is less than $100, the offense is a Class C misdemeanor.
- Section 28.04 – Reckless Damage or Destruction
  - A person commits an offense if, without the effective consent of the owner, he or she recklessly damages or destroys property of the owner.
- Section 31.03 – Theft
  - A person commits an offense if the person unlawfully appropriates property with intent to deprive the owner of property.
  - If the value of the property is less than $100, the offense is a Class C misdemeanor.
- Section 31.04 – Theft of Service
  - A person commits theft of service if, with intent to avoid payment for service that the person knows is provided only for compensation:
    - the person intentionally or knowingly secures performance of the service by deception, threat, or false token;
    - having control over the disposition of services of another to which the person is not entitled, he or she intentionally or knowingly diverts the other's services to his or her own benefit or to the benefit of another not entitled to them;
    - having control of personal property under a written rental agreement, the person holds the property beyond the expiration of the rental period without the

effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals; or

- the person intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.

– If the value of the stolen service is less than $100, the offense is a Class C misdemeanor.

- Section 32.41 – Issuance of Bad Check

  – A person commits an offense if he or she issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

  – If the check or sight order was issued or passed for a child support payment established under court order, the offense is a Class B misdemeanor.

- Section 36.05 – Tampering with Witness

  – A person commits an offense if, with intent to influence the witness, he or she offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a witness or prospective witness in an official proceeding to testify falsely, to withhold any testimony, information, document, or thing, to elude legal process summoning the person to testify or supply evidence, to absent him or herself from an official proceeding to which he or she has been legally summonsed, or to abstain from, discontinue, or delay the prosecution of another.

  – A witness or prospective witness in an official proceeding commits an offense if he or she knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he or she will do any of the things mentioned above.

  – If the official proceeding is part of the prosecution of a criminal case, the offense is a Class C misdemeanor if the most serious charge in the proceeding is a Class C misdemeanor. If the proceeding is one involving family violence or the tampering involves an act of family violence, it is not a Class C misdemeanor, even if the criminal case was.

- Section 37.10 – Tampering with Governmental Record

  – A person commits an offense if he or she knowingly makes a false entry in or false alteration of a governmental record; makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record; possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully; makes, presents, or uses a governmental

record with knowledge of its falsity; or possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

  - A person commits a Class C misdemeanor offense if the governmental record is a governmental record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.

- Section 38.02 – Failure to Identify
  - A person commits an offense if he or she intentionally refuses to give his or her name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.
  - If the person is not a fugitive from justice, the offense is a Class C misdemeanor.
- Section 38.10 – Bail Jumping and Failure to Appear
  - A person lawfully released from custody, with or without bail, on condition that he or she subsequently appear commits an offense if he or she intentionally or knowingly fails to appear in accordance with the terms of his or her release.
  - If the offense for which the person was required to appear is a fine-only offense, the offense of failure to appear is a Class C misdemeanor.
- Section 38.151 – Interference with Police Service Animals
  - A person commits an offense if the person recklessly taunts, torments, or strike a police service animal.
- Section 38.16 – Preventing Execution of Civil Process
  - A person commits an offense if the person intentionally or knowingly by words or physical action prevents the execution of any process in a civil cause.
- Section 39.02 – Abuse of Official Capacity
  - A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.
  - When the value of the use of the thing misused is less than $100, it is a Class C misdemeanor.
- Section 39.06 – Misuse of Official Information
  - A public servant commits an offense if, in reliance on information to which he or she has access by virtue of his or her office or employment and that has not been made public, and he or she as a public servant, including a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.

- Section 42.01 – Disorderly Conduct
  - The offense of disorderly conduct has 11 different ways in which the act of disorderly conduct can be committed. The following are Class C misdemeanors.
    - A person commits an offense if he or she intentionally or knowingly:
      - Uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;
      - Makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;
      - Creates, by chemical means, a noxious and unreasonable odor in a public place;
      - Abuses or threatens a person in a public place in an obviously offensive manner;
      - Makes unreasonable noise in a public place other than a sport shooting range or in or near a private residence that he or she has no right to occupy;
      - Fights with another in a public place;
      - Discharges a firearm on or across a public road;
      - Exposes his or her anus or genitals in a public place and is reckless about whether another may be present who will be offenses or alarmed by his or her act; or
      - For a lewd or unlawful purpose enters on the property of another and looks into a dwelling on the property through a window or other opening; while on the premises of a hotel or comparable establishment, looks into a guest room not their own through a window or other opening; or while on the premises of a public place, looks into an area such as a restroom or shower stall or changing/dressing room that is designed to provide privacy.
- Section 42.105 – Cockfighting
  - A person commits an offense if the person knowingly attends as a spectator an exhibition of cockfighting.
- Section 42.13 – Use of Laser Pointers
  - A person commits an offense if the person knowingly directs a light from a laser pointer at a uniformed safety officer, including a peace officer, security guard, firefighter, emergency medical service worker, or other uniformed municipal, state, or federal officer.
- Section 42.14 – Illumination of Aircraft by Intense Light
  - A person commits an offense if the person intentionally directs a light from a laser pointer or other light source at an aircraft and the light has an intensity sufficient to impair the operator’s ability to control the aircraft.

- If the intensity of the light impairs the operator's ability to control the aircraft, the offense is a Class A misdemeanor.

- Section 43.22 – Obscene Display or Distribution
  - A person commits an offense if he or she intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

- Section 43.261 – Electronic Transmission of Certain Visual Material Depicting Minor
  - This is the "sexting" offense. A person who is a minor (under 18) commits an offense if the person intentionally or knowingly by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material, or possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.
  - The offense is generally a Class C misdemeanor, but there are many ways to enhance it to a Class B or Class A misdemeanor.
  - This same conduct, when committed by a child (under 17), is considered conduct indicating a need for supervision, and must be filed as such in the juvenile court or transferred to the juvenile court. Thus, municipal courts only have jurisdiction over this offense when the defendant is 17 years of age.

- Section 46.13 – Making a Firearm Accessible to a Child
  - A person commits an offense if a child gains access to a readily dischargeable firearm and the person with criminal negligence failed to secure the firearm or left the firearm in a place to which the person knew or should have known the child would gain access.
  - If the child discharges the firearm and causes death or serious bodily injury to himself or another person, the offense is a Class A misdemeanor.

- Section 47.02 – Gambling
  - A person commits an offense if he or she makes a bet on the partial or final result of a game or contest or the performance of a participant in a game or contest; makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.

- Section 48.01 – Smoking Tobacco
  - A person commits an offense if he or she is in possession of a burning tobacco product or smokes tobacco or operates an e-cigarette in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library,

museum, hospital, transit system bus, or intrastate bus, plane, or train which is a public place.

- Section 49.02 – Public Intoxication
  - A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger himself, herself, or another.
  - An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense to which Section 106.071, A.B.C. applies.
- Section 49.031 – Possession of Alcoholic Beverage in Motor Vehicle
  - A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession of one or more open containers in a single criminal episode is a single offense.

True or False

110. A person who threatens to break another person's arm commits a Class A misdemeanor assault. ____

111. It is not an offense to assist someone to commit suicide. ____

112. A person who leaves a child in a vehicle with someone who is only 14 years of age commits an offense. ____

113. A person who intentionally throws a rock through a neighbor's window causing a repair bill of $90 could be charged in municipal court with a Class C misdemeanor offense of criminal mischief. ____

114. A person who loses control of a car and damages a fence because he or she is speeding could be charged with the offense of recklessly damaging property. ____

115. A person who shoplifts a jacket worth $99.99 can be charged in municipal court with the Class C misdemeanor offense of theft. ____

116. A person who buys a dress for $99.99 and pays for it with a check that does not have sufficient funds to cover it could be charged in municipal court with Class C theft. ____

117. A person who intentionally fails to pay a city water bill that amounts to $45 can be charged with theft of services in municipal court. ____

118. A person who coerces a witness in a Class C criminal mischief case into not testifying could be charged with a Class C misdemeanor offense for witness tampering. ____

119. It is a crime for a person who has been lawfully stopped by a peace officer to not provide his or her name, address, and date of birth to the officer if he or she is not committing a crime. ____

120. When a defendant has been summoned to court and fails to appear, he or she can be charged with the offense of failure to appear. ____

121. A person who lies about someone's whereabouts to a person attempting to serve a civil citation commits a Class C misdemeanor offense. ____

122. A person who curses in the shopping mall could be charged with Class C misdemeanor disorderly conduct. ____

123. If the city police raid a cockfighting contest and catch you watching, they can charge you with a Class C misdemeanor offense. ____

124. A 15-year-old who is charged with "sexting" can be tried in the municipal court. ____

125. It is not a crime to smoke in a theater. ____

126. A person who gets drunk in his or her backyard is committing the offense of public intoxication. ____

ANSWERS TO QUESTIONS

PART 1

1. To help courts ascertain and appropriately enforce the legislative intent of statutes.
2. Chapter 311 of the Government Code.
3. Statutes must be reasonably construed (interpreted) in accordance with general principles of law.
4. Words and phrases shall be read in context and interpreted according to the rules of grammar and common usage.
5. They shall be interpreted according to their technical meaning.
6. Words in the present tense include the future tense; the singular includes the plural; the plural includes the singular; and words of one gender include the other genders.
7. The first day is excluded and the last day is included. If the last day is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.
8. Section 311.021 of the Government Code provides that when a statute is enacted, it is presumed that:
   - there is compliance with the U.S. and Texas Constitutions;
   - the entire statute is intended to be effective;
   - a just and reasonable result is intended;
   - a result possible of execution is intended; and
   - the public interest is favored over any private interest.
9. Section 311.023 of the Government Code provides that in interpreting statutes, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:
   - object or purpose sought to be achieved;
   - circumstances under which the statute was enacted;
   - legislative history;
   - common law or former statutory provisions, including laws on the same or similar subjects;
   - consequences of a particular construction;
   - administrative construction of the statute; and
   - title (caption), preamble, and emergency provision.
10. When the statute in question is ambiguous.
11. True
12. False.

13. False (the statute may have a severability provision).

14. True.

15. True.

16. True.

17. True.

18. A savings clause.

19. A severability provision is a provision in a statute that saves part of a statute from a declaration of unconstitutionality when one or more other parts are declared unconstitutional. Section 311.032 of the Government Code provides that if a statute contains a severability clause, that provision prevails in interpreting that statute. That means that should a court declare part of a statute containing a severability clause unconstitutional, the other parts would still be valid if they are self-sustaining and capable of separate enforcement without regard to the invalid portion. Some statutes have a provision for non-severability, which means that if part of the statute is declared unconstitutional, the whole statute is invalid. Other statutes do not contain severability clauses. If any provision of one of these statutes or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute if the provisions can be effective without the invalid provisions or application.

20. If two rules conflict, but one is more recent than the other, the more recent rule applies.

21. The date on which the last legislative vote is taken on the bill.

22. General statutes are ones that apply to all courts unless there is a specific statute.

23. If two rules conflict, the special or local provision prevails as an exception to the general provision.

PART 2

24. Criminal trials and investigations.

25. The objectives are:

- adopt measures to prevent crime;
- create rules to prevent criminals from escaping;
- set out trial procedures;
- make available as much evidence as possible;
- guarantee guidelines for fair and impartial trials; and
- provide rules to make sure sentences are properly executed.

26. It applies to all courts with criminal jurisdiction: the Court of Criminal Appeals, the courts of appeals, district courts, county courts, county courts at law with criminal jurisdiction, county criminal courts, magistrates appointed in certain counties, justice of the peace courts, and municipal courts.

27. The code is divided into two parts (Title I and Title 2) that are divided into chapters and articles.

28. Article 4.14.

29. Chapter 12.

30. Chapter 17A.

31. Chapter 45.

32. Justice and Municipal Courts.

33. Chapter 101 provides the purpose of Title 2, that the Code Construction Act applies to the construction of Title 2, and the general provisions about references to chapters and articles in Title 2.

34. The following fees are applicable to municipal court proceedings: reimbursement fees for services of a peace officer, expunction fees, fines for Child Safety Fund, Municipal Court Building Security Fund, and Municipal Court Technology Fund.

35. Chapter 103.

36. The definition is found in Section 1.07 of the Penal Code, which states that a public servant is a person who is elected, selected, appointed, or employed as one of the following, even if he or she has not yet qualified for office or assumed his or her duties:

    - an officer, employee, or agent of the government;
    - juror or grand juror;
    - an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;
    - an attorney at law or notary public when participating in the performance of a governmental function;
    - a candidate for nomination or election to public office; or
    - a person who is performing a governmental function under a claim of right although he or she is not legally qualified to do so.

    Since municipal judges, court clerks, and deputy court clerks are elected, appointed, or employed by a governmental agency, they are public servants.

37. Jurisdiction is a court's legal power or authority over certain geographical areas and certain crimes.

38. Article 1.05, C.C.P.

39. No. All municipal court defendants are entitled to hire and consult with counsel and have representation but are not entitled to appointed counsel. The court may appoint counsel for an indigent defendant if the interest of justice requires representation.

40. Probable cause upon oath or affirmation.

41. Article 1.07 states that all prisoners have a right to bail, unless for capital offenses when the proof is evident.

42. No person may be tried twice for the same offense after a verdict of not guilty in a court of competent jurisdiction.

43. Article 1.12 states that the right of a trial by jury shall remain inviolate, which means that the right cannot be violated and is free from any impairment.

44. Article 1.24 states that the proceedings and trials in all courts shall be public.

45. Article 1.05 states that defendants have a right to know the nature and cause of an accusation against them and to have a copy of the complaint.

46. Defendants are entitled to notice of a complaint not later than the day before any proceeding in the prosecution.

47. The written notice to appear (citation) when a legible duplicate copy was given to the defendant.

48. If a defendant pleads not guilty, a sworn complaint must be filed unless the defendant and prosecutor agree to go to trial on the written notice (citation). The agreement must be in writing and filed with the court. In addition, a sworn complaint must be filed when the defendant fails to appear in court. This will toll (stop) the statute of limitations from running so that prosecution can continue.

49. A docket is a formal record with brief entries of the proceedings in a case.

50. A defendant can make an appearance:

- in person in open court;
- by attorney in open court;
- by mail;
- by delivering a plea and waiver of jury trial to the court; or
- by paying the fine.

51. The defendant or the defendant's attorney.

52. Not guilty, guilty, nolo contendere, or a special plea.

53. Enter a not guilty plea.

54. A complaint or affidavit based on probable cause.

55. Warrants for charges filed in the judge's court.

56. A capias is a written order issued by a judge of a court having jurisdiction of a case after commitment or bail and before trial.

57. When a bond forfeiture has been declared.

58. When a prosecutor makes a request that it be issued.

59. Article 45.202 of the Code of Criminal Procedure.

60. The court releasing a defendant on his or her personal bond must forward a copy of the bond to the personal bond office in that county.

61. No, but the court may set a case for pre-trial before it is set for trial upon its merits.

62. Because defendants have a right to subpoena witnesses and there is no discretion in issuing subpoenas, municipal court clerks may issue subpoenas.

63. The written declaration of the court signed by the trial judge ordering the defendant to pay a fine and certain costs to the State.

64. Article 44.02 of the Code of Criminal Procedure.

65. A writ of execution.

66. Municipal judges and mayors.

PART 3

67. It is a collection of statutes defining criminal offenses and setting penalties.

68. The goals are:

- to ensure public safety through deterrence, rehabilitation of offenders, and punishment of those who commit offenses;
- to define and grade offenses so citizens will know what they can and cannot do;
- to define punishments appropriate for each particular offense;
- to safeguard innocent conduct;
- to guide law enforcement officials; and
- to make the criminal laws apply to everyone in the same way.

69. The objectives show that the intent of the Legislature is to prevent crime through deterrence and punishment and to limit the power of the State from interfering too much with innocent citizens.

70. It is divided into title, chapters, subchapters, and sections.

71. Title 2, Chapters 6 through 9.

72. Title 3, Chapter 12.

73. It is an offense that is attempted but not completed.

74. Title 8, Chapter 36.

75. Title 8, Chapter 38 (Section 38.10).

76. Title 8, Chapter 39.

77. Title 9, Chapter 42 (Section 42.01).

78. Title 10, Chapter 49 (Section 49.02).

79. Definitions are scattered throughout the Penal Code. General definitions are listed in Section 1.07.

80. A person does not have to prove that he or she is innocent. The State must prove that the person is guilty beyond a reasonable doubt by proving each element of the offense.

81. When the conduct is defined as an offense by statute, municipal ordinance, order of a county commissioner’s court, or rule authorized and lawfully adopted.

82. A person commits an offense only if he or she voluntarily engages in conduct, including an act, an omission, or possession.

83. Act means a bodily movement, whether voluntary or involuntary and includes speech. Omission means a failure to act when the person had a duty to act. Possession means actual care, custody, control, or management.

84. A culpable mental state is the state of the mind in which a person voluntarily engages in certain conduct or fails to perform an act when there is a duty to act.

85. Intentionally, knowingly, recklessly, and criminally negligent.

86. When a person specifically intends to commit the offense and does an act amounting to more than mere preparation that tends, but failed, to effect the commission of the offense intended.

87. A person is criminally responsible if the result would not have occurred but for his or her conduct.

88. When conduct constituting an offense is performed by an agent acting on behalf of a corporation or association and within the scope of his or her office or employment.

89. True.

90. False.

91. False.

92. True.

93. Section 1.08 of the Penal Code prohibits governmental subdivisions from enacting or enforcing laws that make any conduct covered by the Penal Code an offense subject to criminal penalty.

94. As felonies or misdemeanors.

95. Class A, Class B, and Class C misdemeanors.

96. Class C misdemeanor.

97. The Penal Code defines a Class C misdemeanor as an offense that is punishable by a fine not to exceed $500.

98. Capital felonies, first degree felonies, second degree felonies, third degree felonies, and state jail felonies.

99. Class C misdemeanor.

100. $2,000.

101. Any person the court deems appropriate.

102. The Texas Attorney General.

103. Section 8.07.

104. Traffic offenses, except for traffic offenses punishable by incarceration or

- Section 550.021 (accident involving person injury or death);
- Section 550.022 (accident involving damage to vehicle);

- Section 550.024 (duty on striking unattended vehicle);
- Other state law misdemeanors punishable by fine only; and
- City ordinances.

105. Age 10.

106. Criminally responsible for any misdemeanors punishable by a fine only or a violation of a penal ordinance of a political subdivision (with the exception of juvenile curfew ordinance), except for traffic offenses.

107. The elements of an offense are the forbidden conduct; the required culpability and required result; and the negation of any exception to the offense.

108. No (e.g., assault).

109. The elements of the offense of a Class C assault are:

- person;
- location (city and county);
- date of offense;
- intentionally or knowingly; and
- threatens another, including the person's spouse, with imminent bodily injury.

110. False (This conduct would constitute an assault by threat, a Class C misdemeanor. The Class A misdemeanor assault requires bodily injury, which is not suggested by the question. If the offense charged was Terroristic Threat under 22.07, P.C., however, the charge could be filed as a Class A misdemeanor. The practice question suggests a Class A Assault, though, so the answer is false.).

111. False (it is a Class C misdemeanor offense).

112. False (it is not an offense if there is a person at least 14 years of age in the vehicle).

113. True.

114. True.

115. True.

116. True.

117. True.

118. True.

119. True.

120. False (the defendant must have been in custody and released on the condition he/she subsequently appear).

121. True.

122. True.

123. True.

124. False (only 17-year-olds can be tried in municipal court; anyone else must be transferred to juvenile court).

125. False (it is a Class C misdemeanor offense).

126. False (the backyard is not a public place).

4

Bond Forfeitures

Table of Contents

INTRODUCTION

The failure to perform the conditions of the bond requires the court to declare forfeiture of the bail. A defendant's failure to appear in court after posting bond in the criminal case and the judicial declaration of the forfeiture initiates the bond forfeiture procedures. A bond forfeiture is a new civil lawsuit to recover from a defendant or sureties, if any, the amount of a bond because of the violation of the conditions of the bond. Generally, Chapter 22 of the Code of Criminal Procedure governs bond forfeiture proceedings. If the court is in a county with a population of 110,000 or more or has a bail bond board, the court must also consider Chapter 1704 of the Occupations Code, which governs licensing requirements, bail bond businesses, and enforcement provisions in a bond forfeiture proceeding.

The exception to using the bond forfeiture procedures in Chapter 22 is found in Article 45.044 of the Code of Criminal Procedure. This statute provides an additional method of forfeiting a cash bond for municipal and justice courts. Both methods are discussed in this study guide.

Although a bond forfeiture is considered a criminal case, the bond forfeiture proceedings are governed by the rules that govern civil lawsuits. *Safety National Casualty Corporation v. State,* 305 S.W.3d 586 (Tex. Crim. App. 2010). This means that the court must consult the Texas Rules of Civil Procedure for preparation and service of the citation (the civil citation, not the "ticket"), timelines regarding the bond forfeiture lawsuit, and other requirements. These rules may appear to be somewhat intimidating because municipal courts do not usually use them. For more detailed step by step procedures and explanation, further reading should include the TMCEC *Bench Book*.

The clerk's role in processing bond forfeitures includes the following:

- creating the civil forfeiture file;
- entering the forfeiture on the civil docket (scire facias docket);
- issuing a "citation" when requested to do so;
- serving the citation when requested to do so;
- coordinating with the prosecutor the service of the citation if other methods of service fail;
- stamping the file date on answers to the forfeiture lawsuit;
- scheduling any hearings on the case;
- issuing a writ of execution upon a bond forfeiture judgment directing the payment of the forfeiture; and
- managing the paperwork.

True or False

1. When a defendant fails to appear, a bond forfeiture lawsuit is filed to recover the bond from a defendant or the sureties, if any. ____
2. Bond forfeitures are governed by the Rules of Criminal Procedure. ____

PART 1
BAIL

Bail is the security given by an accused that he or she will appear and answer before the proper court the accusation brought against him or her and includes a bail bond or a personal bond. Art. 17.01, C.C.P. Generally, the purpose of bail is to guarantee the person's appearance in court.

The Texas Constitution states in Article 1, Section 11 of the Bill of Rights that prisoners can be released on bail guaranteed by sufficient sureties except in cases punishable by the death penalty. The Code of Criminal Procedure provides in Article 1.07 that any person shall be eligible for bail unless denial of bail is expressly permitted by the Texas Constitution or by other law. Generally, only defendants accused of crimes punishable by the death penalty when the evidence is clear and strong that the person will be convicted and sentenced to death are not bailable. Therefore, persons charged with fine-only offenses are presumed to be entitled to reasonable bail based on the presumption of innocence.

Bail in a fine-only misdemeanor case may be set in two different instances. A person who is arrested must be taken before a magistrate for certain warnings under Article 15.17 of the Code of Criminal Procedure. The magistrate, after giving the required warnings, shall admit the person to bail if allowed by law. Art. 15.17(a), C.C.P. The first instance would be bail set by the magistrate prior to formal charges being filed.

The second instance would be bail set by the judge. A municipal judge or justice of the peace may require a defendant to give bail to secure the defendant's appearance in accordance with the Code of Criminal Procedure. Art. 45.016, C.C.P.

When a defendant gives bail for his or her personal appearance before a court or magistrate to answer a charge against him or her, the bond is valid and binding upon the defendant and his sureties, if any, for the defendant's personal appearance before the court designated in the bond, any other court to which the case may be transferred, and for any and all subsequent proceedings in the case. Art. 17.09, Sec. 1, C.C.P. When a defendant gives bail, he or she cannot be required to give another bond in the course of the same criminal case, with limited exception. Art. 17.09, Sec. 2, C.C.P.

A bail bond is a written undertaking entered into by a defendant and/or the defendant's sureties guaranteeing the appearance of the principal (the defendant) before some court or magistrate to answer a criminal accusation. Art. 17.02, C.C.P. Section 1704.001 of the Occupations Code defines a bail bond as a cash deposit or similar deposit, written undertaking, a bond, or other security given to guarantee the appearance of a defendant in a criminal case. Requisites for a bail bond can be found in Article 17.08 of the Code of Criminal Procedure.

A. Surety Bond

A surety is defined by *Black's Law Dictionary* as a person who is primarily liable for the payment of another's debt or the performance of another's obligation. Article 17.11 of the Code of Criminal Procedure provides that one surety is sufficient if such surety is worth at least double the amount of the sum for which he or she would be bound (the amount of the bail) and is a Texas resident.

A corporation can be a surety if authorized by law to act as a surety. Art. 17.06, C.C.P. Any corporation authorized by law to act as a surety shall, before executing a bail bond, file in the office of the county clerk of the county in which the corporation is giving bonds, a power of attorney designating and authorizing named agent(s) or attorney of the corporation to execute the

bail bonds. It is the power of attorney that provides that the bonds are a valid and binding obligation on the corporation. Art. 17.07, C.C.P. A copy of the power of attorney should be attached to each bond filed with the court. Article 22.04 of the Code of Criminal Procedure requires that a copy of the power of attorney be attached to the citation when there is a bond forfeiture.

A surety who is on default for another bond is disqualified from again acting as a surety. Art. 17.11(b), C.C.P. A minor cannot be a surety on a bail bond, nor can a person, for compensation, act as a surety if the person has been convicted of a felony or a misdemeanor involving a crime of moral turpitude. Art. 17.10(a) and (c), C.C.P. Article 17.10(b) provides that a person, for compensation, may not be a surety on a bail bond written in a county in which there is not a county bail bond board unless the person within two years before the bail bond is given completes at least eight hours of continuing legal education in criminal law courses or bail bond law courses that are (1) approved by the State Bar of Texas and (2) offered by an accredited institution of higher education in Texas.

Section 1704.001 of the Occupations Code applies to counties with a population of 110,000 or more or counties that have elected to be governed by Chapter 1704. This section defines a "bail bond surety" as a person who (1) executes a bail bond as a surety or cosurety for another person; or (2) for compensation deposits cash to ensure the appearance in court of a person accused of a crime. Person is defined as an individual or corporation. In order for a person to act as a bail bond surety, the person must hold a license under Chapter 1704. There is one exception to being licensed−an attorney licensed to practice law in the State of Texas may act as a surety for a person in a criminal case in which he or she represents the person without being licensed under Chapter 1704. The attorney, however, must, at the time the bond is executed, file with the court a notice of appearance as counsel of record in the criminal case for which the bond was executed or surety provided. Sec. 1704.163(a)(2), O.C.

Every county with a population of 110,000 or more must have a bail bond board. Sec. 1704.051, O.C. The bail bond board shall post in each court having criminal jurisdiction in the county a current list of each licensed bail bond surety and the licensed agent of the corporate surety in the county. Sec. 1704.105(a), O.C. The bail bond board shall provide to each local official responsible for the detention of prisoners in the county a current list of each licensed bail bond surety and agent of the bail bond surety in the county. A list of each licensed bail bond surety in the county must be displayed where prisoners are examined, processed, or confined. Sec. 1704.105(a) and (b), O.C.

A judge or court employee may not recommend a particular bail bond surety to another person. Doing so is a Class B misdemeanor offense. Sec. 1704.304(b)(3), O.C.

In counties in which there is no bail bond board regulated under the Occupations Code, the sheriff may post a list of eligible bail bond sureties whose security has been determined to be sufficient. Each surety listed must file annually with the sheriff a sworn financial statement. Art. 17.141, C.C.P.

Other laws for determining the sufficiency of a surety can be found in Articles 17.13 and 17.14 of the Code of Criminal Procedure.

B. Cash Bond

A defendant can file a cash bond, by depositing cash in the amount of the bond with the custodian of the court in which the prosecution is pending, in lieu of having sureties sign any

time a bond is required of the defendant. When a defendant complies with the conditions of the bond, the court shall order the bond returned to the defendant. Art. 17.02, C.C.P. A cash bond, when a refund is due, is to be refunded to the person that posted the bond. Art.17.02(1), C.C.P. The officer receiving the funds is to receipt the funds, and when the court orders the bond to be refunded, it should go to the person in the name of whom the receipt was issued. If no one produces a receipt, the bond shall be refunded to the defendant. The statute is silent as to how long the court must wait on the production of a receipt.

C. Personal Bond

In certain cases, a magistrate may, in his or her discretion, release a defendant on personal bond without sureties or other security. Art. 17.03, C.C.P. Municipal judges are magistrates. Art. 2.09, C.C.P. The requisites for a personal bond are contained in Article 17.04 of the Code of Criminal Procedure.

If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his or her personal bond must forward a copy of the personal bond to the personal bond office in that county. Art. 17.031(b), C.C.P.

In a county that has a personal bond office, a court that releases an accused on personal bond on a recommendation of a personal bond office must assess a personal bond reimbursement fee of $20 or three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown. A municipal judge that requires a Class C defendant to give a personal bond under Article 45.016, C.C.P. may not assess a personal bond fee. Art. 17.42, C.C.P. The court may order the personal bond fee to be:

- paid before the defendant is released;
- paid as a condition of bond;
- paid as court costs;
- reduced as otherwise provided for by statute; or
- waived. Article 17.03(g), C.C.P.

As an alternative, a magistrate may also release a person charged with a fine-only misdemeanor without bond on an order to appear at a later date for arraignment in the applicable justice or municipal court. Art. 15.17(b), C.C.P. If the magistrate utilizes this provision, there would be no bond on which to declare a forfeiture.

Practice Note

It is important to note that a municipal judge that requires a Class C defendant to give a personal bond under Article 45.016, C.C.P. may not assess a personal bond fee. Although this was not a common practice in the majority of municipal courts prior to the 85th legislative session, after September 1, 2017 it is also prohibited by law.

True or False

3. Bail includes a bail bond or a personal bond and is the security given by the accused

promising to appear in court at a later date or dates as required by the court. ____

4. What is the purpose of bail? _____

_____

5. Define bail bond. _____

_____

6. When can a defendant present the court with a cash bond? _____

_____

7. Who has the authority to release a defendant on a personal bond?_____

_____

PART 2
SURRENDER OF PRINCIPAL DEFENDANT

A person executing a bail bond is relieved of liability on the bond on the date of disposition of the criminal case for which the bond is executed. A disposition occurs on the date the criminal case is dismissed, or the principal is acquitted or convicted. Sec. 1704.208, O.C.

A. Discharge on Incarceration of Principal

A surety may generally be released from the responsibility on a bond if, before forfeiture or a judgment nisi (the process that initiates the bond forfeiture lawsuit) is issued, the surety surrenders the principal into custody of the sheriff of the county where the prosecution is pending or produces an affidavit that the defendant is in federal, state, or county custody. Art. 17.16(a), C.C.P. Any affidavit that the accused is incarcerated must be filed, with any documentation, in the record of the underlying criminal case in the court in which the prosecution is pending. A copy must be delivered to the State. Art 17.16(f), C.C.P. The bond is discharged, and the surety is absolved from liability on the bond upon verification of the incarceration of the accused principal defendant. Art 17.16(e), C.C.P. Producing an affidavit that the defendant is in custody does not relieve the surety if the accused is in federal custody to determine whether the accused is lawfully present in the United States. Art. 17.16(a-1), C.C.P.

The issuance of a capias for the arrest of the principal is not required if: (1) a warrant has already been issued for the accused's arrest and remains outstanding, or (2) the issuance of a capias is unnecessary to take the accused into custody. Art 17.16(d), C.C.P. A capias is a writ that is issued by a judge of the court having jurisdiction of a case after commitment or bail and before trial, is directed to any peace officer of the State of Texas and commands the officer to arrest the person and bring them before the court. Art. 23.01, C.C.P.

B. Surety May Obtain Warrant

Any surety desiring to surrender a principal defendant can file an affidavit of that intention and request the judge or magistrate to issue a capias or warrant for the principal. Art. 17.19, C.C.P. Article 17.19(a) and Section 1704.207(a) of the Occupations Code require the affidavit to state:

- the person's intention to surrender the principal;
- the court and cause number of the case;
- the name of the defendant;

- the offense with which the defendant is charged;
- the date of the bond;
- the cause or reason for the surrender; and
- that notice of the person's intention to surrender the principal has been provided to the principal's attorney as provided by Rule 21a of the Rules of Civil Procedure. (Rule 21a provides methods of service and allows service to be made by delivering a copy to the party to be served, or the party's duly authorized agent, or attorney of record. The service may be either in person, by agent, or by courier receipted delivery; by certified or registered mail to the party's last known address; by telephonic document transfer to the recipient's current telecopier number; or by such other manner as the court in its discretion may direct.)

The judge of the court shall issue a capias for the defendant if cause is shown for the surrender. If the affidavit is presented to the magistrate, the magistrate shall issue a warrant of arrest. Article 17.19(b) provides that it is an affirmative defense to a bond forfeiture case filed later if a court or magistrate refused to issue a capias or warrant for the principal and the principal later fails to appear. It has been held that there is no authority for a trial judge to refuse the issuance of a capias if the requisite affidavit to surrender is properly filed. *McConathy v. State*, 545 S.W.2d 166 (Tex. Crim. App. 1977). If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to any magistrate in the county. Art. 17.19(c), C.C.P.

A capias (warrant) issued under Article 17.19(d) of the Code of Criminal Procedure must be issued (given) to the sheriff of the county in which the case is pending and a copy of the warrant or capias must be given to the surety or his or her agent. A peace officer, a security officer, or a licensed private investigator may execute the capias (warrant). Art. 17.19(e), C.C.P.

When a clerk receives a surety's affidavit of intent to surrender his or her principal, the clerk should immediately transmit the affidavit to the judge. If the judge determines that there is sufficient cause to issue the capias (warrant), the clerk should prepare a capias (warrant) for the judge's signature. The clerk or judge should note on the criminal docket the date the capias (warrant) is issued and to whom the capias (warrant) was given for execution. The filing of an affidavit of intent to surrender and the issuance of a warrant does not constitute a surrender as to discharge the surety's liability under the bond until the principal is taken into custody. *Apodaca v. State*, 493 S.W.2d 859 (Tex. Crim. App. 1973).

After the judge issues the capias (warrant), the clerk should give a copy to the State and to the defendant's attorney, if the defendant has one.

C. Contest of Surrender

If the principal on the bond (the defendant) or an attorney representing the State determines that the surrender was without reasonable cause, that person may contest the surrender in the court that authorized the surrender. Sec. 1704.207(b), O.C. If the court finds that a contested surrender was without reasonable cause, the court may require the person who executed the bond to refund to the principal all or part of the fees paid for execution of the bond. The court shall identify the fees paid to induce the person to execute the bond regardless of whether the fees are described as fees for the execution of the bond. Sec. 1704.207(c), O.C.

8. When is a surety released from the responsibility on a bond? _____

_____

_____

_____

9. What must be stated in an affidavit filed by a surety requesting to surrender the principal?

_____

_____

True or False

10. When an affidavit is filed with a court asking permission for the surrender of the principal, the court may refuse to issue the capias if no reasonable cause is shown. ____

11. A capias issued for the surrender of the principal may be executed only by a peace officer. ____

12. When a clerk receives an affidavit, the clerk should immediately notify the judge. ____

PART 3
SURETY BOND FORFEITURE

When a defendant is bound by bail to appear on a criminal case and fails to appear, the court shall declare a forfeiture of the bond. Art. 22.01, C.C.P. An action by the State to forfeit the bond must be brought not later than the fourth anniversary of the date the principal fails to appear in court. Art. 22.18, C.C.P. This part addresses the procedure to forfeit a bond involving a surety. The State is the plaintiff and is referred to in this chapter as "State," "city attorney," or "prosecutor." The surety is referred to as "defendant surety" or "surety." The defendant is referred to as "defendant," "principal" or "principal defendant." See Parts 4 and 5 for procedures to forfeit a bond posted only by a defendant without a surety.

A. Declaring the Forfeiture

1. Calling Name Outside of Courtroom

On scheduled appearance dates for criminal cases, the judge asks the defendants to acknowledge their presence when their name is called. When a defendant fails to answer, the judge must order that the name of the defendant be called distinctly at the courthouse door. Usually, the judge directs either a clerk or bailiff to call the name outside the courtroom. Art. 22.02, C.C.P. In *Burns v. State*, 814 S.W.2d 768 (Tex. App.−Houston [14th Dist.] 1991, rev'd on other grounds, 801 S.W.2d 361 (1992)), the court held that only substantial compliance with Article 22.02 is required and that calling the defendant's name in the hallway on the sixth floor of the courthouse meets this test.

If the defendant fails to appear or answer the call, the prosecutor moves for forfeiture of bond posted on the criminal case. The clerk or bailiff prepares and swears to a statement that he or she called the name outside the court and that the defendant failed to answer or to appear. (The clerk has the authority to administer this oath.) The affidavit is filed with the bond forfeiture case and may also be used as probable cause for filing a new offense of failure to appear or violation of

promise to appear, if applicable, and issuing a warrant for the defendant's arrest for the new nonappearance crime.

2. Judgment Nisi

If a defendant does not appear on the criminal case within a reasonable amount of time after his or her name is called at the courthouse door, the court shall enter a judgment nisi that the State recover the amount of the bond unless good cause is shown as to why the defendant did not appear. Art. 22.02, C.C.P. Although statutes do not define the words "reasonable amount of time," typically the judge signs the judgment nisi at the end of the court session on the day that the forfeiture is declared (the day the defendant failed to appear). Some judges, however, consider the "Mailbox Rule" in Article 45.013(a) of the Code of Criminal Procedure and wait 10 working days before signing the judgment nisi. (The judge is waiting to see if the defendant is appearing by mail.) The signing of a judgment nisi is a judicial decision.

3. Issuance of Capias After Forfeiture of Bond

When a court declares a bond forfeiture, the court shall issue a capias for the defendant's arrest on the original underlying charge for which the bond was posted. Art. 23.05(a), C.C.P. The capias must be issued immediately but not later than the 10th business day after the order of the forfeiture. Art. 23.05(c), C.C.P. When the defendant is arrested on this capias, the court may require a cash bond to guarantee the defendant's appearance in court. Art. 23.05(a), C.C.P. This is the *only* time a judge may require the bond to be posted by cash only.

Usually, the clerk prepares the capias for the judge's signature. After the judge issues the capias, the clerk should coordinate the service of the capias with the police department.

A capias issued when a bond forfeiture is declared may be executed by a peace officer or by a private investigator licensed under the Chapter 1702 of the Occupations Code. Art. 23.05(b), C.C.P. Section 1702.3867 provides rules that private investigators must follow when executing a capias.

True or False

13. When a defendant fails to appear, the court is not required to declare a forfeiture of the bail. ____
14. When a defendant fails to answer docket call, the court is required to have the defendant's name called at the courthouse door. ____
15. When a bond forfeiture is declared, the court must issue a capias for the defendant's arrest. ____
16. When a bond forfeiture is declared and the defendant is rearrested, the court may require the defendant to present the court with a cash bond to obtain a new court date. ____

B. Initiating the Forfeiture

Before filing the judgment nisi, the State (prosecutor) needs to determine if the name of the bail bond company is merely an assumed or trade name and who is the proper party in the lawsuit. This information is given to the clerk for the clerk to prepare the judgment nisi. After the judge signs the judgment nisi, the clerk records the judgment nisi on the court record of the original

criminal case. The judgment nisi is the basis of the State's case for the forfeiture and becomes the State's petition in a separate civil case. *Swaim v. State*, 498 S.W.2d 988 (Tex. Crim. App. 1973); *Cheatam v. State*, 13 Tex. Ct. App. 32 (1884).

C. Scire Facias Docket

Once a judgment nisi is entered, this new case is given a new case number and set on the scire facias docket. Art. 22.10, C.C.P. The scire facias docket is a separate civil docket for bond forfeiture cases. Although either the judge or the clerk may docket the case, usually the clerk performs this action. The forfeiture is docketed in the name of the State of Texas as the plaintiff party. The defendant and his or her sureties, if any, are the defendant parties. The nature of the action is a bond forfeiture.

Rule 26 of the Rules of Civil Procedure requires the civil docket to be a permanent record that shall include the number of the case, the names of the parties, the names of the attorneys, the nature of the action, the pleas, the motions, and the ruling of the court.

17. What is a judgment nisi? _____
_____
18. After a bond forfeiture is declared, when is the judgment nisi signed? _____
_____
19. Define scire facias docket. _____
_____
20. How is the bond forfeiture case docketed?_____
_____
21. Who is the defendant in a bond forfeiture case?_____
22. How long is the court required to keep and maintain the scire facias docket? _____
23. List the information required on a scire facias docket. _____
_____
_____
_____
_____

D. Notification of Bond Forfeiture Lawsuit

1. Citation

After the entry of the judgment nisi, a "citation" is issued to notify the surety and the principal of the bond forfeiture. Arts. 22.03(a) and 22.04, C.C.P. A citation, in this sense, is a notice to a person that he or she must appear to answer before a court. This is a civil citation as distinguished from the criminal citation that an officer issues in lieu of an arrest. The purpose of the citation is to notify the defendant surety and the principal defendant (the person charged with the criminal offense) of the pending lawsuit now filed against him, her, or them. The citation requires the surety and principal to appear and show cause why the judgment of forfeiture (the judgment nisi) should not be made final.

2. Principal Defendant

It is not necessary to give notice of the bond forfeiture to the principal defendant on a surety bond unless he or she has furnished an address on the bond. Art. 22.05, C.C.P. If the court has an address, the notice is served by depositing it in the U.S. Mail directed to the defendant at the address shown on the bond or the last known address of the defendant. The court must attach a copy of the judgment nisi and a copy of the bond to the notice. Although Article 22.05 of the Code of Criminal Procedure does not define what is meant by "notice" to the defendant/principal on a surety bond, under the Rules of Civil Procedure, proper notice is the citation.

If the defendant posted a cash bond, the court is required to give notice of the bond forfeiture as in civil cases. The court must give notice by regular mail if the defendant provided his or her address on the bond. If the defendant did not provide an address, notice shall be served at the last known address of the defendant.

3. Defendant Surety

Sureties have a right to notice of the bond forfeiture lawsuit against them. The process that provides sureties this notice is the citation.

a. Issuance of Citation

The citation must be in the form provided for citations in civil cases and a copy of the judgment nisi, a copy of the bond, and a copy of the power of attorney, if any, must be attached. Art. 22.04, C.C.P.

The clerk, when requested by the State, shall immediately issue a citation. Also, upon request, the clerk must issue separate or additional citations. Rule 99, R.Civ.P. The clerk must deliver the citation(s) as directed by the requesting party. In municipal court, the requesting party is the State or prosecutor. The party requesting the citation is responsible for obtaining service of the citation.

b. Requirements of Citation

Rule 99 of the Rules of Civil Procedure requires that the citation be in the following form:

- be styled "The State of Texas;"
- be signed by the clerk under seal of court;
- contain name and location of the court;
- show date of filing of the judgment nisi;
- show date of issuance of citation;
- show file number;
- show names of parties (State, principal defendant and defendant surety, if any);
- be directed to the principal defendant and defendant surety, if any;
- show the name and address of the attorney for the plaintiff (State, or prosecutor); and
- contain the address of the clerk.

The citation shall direct the defendant(s) to file a written answer on or before 10:00 a.m. on the next Monday after the expiration of 20 days after the date of service. The "answer" is the formal written statement made by a defendant setting forth the grounds of his or her defense.

The citation shall include the following notice to the defendant(s):

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you."

If a citation is to be served by publication, the requirements of the citation are different from the ones listed in this section. See the next section regarding service of the citation.

True or False

24. The court must always give notice of the bond forfeiture to the principal defendant on a surety bond. ____
25. The citation to the principal defendant who has posted a cash bond is required to be served as in civil cases. ____
26. The notice to the defendant(s) must include a copy of the judgment nisi. ____
27. The purpose of the citation is to notify the surety of the bond forfeiture lawsuit. ____
28. When a citation is served on a surety, a copy of the judgment nisi and a copy of the bond must always be attached. ____
29. When must the clerk issue the citation? _____
30. List the requirements of the citation. _____

    _____

    _____

    _____
31. What does the citation require the defendant to do?_____

    _____
32. When does the citation direct the defendant to answer?_____

    _____
33. Define answer. _____

    _____

c. Service of the Citation

Sureties are entitled to notice of the civil lawsuit to forfeit the bond by service of a citation. One of the chief difficulties of service on a surety is serving the citation on the proper party. Before requesting service of a citation, the State must determine if the name of the bail bond company is merely an assumed or trade name and who the proper party is in the lawsuit. If the bail bond company is a property bail bond company, it will have an individual owner and the citation will be served on the individual owner in his or her individual capacity. The company may be named "Easy Bonds," but the owner is John Star. The forfeiture lawsuit would be against John Star d/b/a Easy Bonds.

If a surety is an insurance company doing business as a bail bonding company, the company will have agents who run the bonding business. Insurance companies must have obtained authority from the Texas Department of Insurance to write surety bonds. The agents have no liability to the State for the bonds. The citation must be served on the insurance company. Insurance

companies must have a registered agent (this is an attorney) for service on file with the bail bond board in the county. If the court is in a county that does not have a bail bond board, the State can contact the Office of the Secretary of State and obtain the name and address of the registered agent.

Article 22.03(c) of the Code of Criminal Procedure requires that service of a citation to a surety who is a corporation or other entity shall be served to the attorney designated for service of process by the corporation or entity under Chapter 804 of the Insurance Code.

Service of a citation to a surety who is an individual shall be served to the individual at the address shown on the face of the bond. Art. 22.03(b), C.C.P. A surety may designate a person other than the surety to receive service of the citation by filing a designation in writing with the clerk of the court. This is effective until revoked. Art. 22.03(d), C.C.P.

The service of the citation on a surety is in the same manner as provided for civil actions. Art. 22.05, C.C.P. Rule 103 of the Rules of Civil Procedure states that no person who is a party to or interested in the outcome of a suit shall serve any process. Rule 103 provides that the following persons may serve a citation anywhere:

- any sheriff or constable or other person authorized by law; or
- any person authorized by law or by written order of the court who is not less than 18 years of age.

Article 45.202(a) of the Code of Criminal Procedure provides that all process issuing out of a municipal court may be served by a city peace officer or a marshal under the same rules as are provided by law for the service of process by sheriffs and constables issuing out of the justice court. Article 45.202(b) provides that city police officers may serve all process issuing out of a municipal court anywhere in the county in which the city is situated. If the city is situated in more than one county, the city police officer may serve the process throughout those counties, as well. Hence, city peace officers may serve a citation anywhere in the county or counties where the city is situated.

The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

Rule 106 of the Rules of Civil Procedure provides for the method of service of a citation. It includes service by mail, personal service, alternative service, and service by publication. The following information explains the procedures for using each method.

- **Service by Mail**

  Usually, the prosecutor requests that the clerk serve the citation by registered or certified mail, restricted delivery to addressee only. A copy of the judgment nisi, a copy of the bond, and a copy of a power of attorney, if any, shall be attached to the citation. Art. 22.04, C.C.P. If the surety is a corporation, such as a bonding company, the clerk should call the company and ask who the registered agent is for accepting service of the citation.

  If the defendant surety or the defendant surety's registered agent for service accepts service and signs the green card (return receipt), the clerk must attach the card to the original citation in the forfeiture file. Rule 107(g), R.Civ.P. The clerk fills out the return portion of the citation noting the date and time the return receipt (green card) was signed and returned to the court. When the citation was served by registered or

certified mail, the return must also contain the return receipt with the addressee's signature. Rule 107(c), R.Civ.P.

If the citation is returned unclaimed or refused, or if someone other than the defendant surety or registered agent for service accepted the citation by signing the green card, the citation has not been served and the clerk would notify the prosecutor.

- **Personal Service**

  If service by mail fails, the clerk should notify the prosecutor. The prosecutor may request that a peace officer or marshal personally serve the citation on the defendant surety or the defendant's registered agent. A copy of the judgment nisi, a copy of the bond, and a copy of any power of attorney must be attached to the citation. The officer or authorized person to whom the citation is delivered shall endorse the citation with the day and hour on which he or she received it. Rule 105, R.Civ.P. The person serving the citation shall execute it and return it without delay. The return of the officer or authorized person executing the citation may be endorsed on or attached to the citation. Rule 107, R.Civ.P. The return shall include 11 items, listed in Rule 107 of the Rules of Civil Procedure. The return must also:

  - state when the citation was served;
  - state the manner of service; and
  - be signed by the officer officially or by the authorized person.

  The return of citation signed by a person other than a sheriff, constable, or the court clerk shall be verified (sworn).

  When the officer or authorized person has not served the citation, the return shall show:

  - the diligence used to execute it;
  - the reason for failing to execute it; and
  - if the whereabouts of the defendant surety can be ascertained.

- **Substitute Alternative Service**

  If the above methods of service are not successful, the court may authorize alternative service under Rule 106(b) of the Rules of Civil Procedure. The officer must have noted the cause for failure to serve the citation and the diligence used in attempting service when he or she returns the citation to the court. The clerk notifies the prosecutor of the failure to serve the citation. The prosecutor may file a motion with the court for alternative service. The motion must be supported by an affidavit stating the location of the defendant surety's usual place of business, usual place of abode, or other place where the defendant can probably be found. The affidavit must state specifically the facts showing that service has been attempted by mail or personal service at the location named in the affidavit, but has not been successful. If the court grants the motion, the citation can be served:

  - by leaving a copy of the citation, with a copy of the judgment nisi, a copy of the bond, and a copy of any power of attorney attached, with anyone over 16 years of age at the location specified in such affidavit; or

- in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

If the court grants substitute service, the clerk delivers the citation to the peace officer. The peace officer endorses the citation with the date and hour received and attempts to serve the citation by leaving a copy with anyone over 16 years of age at the location specified in the affidavit or in any other manner specified by the court in its order. If the officer is able to serve the citation, the officer signs the citation, noting the manner, person, time, and place served. The officer returns the citation to the court.

- **Service by Publication**

If the officer is unable to serve the citation by alternative service, the officer notes the cause for failure to serve and the diligence used and returns the citation to the court. The clerk notifies the prosecutor of the failure to serve the citation by substitute service. When a citation is unable to be served by any of the abovementioned methods, Rule 109 of the Rules of Civil Procedure provides for service by publication. The prosecutor must make an oath that the residence of the defendant surety is unknown or that the defendant surety is a transient person and that, even though due diligence has been used in attempting to serve the citation, the defendant surety has not been located. The court must inquire into the sufficiency of the diligence used in attempting to locate the defendant surety before granting such service. If the court grants the motion, the clerk shall issue the citation for service by publication.

Rule 114 of the Rules of Civil Procedure provides for the requirements of a citation that is to be published. The citation shall:

- be styled "The State of Texas;"
- be directed to the defendant surety by name, if their name is known;
- if there is more than one defendant (e.g., two sureties), the citation may be directed to all of them by name;
- contain the names of the parties (the State (city) and the defendant surety); and
- contain a brief statement of the nature of the suit.

A copy of the judgment nisi does not have to be published with this citation.

The citation must be published once each week for four consecutive weeks. Rule 116, R.Civ.P. It must be published in the county where the lawsuit is pending. If there is not a newspaper in the county where the suit is pending, publication may be published in an adjoining county where a newspaper is published. The first publication is to be at least 28 days before the return day of the citation.

The clerk who executed the citation shall endorse the citation and show how and when the citation was executed, specifying the dates of publication. A copy of the publication shall be attached to the citation. Rule 117, R.Civ.P.

Rule 114 of the Rules of Civil Procedure provides that a defendant (surety) must file an answer with the court before 10:00 a.m. of the first Monday after the expiration of 42 days from issuance of the citation for publication.

Rule 244 of the Rules of Civil Procedure states that where service of the citation has been made by publication and no answer has been filed nor appearance entered within the prescribed time, the court shall appoint an attorney to defend the suit on behalf of the defendant. Judgment may be rendered as in other cases, but a statement of evidence, approved and signed by the judge, shall be filed with the papers of the case as a part of the record. The court shall allow a reasonable fee to be paid to the attorney for his or her services. This fee is added on as part of the costs.

4. Waiver of Service

Article 22.03(d) of the Code of Criminal Procedure allows a surety to file a waiver with the clerk of the court waiving service of citation or to designate a person other than the surety or the surety's attorney to receive service of the citation.

The defendant surety may accept service or waive the issuance of service of the citation by filing with the court a sworn memorandum signed by the defendant surety or by his or her duly authorized agent or attorney. The waiver is effective until written revocation is filed with the clerk. The waiver or acceptance shall have the same force and effect as if the citation had been issued and served. The defendant surety who waives service of the citation shall be delivered a copy of the judgment nisi. Receipt of the copy of the judgment nisi must be acknowledged in the memorandum. Rule 119, R.Civ.P.

5. Absent Surety or Non-Resident Surety

If a defendant surety is absent or a non-resident, service of a certified copy of the citation may be made outside of Texas by any person competent to make an oath of the fact of service, who is a disinterested party not less than 18 years of age. The affidavit of such person stating the facts of service shall be a sufficient return. Art. 22.08, C.C.P.

When the defendant surety is absent from the State or is a non-resident of the State, the form of the notice to the defendant surety shall be in the same form prescribed for a citation to a resident defendant surety. The return of service shall be endorsed on or attached to the original notice and shall be in the same form as for the return of service on a resident defendant surety. Rule 108, R.Civ.P.

True or False

34. A citation issued in a bond forfeiture case is served in the same manner as civil citations. ____

35. The sheriff, constable, city peace officers, and court clerks are the only persons who may serve a citation. ____

36. If a city police officer serves the citation, he or she may serve the citation only within the city limits. ____

37. A clerk may serve a citation by mail. ____

38. List the methods of serving a citation. _____

_____

_____

_____

39. When a citation is mailed to a surety, what are the requirements for mailing a citation? ____

_____

_____

40. When the surety is a corporation, what should the clerk do before serving the citation? ____

_____

_____

41. If the clerk serves the citation by mail, what must the clerk attach to the citation in the forfeiture file after the surety accepts service? _____

42. After service of the citation by mail, what information on the return of the citation must be completed? _____

_____

True or False

43. A citation that is refused is considered to be served. ____

44. Anyone can sign for a citation and it is considered to be served. ____

45. If the court is unable to serve the citation by mail, the clerk must notify the prosecutor of the failure to serve the citation. ____

46. When a peace officer receives a citation, what information is he or she required to put on the citation? _____

_____

47. After a citation is served by a peace officer, what information must the officer endorse on or attach to the citation? _____

_____

48. If the person serving the citation is not able to locate the defendant surety for personal service, what must that person do? _____

_____

True or False

49. The State may request alternative service from the court by submitting an affidavit stating specific facts about the previous attempted service. ____

50. If a court grants alternative service, the citation may be served on anyone who lives at the address specified in the affidavit. ____

51. When a citation is served by a peace officer, the officer must note the time and date he or she received the citation. ____

52. If alternative service is not successful, the clerk may ask the judge to serve the citation by publication. ____

53. The request for service by publication must be made under oath that the residence of the defendant surety is unknown and previous attempted service, although diligent, was not successful. ____

54. When a court grants a motion for service by publication, the clerk must issue a new citation since the requirements for this citation are different from the one that is served by mail or

one served on a defendant surety personally. ____

55. A copy of the judgment nisi must be published along with the citation. ____

56. A citation that is published must be published once each week for four consecutive weeks. ____

57. The first publication must be at least 28 days before the return day of the citation. ____

58. When a citation is published, the clerk must endorse the citation and show how and when the citation was executed, specifying the dates of publication. ____

59. Since the clerk endorses the citation showing how it was executed, the clerk does not have to attach a copy of the publication to the citation. ____

60. The defendant surety must file an answer with the court 80 days from the issuance of the citation when service is by publication. ____

61. If a defendant does not file an answer when a citation is published, the court is required to appoint an attorney to defend the suit in behalf of the defendant. ____

62. Defendant surety may waive service of the citation by filing a sworn memorandum with the court. ____

63. A defendant surety who waives service of the citation is not entitled to a copy of the judgment nisi. ____

64. Who may serve a citation to an absent or non-resident surety? _____

_____

E. Answer

The answer is the formal written response made by a defendant or surety, if any, setting forth the grounds of his or her defense. After the forfeiture of the bond is declared and the defendant or surety has been notified (successful service of the citation) of the lawsuit, he or she can answer in writing and show cause why the principal defendant did not appear.

1. When Filed

The answer must be filed within the time limit for answering in other civil actions. Art. 22.11, C.C.P. The civil rules provide that the answer must be filed by 10:00 a.m. on or before the Monday next following the 20th day after the service of the citation. To compute the period of time, the court does not count the day of service, but begins counting on the first day following service. The court counts calendar days, not just business days. The last day is included unless it is a Saturday, Sunday, or legal holiday, in which event the period of time runs until the end of the next working day of the court. Rule 4, R.Civ.P.

For example, if a citation is served on a Friday, the court starts the counting with Saturday as the first day. If the 20th day is a Thursday, the court then looks to the following Monday as the answer date. If this Monday is a holiday, the court then goes to the following day which is Tuesday. The answer is due by 10:00 a.m.

Ten additional days are allowed if the answer is mailed by first class mail, properly addressed and mailed on or before the last day for filing an answer. Art 45.013(a), C.C.P.; Rule 5, R.Civ.P. When an answer is mailed to the court, the clerk must keep the envelope in which the answer is

received to determine if the mailing of the answer was within the time deadline. The postmark will indicate the day that the answer was mailed.

All answers received should be stamped with the time and date received. After receiving the answer, the clerk sets the case on the scire facias trial docket and provides a copy of the answer(s) to the State.

2. General Denial

A general denial is an answer that is not required to be denied under oath and it is sufficient to put the case on the scire facias trial docket. Rule 92, R.Civ.P. The defendant or surety may later amend the answer. However, if the amended answer is filed within seven days of the date of the trial, the defendant or surety must get permission from the judge to file the amendment. Rule 63, R.Civ.P. When the court receives an amended answer, the clerk should date stamp it and notify the State and the judge.

3. Verified Pleadings

A verified statement is a sworn statement. Rule 93 of the Rules of Civil Procedure requires that certain pleadings be verified. This means that some answers must be sworn so that certain issues are raised at the trial of the bond forfeiture case. Rule 185, R.Civ.P. Examples of when a verified pleading would be required are:

- when the surety and principal deny the execution of the bond; or
- when the surety and principal plead that the bond was not a valid bond.

If the defendant or surety has filed a general denial, he or she may later amend the answer and deny the allegations of the bond forfeiture suit under oath. This is the responsibility of the defendant or surety and not the court. When the clerk receives a verified answer, the clerk should date stamp it and notify the State.

4. Answer Before Citation Issued

If the defendant or surety files an answer before the court that issues the citation, the answer constitutes an appearance and dispenses with the necessity for issuance or service of the citation. If the clerk receives an answer before issuing the citation, the clerk should date stamp the answer and note on the file that the answer was received before the issuance of the citation. Rule 121, R.Civ.P.

5. Appearance in Open Court

If the defendant or surety enters an appearance in open court either in person or by his or her attorney or duly authorized agent, the judge shall note the appearance on the civil docket and enter it in the minutes. The citation shall be deemed to have been issued and served. Rule 120, R.Civ.P.

65. How can a defendant surety answer the bond forfeiture lawsuit?_____

_____

66. What is the time limit for filing an answer with the court?_____

_____

67. If an answer is mailed by first class mail on or before the last day for filing the answer, how much additional time is allowed? _____

68. If an answer is received by mail, why must the clerk keep the envelope in which the answer was mailed? _____

69. What is a general denial? _____

_____

70. When must a defendant obtain permission of the court to file an amended answer? _____

_____

71. What is a verified pleading? _____

_____

72. What happens if a defendant surety files an answer before the court issues a citation? _____

_____

_____

73. What happens when a defendant surety enters an appearance in open court before a citation is issued?_____

_____

F. Setting the Case

An answer filed contests the State's (prosecutor's) case. The court may set contested cases on the scire facias docket on written request of any party, defendant surety or State (prosecutor), or on the court's own motion. The court must give reasonable notice of not less than 45 days of a first setting for trial. When a case has previously been set for trial, the court may reset the case to a later date on any reasonable notice to the parties or by agreement of the parties. Rule 245, R.Civ.P.

Rule 21a of the Rules of Civil Procedure states that the notice may be served on the parties:

- by delivering a copy to the party to be served or the party's duly authorized agent or attorney of record either in person or by agent or by courier receipted delivery;
- by certified or registered mail to the party's last known address;
- by telephonic document transfer to the recipient's current telecopier number; or
- by such other manner as the court in its discretion may direct.

Service by mail shall be complete upon deposit in a post office or official depository under the care and custody of the U.S. Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of the notice is made by mail or telephonic document transfer, three days shall be added to the

prescribed period. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance by filing a signed written document of the compliance. A certificate by a party or an attorney of record, the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. The clerk, upon receiving a document showing compliance of the service of notice, should date stamp the document and file it with the bond forfeiture case.

1. Continuance

A case can be postponed or continued by agreement of both the defendant or surety and the State (prosecutor) for good cause supported by an affidavit presented to the court after notice to the other party (by consent of the parties) or by operation of law. Rules 247 and 251, R.Civ.P.

2. Non-Contested Cases – No Answer Filed

If the defendant or surety does not file an answer, the case is uncontested.

Non-contested cases may be tried or disposed of at any time, whether set or not, and may be set at any time for any other time. Rule 245, R.Civ.P. If the surety does not file an answer within the specified period, the clerk should notify the State (prosecutor) and set the case on the scire facias docket. After the State presents evidence, the judge will enter a final default judgment for the State. Rule 239, R.Civ.P. At the time of judgment, the State (prosecutor) shall certify to the clerk in writing the last known mailing address of the party against whom judgment is taken. Rule 239a, R.Civ.P. The clerk notifies the surety of the final judgment and that the judgment is due and payable to the city.

74. When may a court set bond forfeiture contested cases in which answers have been filed? __
_____

75. How many days notice must a court give a defendant surety of a trial date? _____

76. If a case has been previously set for trial, how much notice is the defendant surety entitled to receive?_____

77. When may a case be postponed or continued? _____
_____

78. When can non-contested cases be disposed? _____
_____

G. Remittitur Before Entry of Final Judgment

Article 22.16(a) of the Code of Criminal Procedure provides that after the forfeiture of a bond and before entry of a final judgment, the court shall, on written motion, remit (return) to the surety the amount of the bond after deducting court costs, any reasonable and necessary re-arrest costs, and the interest on bond amount after forfeiture if:

- the principal defendant is released on new bail in the criminal case; or
- the criminal case for which the bond was given is dismissed.

For other good cause shown and before entry of a final judgment against the bond, the court in its discretion may remit to the surety all or part of the amount of the bond after deducting the court costs, any reasonable and necessary re-arrest costs, and interest accrued on the bond from the date of the forfeiture. Art. 22.16(b), C.C.P.

H. Trials

Courts may not enforce bail bonds during a period of active military service of the principal defendant when the military service prevents the defendant surety from obtaining the attendance of the principal. Sec.103(c), Service Members Civil Relief Act (S.C.R.A.). The State must provide the court with an affidavit of non-military service regarding the defendant. If the State does not provide an affidavit that the principal defendant is not on active military duty, the court may appoint an ad litem (an attorney appointed by the court to appear in a lawsuit on behalf of the party) for the service member, for whom the State must pay the fees, or the court may refuse to proceed and abate the forfeiture action until the service member's return from active duty. Sec. 201, S.C.R.A. The Department of Defense provides a website for government agencies to check military status: https://scra.dmdc.osd.mil/.

1. Trial before the Judge

Although a bond forfeiture stems from a criminal case under Chapter 22 of the Code of Criminal Procedure, the procedures are governed by the Rules of Civil Procedure instead of the Code of Criminal Procedure. Art 22.10, C.C.P. Under the Rules of Civil Procedure, when a defendant wants to contest a lawsuit, the defendant is automatically entitled to a trial before the judge. The rules that govern a jury trial also govern trials by the court in so far as they are applicable. Rule 262, R.Civ.P.

2. Jury Trial

A defendant surety may request a jury trial. The request must be made in writing and filed with the clerk a reasonable time before the date set for trial on the non-jury docket, but not less than 30 days in advance. Rule 216(a), R.Civ.P. When the clerk receives the request, the clerk should date stamp it and file it with the case.

A defendant surety who requests a jury trial must also pay a fee. Rule 216(b), R.Civ.P. Unless otherwise provided by law, defendants in county court are required to pay a $5 fee, and defendants in district court are required to pay a $10 fee. Although municipal courts must follow the Rules of Civil Procedure in bond forfeiture cases, the rules do not state if municipal courts use the rule governing county court or the one governing district court. Clerks should ask their judge for guidance on this issue.

If a defendant within the time for making the jury fee deposit files with the clerk an affidavit that he or she is unable to pay the fee and cannot otherwise obtain the money, the court shall order the clerk to enter the suit on the jury docket without requiring a fee. Rule 217, R.Civ.P.

If the jury fee is not paid, the court may deny the jury trial. When the clerk receives the fee, the clerk must promptly enter a notation of the payment of the fee upon the court's docket sheet. Rule 216(b), R.Civ.P. The clerk is required to keep a docket, styled "The Jury Docket," which shall be entered in the order of the cases in which jury fees have been paid or an affidavit of indigence in lieu of the fee has been filed. Rule 218, R.Civ.P.

If the request is timely received and the fee is paid, the clerk must summons prospective jurors. Rule 248, R.Civ.P. The clerk summons the jury in the same manner as any other jury trial in municipal court.

If the trial is a jury trial, either the defendant surety or the State may challenge the array of the jury upon the ground that the officer summonsing the jury has acted corruptly and has willfully summonsed jurors known to be prejudiced against or for either side. All such challenges must be in writing setting forth distinctly the grounds of the challenge and be supported by an affidavit. Rule 221, R.Civ.P. If the challenge is sustained, the jurors must be discharged, and the court shall order that other jurors be summonsed. The person who summonsed the first panel of jurors may not summons any other jurors in the case. Rule 222, R.Civ.P.

The court must give instructions to the jury panel as prescribed by Rule 226a of the Rules of Civil Procedure.

Both the State (prosecutor) and defendant surety may question the jurors under oath. During questioning, jurors may be excused for cause (i.e., they have a biased view of the case). This is called a challenge for cause. Rule 228, R.Civ.P. In addition, both the defendant surety and the State have the right to strike three persons without assigning a reason to the strike. This type of challenge is called a peremptory challenge. Rule 232, R.Civ.P. After any challenges for cause, the State and the defendant surety shall deliver their lists of jurors with their preemptory challenges to the clerk. The clerk shall call off the first six names on the lists that have not been erased. These six persons make up the jury. Rule 234, R.Civ.P.

After the evidence has been presented, the judge must give instructions to the jury as prescribed by the Texas Supreme Court. Rule 226a, R.Civ.P. The court's charge and verdict certificate is included in Rule 226a. The State (prosecutor) and defendant surety make their closing arguments and the case is submitted to the jury. The jury's decision is the verdict.

3. Trial Proceedings

Whether the trial is before the judge or a jury, the evidence and trial procedures are the same. The State offers into evidence a copy of the complaint on the original criminal charge for which the bond was given, a copy of the bond, the docket entry and indication of the forfeiture, the affidavit of the person who called the name outside the courtroom, and the judgment nisi. The bond and judgment nisi are the essential elements in a bond forfeiture proceeding. Generally, the State will ask the court to take judicial notice of the bond and judgment nisi unless the defendant surety has filed a sworn answer challenging the bond's validity. *Hokr v. State*, 545 S.W.2d 463 (Tex. Crim. App. 1997). If there is a sworn answer, the State follows the required predicate to introduce a copy of the bond.

The State may also ask for court costs, costs of arrest, if any, and interest from the date of the judgment nisi until the date of final judgment. Then, the State rests.

If a proper answer has been filed, the defendant surety can present his or her case. If the defendant has not filed or raised a valid defense or raised a defense that must be verified, the State may object. (Note: A bond forfeiture trial is equitable in nature, and therefore, it can be argued that the judge has discretion to hear any testimony he or she may deem fit.)

I. Powers of the Court

After a trial, the court may exonerate the defendant surety from liability on the forfeiture, remit the amount of the forfeiture, or set aside the forfeiture. If the forfeiture is set aside, it may be

done so only as expressly provided by Chapter 22 of the Code of Criminal Procedure. The court may approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant surety. Art. 22.125, C.C.P.; Sec. 1704.205, O.C.

J. Causes that Will Exonerate

Article 22.13 of the Code of Criminal Procedure provides causes that will exonerate the principal and surety. The causes are:

- The bond is not a valid and binding undertaking in law.
- The death of the principal defendant before the forfeiture was taken.
- The sickness of the principal or some uncontrollable circumstance that prevented the principal defendant's appearance at the court. It must be shown that the failure to appear arose from no fault on the principal defendant's part. This defense is available if the principal and surety, if any, appear before final judgment on the bond forfeiture to answer the accusation or show the cause for not appearing.
- Failure to present an indictment or information at the first term of the court after the principal has been admitted to bail (municipal courts file a complaint to begin proceedings).
- The incarceration of the principal defendant in any jurisdiction in the United States:
  - in the case of a misdemeanor, at the time of or not later than the 180th day after the date of the principal's failure to appear in court; or
  - in the case of a felony, at the time or not later than the 270th day after the date of the principal's failure to appear in court. A surety who may be exonerated for the incarceration of the principal remains obligated to pay costs of court, any reasonable and necessary costs incurred to secure the return of the principal, and interest accrued on the bond amount from the date of the judgment nisi to the date of the principal's incarceration. Art. 22.13(b), C.C.P.

The court may consider only the causes listed in Article 22.13 and no others for exoneration. Art. 22.13(a), C.C.P.

79. How may a defendant surety request a jury trial?_____
_____

80. If a defendant surety wants a jury trial, what is the time limit for filing a request with the court? _____

81. What is the amount of the fee a defendant surety must pay when requesting a jury trial? ___
_____

82. If a defendant surety does not pay the jury fee what may the court do?_____
_____

83. Who summons prospective jurors in a bond forfeiture trial? _____

84. After the State and defense deliver their lists of prospective jurors to the clerk, how does the clerk determine which persons shall sit on the jury? _____
_____

85. List the powers of the court after a judicial declaration of a bond forfeiture. _____

_____

_____

86. What may the court remit to the defendant surety before entry of a final judgment?_____

_____

87. If a court remits the bond to the defendant surety, what may the court keep and not remit?

_____

True or False

88. If the principal defendant died before the forfeiture of bond, the surety is exonerated from liability. ____

89. If the principal defendant broke his leg and was in the hospital when he missed his court date for the criminal charge, the surety can send a letter to the court explaining the situation and be exonerated from liability. ____

90. If no complaint (charging instrument) has been filed against the principal defendant at the time of trial for the bond forfeiture, the court could find that as a cause for exoneration of liability. ____

91. The court can consider any cause for exoneration. ____

K. Judgments that May Be Entered

1. Summary Judgment

The State (prosecutor) or the defendant surety may, after the adverse party has appeared or answered, file a motion for a summary judgment. A summary judgment is filed when either the State or the defendant believes that there is no genuine issue of material fact and that the State or defendant is entitled to prevail as a matter of law. Rule 166a, R.Civ.P. Usually, the summary judgment is filed by the prosecutor. The party requesting the summary judgment must file and serve the motion and supporting affidavit at least 21 days before the time specified for hearing on the motion. The adverse party has no later than seven days prior to the hearing to file and serve opposing affidavits. Rule 166a(c), R.Civ.P. At the hearing, no oral testimony is received. If the judge grants the motion for summary judgment, the State prepares the judgment for the judge's signature. If the judge denies the motion for summary judgment, the case should be set on scire facias trial docket.

2. Default Judgment

When the sureties and principal have been properly served but all fail to answer within the time limit, the State may make a motion for a default judgment. Art. 22.15, C.C.P.; Rule 239, R.Civ.P. Before the court can enter a default judgment, the citation with the officer's return must have been on file in the clerk's office for at least 10 days, exclusive of the date of filing and the date of judgment. Rule 107(h), R.Civ.P. If there is more than one surety, each may have been served on different days and therefore may have different deadlines to answer. The clerk should make sure that the deadlines have passed for all defendants.

Also, before the court can grant a default judgment, the State must provide the court with an affidavit of non-military service regarding the principal defendant. Sec. 201, S.C.R.A.

The court entering a default judgment during or within 60 days after military service of a principal defendant shall, upon application by or on behalf of the service member, reopen the case. The purpose is to allow the service member to defend the action if it appears that the service member was materially affected by reason of the military service in making a defense to the action and the service member has a meritorious or legal defense to the action or some part of it. The application must be filed not later than 90 days later the date of termination of or release from military service. Sec. 201, S.C.R.A.

The State presents evidence and prepares the default judgment for the judge's signature. Rule 305, R.Civ.P. The State must certify in writing to the clerk the last known mailing address of the defendant surety against whom the default is taken. The certificate is filed with the case. Immediately upon the signing of the judgment, the clerk shall mail written notice of the default judgment to the defendant surety at the address shown in the certificate filed by the State. Rule 239a, R.Civ.P. The clerk must also note on the scire facias docket the date that the notice was mailed. The notice shall state the number and style of the case, the court in which the case is pending, that the judgment was rendered for the State against the defendant surety, and the date of the signing of the judgment. Failure to comply with these requirements shall not affect the finality of the judgment. Rule 239a, R.Civ.P.

3. Default Final Judgment

If a defendant surety files an answer but fails to appear at trial, the court may enter a default judgment against the defendant surety after the State has presented its evidence. See information directly above for procedures on default judgments.

4. Final Judgment - Defendant Surety Exonerated

If the court exonerates or sets aside the forfeiture, it can dismiss with or without costs or dismiss and reinstate the bond. Unless the principal defendant has filed a new bond on the original criminal case, there may still be an outstanding capias for the defendant's arrest that the court should review at the same time.

5. Final Judgment – Liability on Bond

If the court finds that no sufficient cause has been shown for failure of the principal defendant to appear in the original criminal case, judgment should be made final for the amount of the bond on which the defendant surety is bound; and the amount of the bond shall be collected by execution as in civil actions. If there is more than one party, a separate execution shall be issued against each party for the amount adjudged against each. The costs shall be equally divided between sureties, if there is more than one. Art. 22.14, C.C.P.

6. Agreed Judgment

An agreed judgment is one in which the State (prosecutor) recommends to the court to settle the bond forfeiture lawsuit for an amount less than the amount of the bond. The court may also on its own motion approve such a settlement. Sec. 1704.205, O.C.

Article 22.125 of the Code of Criminal Procedure provides authority for the judge to approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant or the defendant surety.

7. Clerical Mistakes in Judgment Record

Clerical mistakes in the record of the judgment may be corrected by the judge in open court according to the truth or justice of the case after notice of the motion has been given to the parties interested in the judgment.

The notice can be served by:

- Delivering a copy to the party to be served or the party's duly authorized agent or attorney of record either in person or by agent or by courier receipted delivery;
- Certified or registered mail to the party's last known address;
- Telephonic document transfer to the recipient's current telecopier number; or
- Such other manner as the court in its discretion may direct.

Rule 21a, R.Civ.P. Thereafter, the execution shall conform to the judgment as amended. Rules 316 and 329b(f), R.Civ.P.

92. What can the State do when a defendant surety has been served, but fails to answer within the time limit?_____

93. When can the court enter a default judgment? _____

_____

_____

94. Who prepares the default judgment for the judge's signature?_____

95. What is the State required to do when a default judgment is taken?_____

96. What is the clerk required to do when the court signs a default judgment? _____

_____

97. What can the court do when a defendant files an answer but fails to appear at the trial? ____

_____

_____

98. When a court decides to exonerate a defendant surety, what does the court do with the bond?

_____

99. When a court finds no sufficient cause for a defendant's failure to appear in the criminal case, what does the court do with the bond forfeiture case? _____

_____

100. What is a summary judgment? _____

_____

101. Who usually files the motion for summary judgment?_____

102. What is the time limit for filing a motion for summary judgment? _____

_____

103. How long does the surety have to answer the motion for summary judgment? _____

104. When a motion for summary judgment is granted, what must the prosecutor do?_____

_____

105. When a motion for summary judgment is denied, what does the clerk do? _____

_____

106. What is an agreed judgment? _____

107. Who approves an agreed judgment?_____

108. Who can enter into an agreed judgment? _____

109. If a clerk makes a clerical mistake in the record of the judgment, how is the mistake to be corrected? _____

110. When a mistake in the record of the judgment occurs, how is the notice to the interested parties served? _____

_____

_____

_____

L. Post-Judgment Procedures

1. New Trial

A motion for new trial may be granted in the court's discretion on motion of either party or on the court's own motion for good cause. Rule 320, R.Civ.P. The motion must be in writing and signed by the party or his or her attorney. If the motion is based on a defense, affidavits or other evidence of a defense must support the motion.

If a defendant surety or the State files a motion for new trial, the motion must be filed prior to or within 30 days after the judgment. Rule 329b, R.Civ.P.

2. Appeal

The Code of Criminal Procedure directs that all appeals from municipal courts, including bond forfeitures, go to the county court, except where some other court has jurisdiction. Appeals to the county court are de novo (a new trial) unless it is an appeal from a municipal court of record. If the appeal is from a municipal court of record, the appeal is based on error in the record. Art. 45.042, C.C.P. The Code of Criminal Procedure also states that bond forfeitures are governed by the same rules governing other civil suits. Art. 22.10, C.C.P.

Although there are special rules governing appeals in civil suits heard in a justice court (Rule 571, R.Civ.P.), there are no special rules regarding appeals from a judgment on a bond forfeiture in a municipal court. The civil rules of procedure relate to courts of record and do not address non-record municipal courts. Hence, it is unclear how an appeal from a bond forfeiture judgment from a non-record municipal court is handled other than using the procedures set forth in Chapter 45 of the Code of Criminal Procedure.

3. Special Bill of Review

A special bill of review is a proceeding brought on equitable grounds for the purpose of reversing a prior judgment of forfeiture of a trial court after a judgment has become final. Within two years of the date of final judgment, a surety may file a special bill of review requesting remittitur (return) of all or part of the bond amount minus costs and interest. Art. 22.17(a), C.C.P.; Rule 329b(f), R.Civ.P. A surety proceeding under Article 22.17 does not have to meet

the requirements of a general civil bill of review under Rule 329b(f) of the Rules of Civil Procedure. *Gramercy v. State*, 834 S.W.2d 379 (Tex. App.−San Antonio 1992). The decision to grant or deny the bill is entirely within the court's discretion. *Lyles v. State*, 850 S.W.2d 497 (Tex. Crim. App. 1993). A subsequent appearance by the defendant is not enough for a complete remittitur.

The court can grant or deny the special bill of review without an oral hearing even if a party asks for one. Whether or not arguments will be heard is discretionary with the court. *Hickman v. State*, 141 S.W. 973 (Tex. Crim. App. 1911); *Hester v. Baskin*, 184 S.W. 726 (Tex. Civ. App.−Amarillo 1916); *Peck v. Murphy & Bolenz*, 184 S.W. 542 (Tex. Civ. App.−Dallas 1916). Additionally, not every rule of Texas procedure requires an oral hearing. *Gulf Coast Investment Corporation v. Nasa 1 Business Center*, 754 S.W.2d 152 (Tex. 1988); *Classic Promotions, Inc. v. Shafer*, 846 S.W. 2d 948 (Tex. App.−Houston [14th Dist.] 1993); *Gordon v. Ward*, 822 S.W.2d 90 (Tex. App.−Houston [1st Dist.] 1991). An oral hearing is not mandatory unless the rule explicitly requires one. *Gulf Coast*, 754 S.W.2d at 153; *Gordon*, 822 S.W.2d at 92; *Classic Promotions*, 846 S.W.2d at 950. Neither Article 22.17 nor Rule 329b requires a hearing on a bill of review.

111. Who can file a motion for new trial? _____
112. How is a motion for new trial made? _____
113. What is the time deadline for filing a motion for new trial on a bond forfeiture case?_____
_____
114. Define special bill of review. _____
115. How long does a surety have to file a special bill of review with the court? _____
116. Is the court required to have an oral hearing after a special bill of review is filed? _____

M. Collection and Enforcement of Judgment

1. Bail Bond Surety

A "bonding business" or "bail bond business" means the solicitation, negotiation, or execution of a bail bond by a bail bond surety. A "bail bond surety" is a person who executes a bail bond as a surety or cosurety for another person or for compensation deposits cash to ensure the appearance in court of a person accused of a crime. Sec. 1704.001(2), O.C.

a. Surety in Default

Article 17.11 of the Code of Criminal Procedure provides that a surety on a bail bond who is in default is disqualified to sign as a surety so long as the surety is in default on a bond. Once a final judgment is signed, a surety is deemed to be in default until the judgment is satisfied, set aside, or superseded. Art. 17.11, C.C.P. It is the duty of the clerk to notify in writing the sheriff, chief of police, or other peace officer of the default.

b. Corporation in Default

To be eligible to be licensed to write bonds under Chapter 1704 of the Occupations Code, a corporation must be chartered or admitted to do business in Texas and qualified to write fidelity, guaranty, and surety bonds under the Insurance Code. Sec. 1704.152(b), O.C.

Under Chapter 1704, a corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bail bonds. Under Sections 1704.212(a) and (b), if a corporation defaults on a bail bond, the clerk of the court in which the corporation executed the bond shall deliver a written notice of the default to:

- the sheriff;
- the chief of police; or
- another appropriate peace officer.

A corporation is considered to be in default on a bail bond beginning on the 11th day after the date the trial court enters a final judgment on the scire facias docket and ending on the date the judgment is satisfied, superseded, or set aside. Sec. 1704.212(c)(1)(2), O.C. A license holder shall pay a final judgment on a forfeiture of a bail bond executed by the license holder not later than the 31st day after the date of the final judgment. However, if the license holder fails to pay a final judgment as required, the judgment shall be paid from the security deposited or executed by the license holder required upon application for a license. Sec. 1704.204(a)(b), O.C.

A corporation is not considered to be in default on a bail bond if, pending appeal, the corporation deposits cash in the amount of the final judgment with the court in which the bond is executed. Sec. 1704.212(c)(2), O.C. The cash deposit shall be applied to the payment of a final judgment in the case. Sec. 1704.212(d), O.C.

2. Executions

Execution means carrying out some act or course of conduct to its completion. Execution upon a money judgment is the legal process of enforcing the judgment, usually by seizing and selling property of the debtor.

Municipal courts have jurisdiction over the forfeiture and final judgment of all bail bonds taken in criminal cases over which it has jurisdiction. Sec. 29.003(e), G.C. Since all matters pertaining to bail bonds are governed by the Rules of Civil Procedure, execution is a way to satisfy a bond forfeiture judgment. Arts. 4.14(e) and 22.10, C.C.P. Rule 308 of the Rules of Civil Procedure states the court must cause its "judgments and decrees to be carried into execution." The rule also states that the court may enforce its judgments by "attachment, fine and imprisonment." The judgment in a bond forfeiture case shall be collected by execution as in civil actions and separate execution shall issue against each party for the amount adjudged against him or her. The costs shall be equally divided between the sureties if there is more than one. Art. 22.14, C.C.P.

Rule 621 of the Rules of Civil Procedure states that the judgment shall be enforced by execution or other appropriate process. Such execution or other process shall be returnable in 30, 60, or 90 days from the time a final judgment is signed as requested by the State (prosecutor). Usually, the State requests that the writ of execution be returnable in 30 days. If a timely motion for new trial or an arrest of judgment is filed, the clerk shall not issue execution upon the judgment until after 30 days from the time the order overruling the motion is signed or from the time the motion is overruled by operation of law. The State (prosecutor) must make application for the execution. Rule 627, R.Civ.P.

Execution may be issued at any time before the 30th day upon the filing of an affidavit by the State (prosecutor) that the defendant is about to remove personal property subject to execution by law out of the county or is about to transfer or hide such personal property for the purpose of defrauding his or her creditors. Rule 628, R.Civ.P.

A writ (written order) of execution is a formal process issued by the court generally evidencing the debt of the defendant surety to the plaintiff (State) and commanding the officer to take property of the defendant in satisfaction of the debt. Rule 629 of the Rules of Civil Procedure provides for the requirements of the writ of execution. They are:

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

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

When an execution is issued upon a judgment for a sum of money, or directing the payment of a sum of money, it must specify in the execution the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the officer to satisfy the judgment and costs out of the property of the debtor subject to execution by law. Rule 630, R.Civ.P. The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of bail, either as to principal or sureties, if any. Art. 17.12, C.C.P. Chapter 42 of the Property Code defines exempt personal property that is not subject to execution.

117. When is a surety deemed to be in default of a bond forfeiture judgment? _____

_____

118. Who is responsible for notifying the sheriff or chief of police of a default judgment?_____

_____

119. When may a corporation not act as a bail bond surety in a county?_____

120. If a corporation appeals a final forfeiture of a bail bond, what must the corporation do to not be considered in default? _____

_____

121. Define execution. _____

_____

122. If there is more than one surety, how are the costs divided?_____

_____

123. When is an execution to be returned?_____

_____

124. What happens to an execution if a motion for new trial or an arrest of judgment is filed?___

_____

_____

125. Who is responsible for making an application for execution? _____

126. If the State determines that the surety is about to remove out of the county personal property subject to execution, when may execution be issued? _____

127. What is a writ? _____

_____

128. What are the requirements for a writ of execution? _____

_____

_____

_____

_____

129. When an officer receives a writ of execution, what must the officer do?_____

_____

130. When a writ of execution is issued upon a judgment for a sum of money, what must it specify?_____

_____

N. Costs and Interest

1. Costs

Civil court costs may be assessed in bail bond forfeiture cases after entry of the judgment nisi. *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993). The costs must be equally divided between the sureties, if there is more than one. The costs include necessary and reasonable expenses in rearresting the defendant and any other costs involved in the bond forfeiture case such as any costs for service of process. Art. 22.14, C.C.P.

2. Interest

Under Section 301.002(a)(4) of the Finance Code, interest is the compensation allowed by law for the use, forbearance, or detention of money. Interest on the bond amount after forfeiture begins to accrue on the face amount of the bond at six percent per annum if no specified rate of interest is agreed upon by the defendant surety or State (prosecutor). The six percent per year on the principal amount begins on the 30th day after the date on which the amount is due. If an obligor has agreed to pay to a creditor any compensation that constitutes interest, the obligor is considered to have agreed on the rate produced by the amount of that interest, regardless of whether that rate is stated in the agreement. Although Section 302.002 of the Finance Code provides that interest does not begin to accrue until 30 days after the date on which the amount is due, Articles 22.16(c) and 22.17(a) of the Code of Criminal Procedure and case law from the

Texas Court of Criminal Appeals say that the interest on a bond forfeiture begins to accrue from the date of the judgment nisi.

131. What court costs are assessed in a bond forfeiture case? _____

132. What costs are included in the court costs? _____

133. When can interest be assessed? _____

_____

134. What is the rate of interest that can be assessed? _____

_____

PART 4
PERSONAL BOND FORFEITURE

In a personal bond situation, the principal is the defendant in the criminal case and the defendant in any subsequent bond forfeiture. Article 17.04 of the Code of Criminal Procedure provides requirements for a personal bond and includes the provision that the defendant must swear to and sign an oath promising to appear or pay to the court the principal sum of the bond plus all necessary and reasonable expenses incurred in any arrest for failure to appear. If the defendant fails to appear, a judgment nisi shall be issued and all the other normal procedures of bail bond forfeitures should be followed since there are no distinctions made in the law between the forfeiture of a surety bond and a personal recognizance bond. See Part 3 of this guide for procedures and substitute "defendant" for "defendant surety."

135. How is a bond forfeiture on a personal bond processed? _____

_____

PART 5
CASH BOND FORFEITURE

When a defendant who has filed a cash bond with the court, in lieu of a surety bond, fails to appear, the court may use the procedures in Chapter 22 of the Code of Criminal Procedure or the procedure in Article 45.044 of the Code of Criminal Procedure to forfeit the cash bond, depending on whether a defendant has previously entered a plea.

A. Forfeiture Under Chapter 22

If the cash bond has no plea (meaning the defendant has never entered a plea of guilty or no contest), the court must use Chapter 22 procedures: the process is initiated in the same manner as a surety bond−with a judgment nisi. The judgment nisi is entered on the scire facias docket upon the defendant's failure to appear. If the defendant has provided his or her address on the bond, the court is required to give the defendant notice by regular mail. If there is no address on the cash bond, notice shall be served at the last known address of the defendant. Art 22.035, C.C.P. This notice is by citation, the same as for sureties. The court shall attach a copy of the judgment nisi and a copy of the forfeited bond to the notice. Art. 22.04, C.C.P. See Part 3 of this guide for information on the requirements of the citation. Since the citation notice to the defendant is not

required to be sent certified mail with a return receipt, the court will not know when the defendant received the notice and will not know when to start counting the time period in which the defendant should file an answer.

However, Rule 21a of the Rules of Civil Procedure provides rules for service of notices by regular mail. That rule provides that three days shall be added to the time period. This means that the clerk would count three days from mailing the notice and then count the 20 days. The defendant's answer would be due in court on the Monday next after the expiration of the three days plus the 20 days. If the defendant files an answer, the court handles the case in the same manner as a bond forfeiture case involving a surety. See Part 3 of this guide for information on setting the hearing. If the defendant does not file an answer, the court may enter a default judgment. See Part 3 in this guide for information regarding judgments. Substitute "defendant" for "defendant surety" in the procedures discussed in Part 3.

B. Forfeiture Under Article 45.044 in Satisfaction of Fine

Article 45.044 of the Code of Criminal Procedure applies only to cash bonds posted by the defendant in which a conditional plea of nolo contendere has already been entered, and not to any other type of bond. Under this statute, the court may enter a judgment of conviction and forfeit a cash bond to satisfy a defendant's fine and costs when certain conditions are met. Those conditions are that the defendant:

- must have entered a written and signed plea of nolo contendere and a waiver of jury trial; and
- must have failed to appear on the criminal case according to the terms of the defendant's release.

When a court enters a judgment of conviction, the court shall immediately notify the defendant in writing by regular mail addressed to the defendant's last known address that:

- a judgment of conviction and forfeiture of bond was entered against the defendant on the date that the defendant failed to appear;
- the forfeiture satisfies the defendant's fine and costs in the criminal case; and
- the defendant has a right to a new trial, if the defendant applies for the new trial not later than the 10th day after the date of the judgment and forfeiture. Remember that under Article 45.013 of the Code of Criminal Procedure if the defendant files the request for a new trial by mail, the request must be mailed on or before the due date of filing and the clerk must receive the request within 10 days after the due date. This is called the "Mailbox Rule" and increases the amount of time that a defendant has to request a new trial.

If the defendant applies for a new trial, the court shall allow the defendant to withdraw the previously entered nolo contendere plea and waiver of jury trial. The court would also reinstate the bond.

If the defendant does not apply for a new trial, the judgment becomes final and a conviction is entered. If the defendant spent time in jail, the court is required to give the defendant credit for any time spent in jail before the conviction. Arts. 42.03, Sec. 2, and 45.041(c), C.C.P. Jail-time is credited at a rate of not less than $100 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(c) and 45.048(a) and (b), C.C.P. This means that the court may be refunding to the defendant part or all of the

bond money if he or she spent time in jail. The court shall also remit court costs to the State Comptroller. If the case involved a traffic offense, a notice of final conviction would be sent to the Department of Public Safety within seven days of the judgment. Sec. 543.203, T.C.

136. How is a bond forfeiture processed when a defendant files a cash bond that does not contain a plea of nolo contendere with the court? _____

_____

137. How does a court serve notice of this type of bond forfeiture on a defendant who has filed a cash bond containing no plea with the court? _____

_____

138. What type of notice does the court use to notify the defendant of a cash bond forfeiture? ___

_____

_____

True or False

139. When a defendant files a cash bond with the court and also gives a conditional plea of nolo contendere, the court can enter a finding of guilty and forfeit the bond for the fine and court costs. ____

140. The court must send the defendant notice of this action to the defendant within 10 days from the time the judgment is entered. ____

141. The notice must be sent certified mail. ____

142. If a defendant has been in jail, the court must give the defendant credit for the jail-time. ____

143. If a defendant applies for a new trial after receiving notice, the defendant must file a new bond with the court. ____

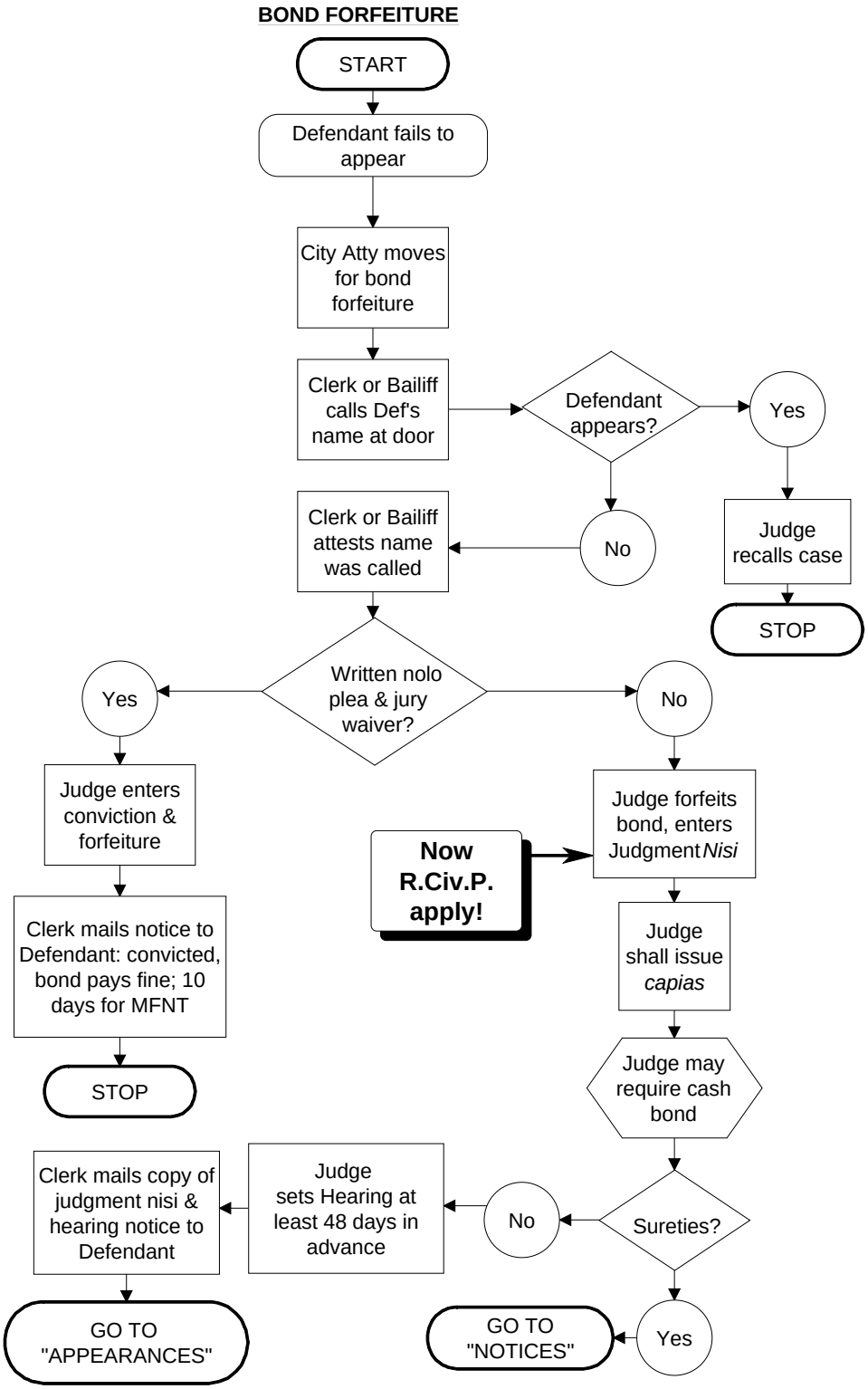
144. If the defendant applies for a new trial within 10 days of the date of judgment and forfeiture, the court shall allow the defendant a new trial. ____

145. When a bond is forfeited for the fine and costs, the clerk must remit the costs to the State Comptroller. ____

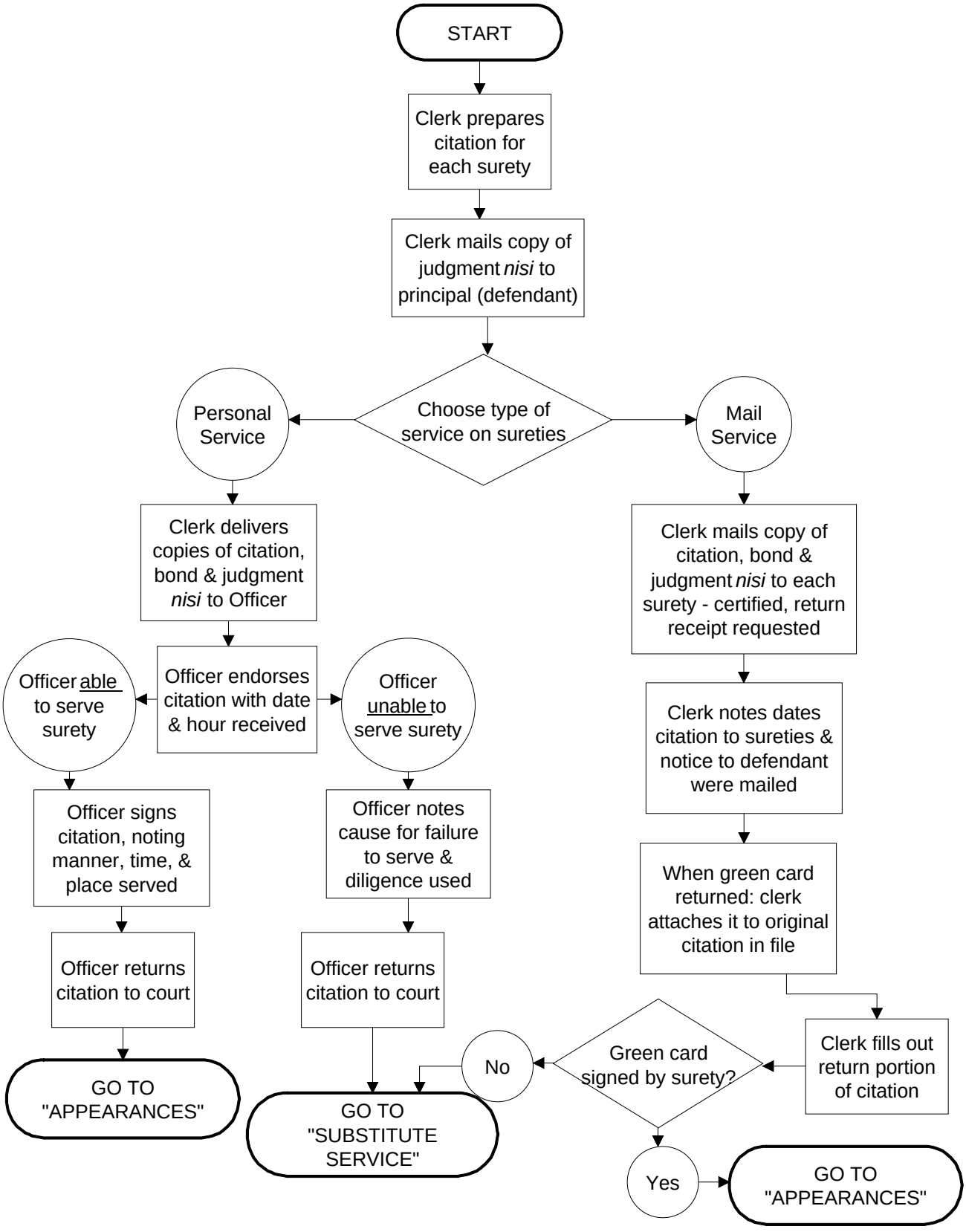
PART 6
REPORTING BOND FORFEITURES
TO THE DEPARTMENT OF PUBLIC SAFETY

Courts are required to report to the DPS a bond forfeiture of a person who has been charged with violating a law regulating the operation of a vehicle on a highway. Sec. 543.203, T.C. The court has seven days after the final forfeiture is entered to send the notice of the bond forfeiture to DPS. This notice can be submitted along with the notice of final convictions on traffic offenses.

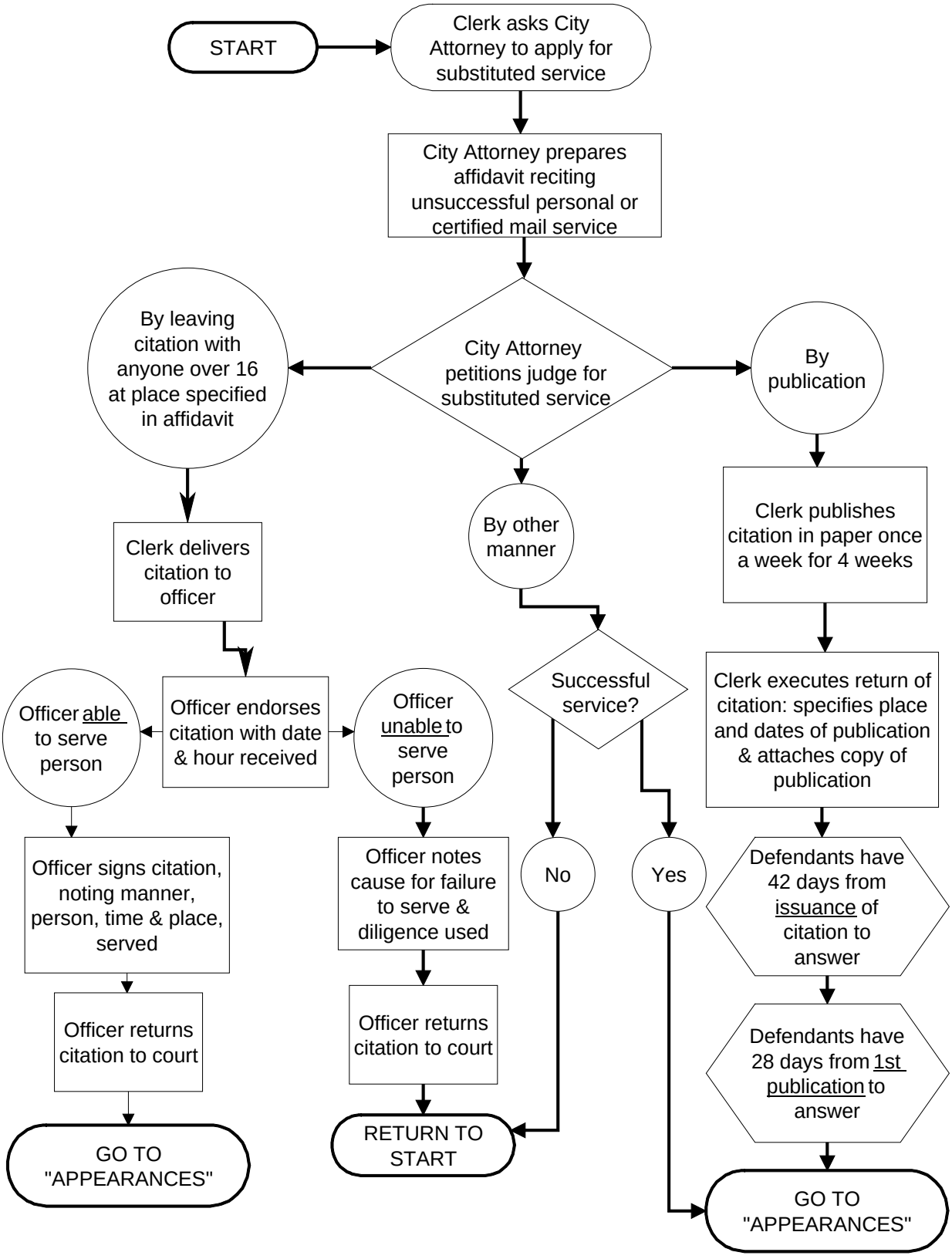
APPENDIX A: FLOWCHARTS



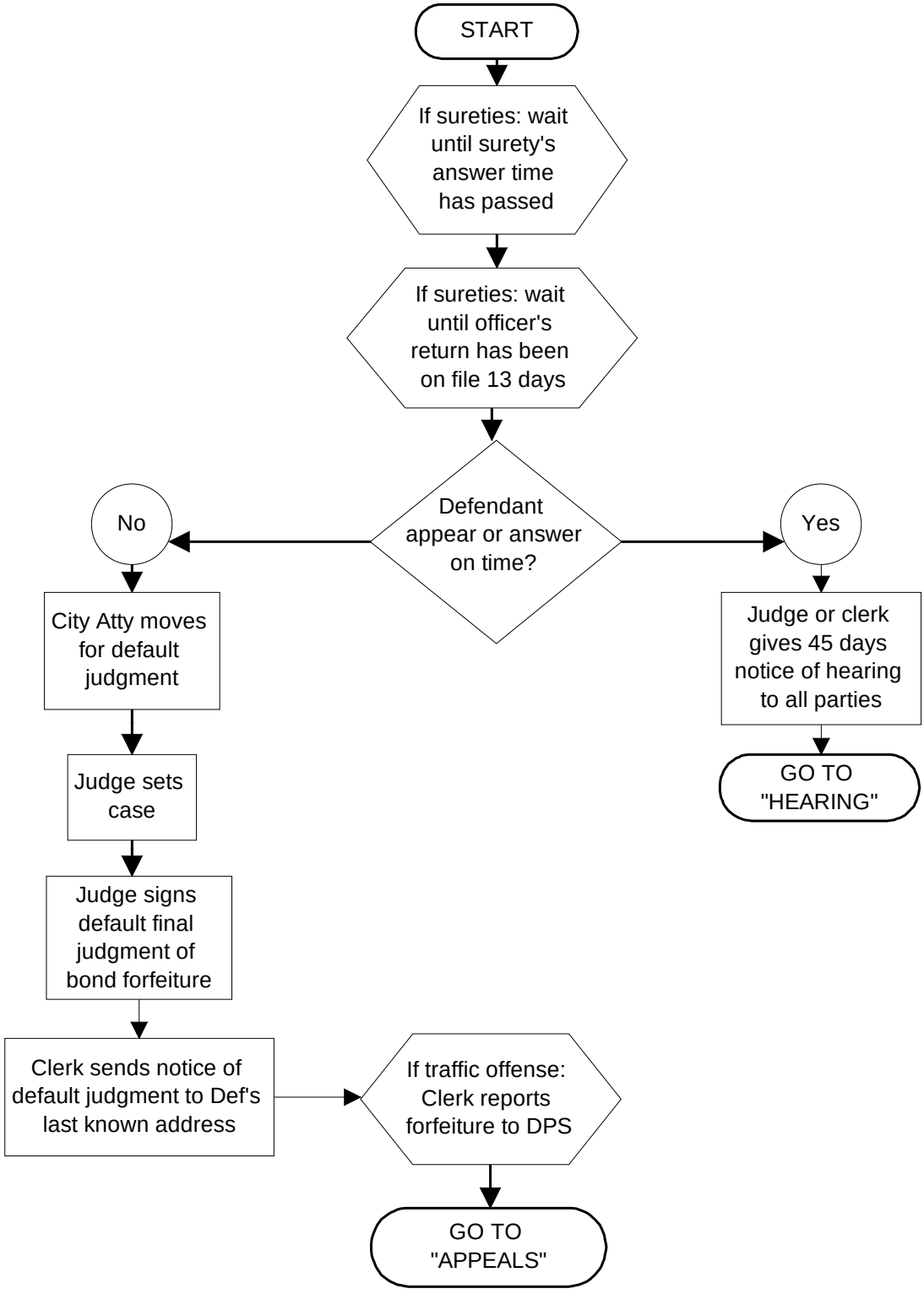
NOTICES

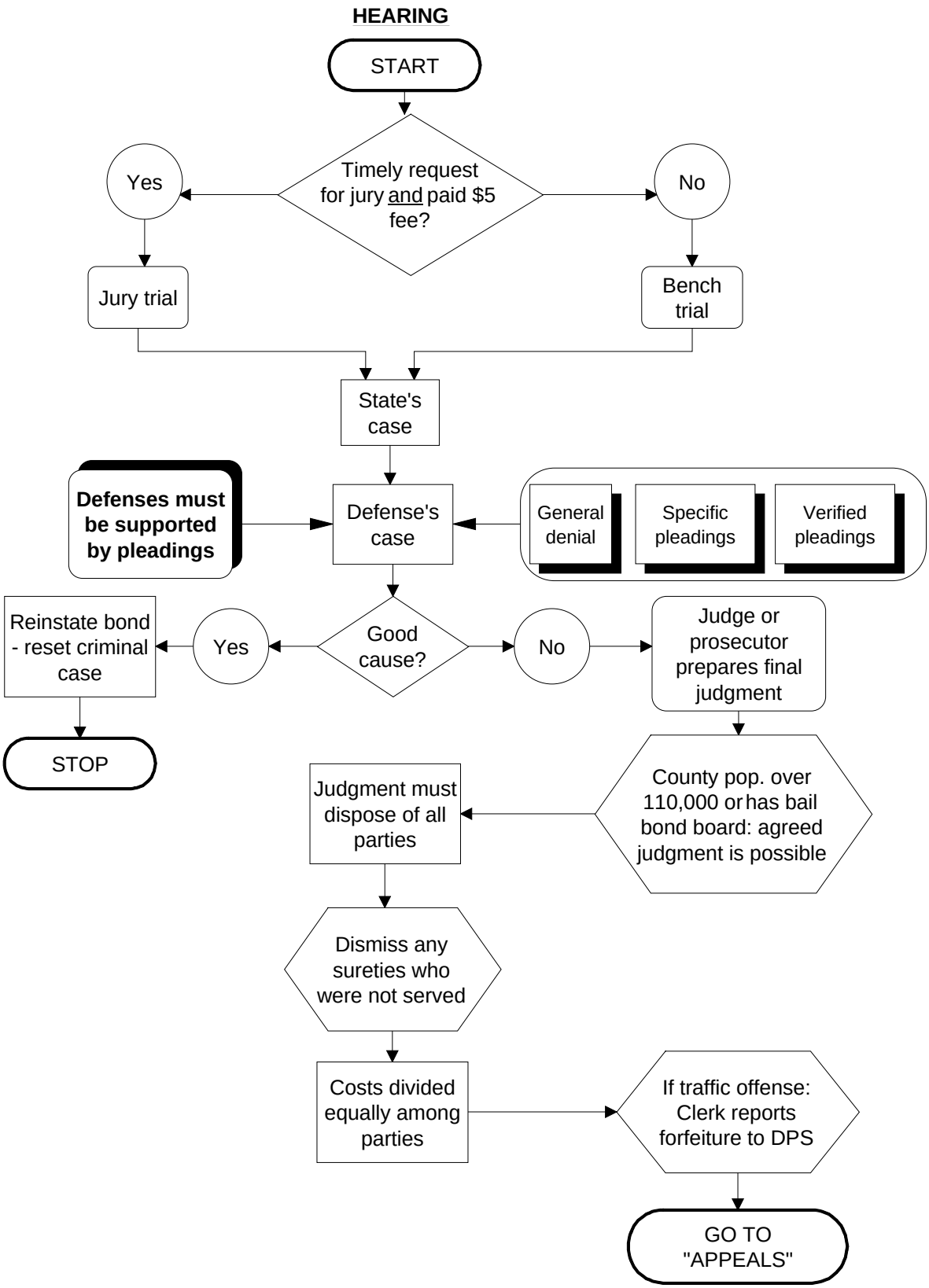

START
Clerk prepares citation for each surety
Clerk mails copy of judgment *nisi* to principal (defendant)
Choose type of service on sureties
Personal Service
Mail Service
Clerk delivers copies of citation, bond & judgment *nisi* to Officer
Clerk mails copy of citation, bond & judgment *nisi* to each surety - certified, return receipt requested
Officer able to serve surety
Officer endorses citation with date & hour received
Officer unable to serve surety
Clerk notes dates citation to sureties & notice to defendant were mailed
Officer signs citation, noting manner, time, & place served
Officer notes cause for failure to serve & diligence used
When green card returned: clerk attaches it to original citation in file
Officer returns citation to court
Officer returns citation to court
Clerk fills out return portion of citation
Green card signed by surety?
No
GO TO "APPEARANCES"
GO TO "SUBSTITUTE SERVICE"
Yes
GO TO "APPEARANCES"

SUBSTITUTE SERVICE

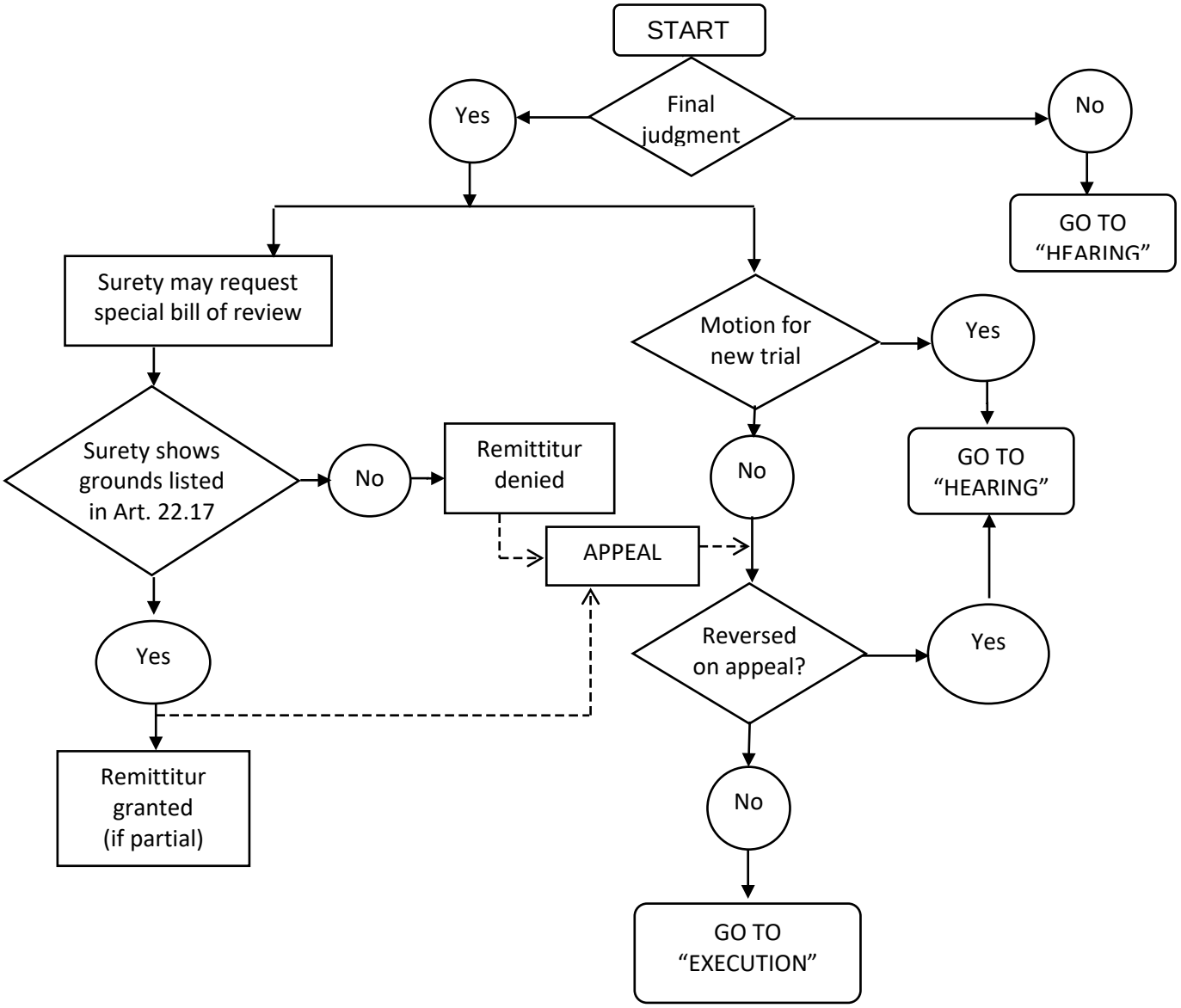


APPEARANCES

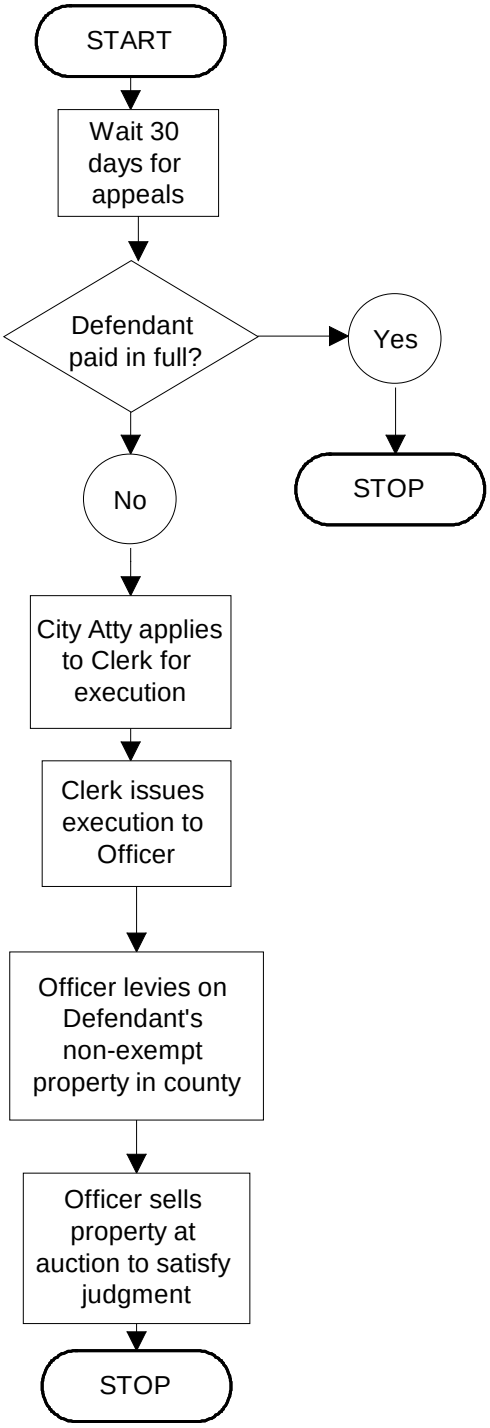



HEARING
START
Timely request for jury and paid $5 fee?
Yes
No
Jury trial
Bench trial
State's case
Defenses must be supported by pleadings
Defense's case
General denial
Specific pleadings
Verified pleadings
Reinstate bond - reset criminal case
Yes
Good cause?
No
Judge or prosecutor prepares final judgment
STOP
County pop. over 110,000 or has bail bond board: agreed judgment is possible
Judgment must dispose of all parties
Dismiss any sureties who were not served
Costs divided equally among parties
If traffic offense: Clerk reports forfeiture to DPS
GO TO "APPEALS"

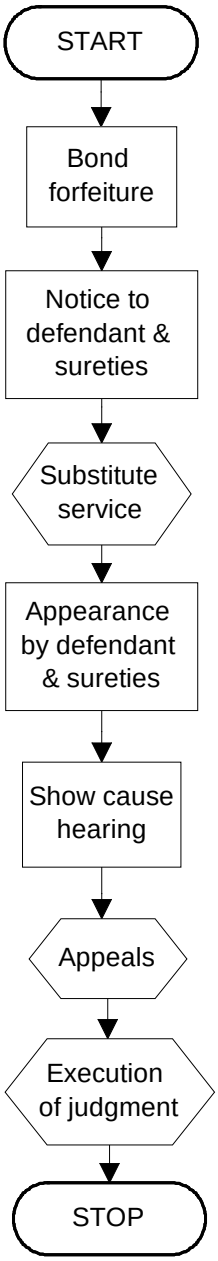
APPEALS


START
Final judgment
Yes
No
GO TO "HEARING"
Surety may request special bill of review
Surety shows grounds listed in Art. 22.17
No
Remittitur denied
Yes
Remittitur granted (if partial)
APPEAL
Motion for new trial
Yes
GO TO "HEARING"
No
Reversed on appeal?
Yes
No
GO TO "EXECUTION"

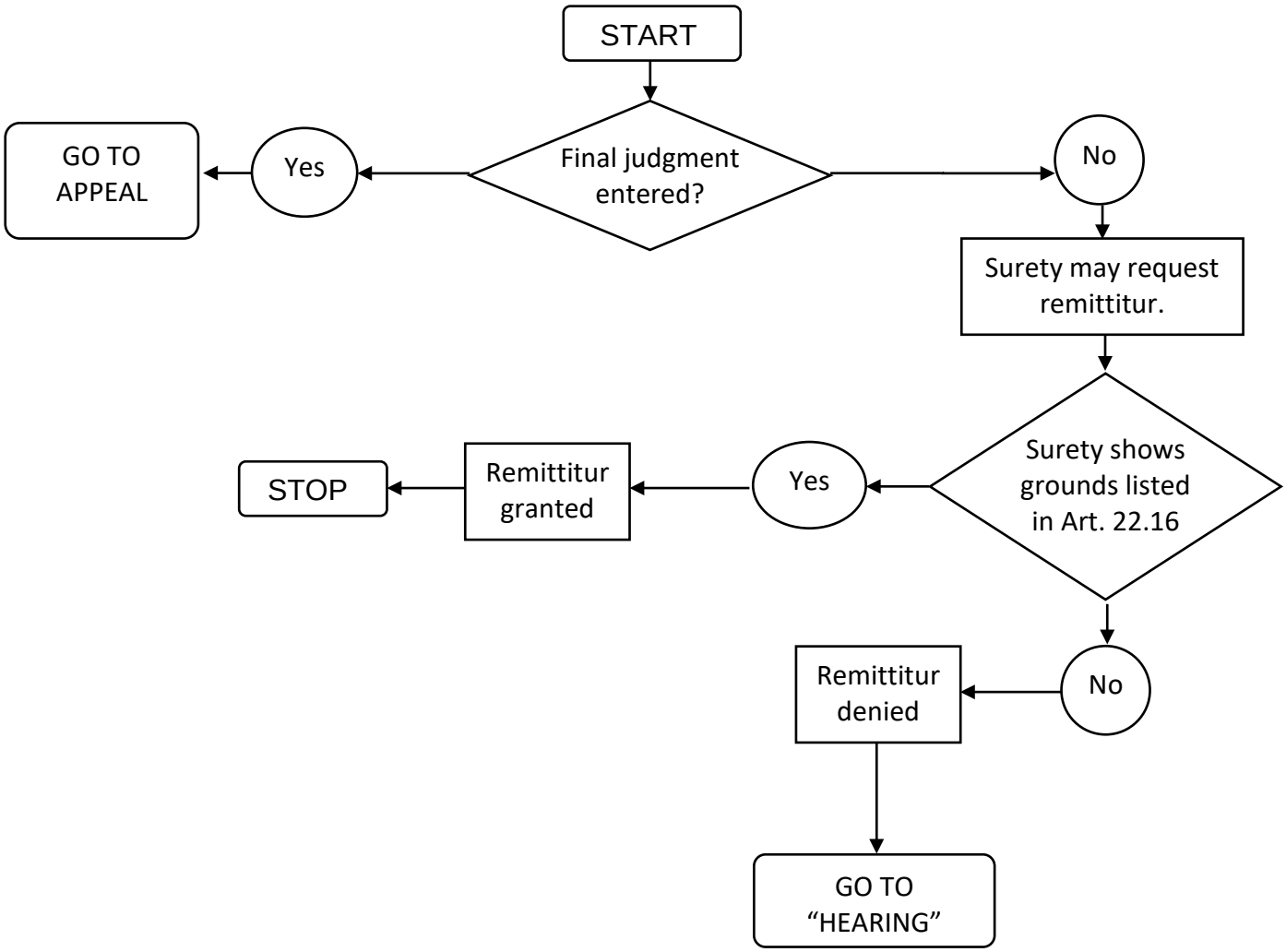
EXECUTIONS



SUMMARY



REMITTITUR


START
Final judgment entered?
Yes
GO TO APPEAL
No
Surety may request remittitur.
Surety shows grounds listed in Art. 22.16
Yes
Remittitur granted
STOP
No
Remittitur denied
GO TO "HEARING"

ANSWERS TO QUESTIONS

INTRODUCTION

1. True.
2. False (they are governed by both the Rules of Criminal Procedure and Rules of Civil Procedure).

PART 1

3. True.
4. Generally, the purpose of bail is to guarantee the person's appearance in court.
5. A bail bond is a written undertaking entered into by the defendant and/or the defendant's sureties for the appearance of the principal (defendant) before some court or magistrate to answer a criminal accusation.
6. A defendant can file a cash bond, by depositing cash in the amount of the bond with the custodian of the court in which the prosecution is pending, in lieu of having sureties sign any time a bond is required of the defendant.
7. A magistrate or judge may release a defendant on a personal bond.

PART 2

8. A person executing a bail bond is relieved of liability on the bond on the date of disposition of the criminal case for which the bond is executed. However, a surety may be released from the responsibility on a bond if, before a forfeiture or judgment nisi (the process that initiates the bond forfeiture lawsuit) is issued, the surety surrenders the principal into custody or produces an affidavit that the defendant is in custody.
9. The following must be stated in an affidavit filed by a surety requesting to surrender the principal:
    - the person's intention to surrender the principal;
    - the court and cause number of the case;
    - the name of the defendant;
    - the offense with which the defendant is charged;
    - the date of the bond;
    - the cause or reason for the surrender; and
    - that notice of the person's intention to surrender the principal has been provided to the principal's attorney as provided by Rules 21a of the Rules of Civil Procedure.
10. True.
11. False (may be executed by a peace officer, security officer, or licensed private investigator).
12. True.

PART 3

13. False (the statutes say "shall declare").
14. True.
15. True.

16. True.
17. The judgment nisi initiates the bond forfeiture. It states that the State of Texas recover the amount of money in which the defendant and/or surety are bound (the amount of the bond) and shall be made final unless good cause be shown why the defendant did not appear.
18. The judgment nisi is signed within a reasonable amount of time. Usually, it is signed the same day that the forfeiture is declared, but some judges consider the Mailbox Rule and wait to see if the defendant is appearing by mail.
19. The scire facias docket is a separate civil docket for bond forfeiture cases.
20. The bond forfeiture case is docketed in the name of the State of Texas, as plaintiff, and the principal and his or her sureties, if any, as defendants.
21. The defendant is the principal (defendant in the criminal case) and the surety, if any.
22. The scire facias docket is a permanent record.
23. The scire facias docket must include the number of the case, the names of the parties, the names of the attorneys, the nature of the action (bond forfeiture), the pleas (answer), the motions, and the ruling of the court.
24. False (only required to if the principal defendant furnished his or her address on the bond).
25. True.
26. True.
27. True.
28. True.
29. The clerk must issue a citation when requested to do so by the State (prosecutor).
30. The requirements of the citation are:
    - be styled “The State of Texas;”
    - be signed by the clerk under seal of the court;
    - contain name and location of the court;
    - show date of filing of the judgment nisi;
    - show date of issuance of citation;
    - show file number;
    - show names of parties (State, principal defendant, and/or defendant surety);
    - be directed to the principal defendant and/or defendant surety;
    - show the name and address of the State (prosecutor); and
    - contain the address of the clerk.
31. The citation directs the defendant (surety) to file a written answer with the court.
32. A defendant must file a written answer on or before 10:00 a.m. on the next Monday after the expiration of 20 days after the date of service.
33. An answer is a formal written statement made by a defendant setting forth the grounds of his or her defense.
34. True.

35. False (any person not less than 18 years of age who is authorized by law or court order may also serve the citation).
36. False (can be anywhere in the county in which the city is located).
37. True.
38. A citation may be served by registered or certified mail, addressee only return receipt requested; by personal service; by alternative service on someone 16 years or older at a residence or place of business; or by publication.
39. The citation must be sent registered or certified mail return receipt requested and delivery must be restricted to the surety or the surety's agent for accepting service of process.
40. The clerk should call the company and ask who the registered agent is for accepting service of the citation.
41. The green card (the return receipt).
42. The clerk would need to complete the information on the return portion of the citation. This would include the date and time the return receipt was signed and returned to the court.
43. False (must go to substitute alternative service).
44. False (must be signed for by the defendant surety or defendant surety's registered agent).
45. True.
46. When a peace officer receives a citation, the officer is required to note on the citation the day and hour he or she received the citation.
47. After a peace officer serves a citation, the officer must endorse the return, stating when the citation was served and noting the manner of service. The officer must then sign the return.
48. The return must state the diligence used to execute the citation, the reason for failing to execute it, and if the whereabouts of the defendant surety can be ascertained, that information should also be included on the return.
49. True.
50. False (person must be 16 years of age).
51. True.
52. False (the prosecutor requests service by publication).
53. True.
54. True.
55. False (the judgment nisi is not published).
56. True.
57. True.
58. True.
59. False (the clerk must attach a copy of the publication).
60. False (must be filed by 10:00 on the Monday after 42 days from the issuance of the citation for publication).
61. True.
62. True.

63. False (the defendant surety is entitled to a copy of the judgment nisi).
64. The citation may be served by any person competent to make an oath of the fact of service.
65. The defendant surety can answer the bond forfeiture lawsuit by filing a written answer with the court, in a general denial or verified pleading.
66. The answer must be filed by 10:00 a.m. on or before the Monday following 20 days after service of the citation.
67. Ten additional days.
68. The court needs the envelope to determine if the mailing of the answer was within the time deadline. The postmark will indicate the day that the answer was mailed.
69. A general denial is an answer that is not required to be denied under oath.
70. If the amended answer is filed within seven days of the date of trial, the defendant must get permission of the judge to file the amendment.
71. A verified pleading is an answer that has been sworn to under oath.
72. The answer constitutes an appearance and dispenses with the necessity for issuance or service of the citation.
73. The citation is deemed to have been issued and served.
74. The court may set contested cases on written request of either the defense or the State or the court may set cases upon its own motion.
75. Forty-five days notice of a trial setting must be given to the defendant (surety).
76. The court may reset the case to a later date on any reasonable notice to the parties or by agreement of the parties.
77. A case may be postponed or continued by agreement of both the defendant surety and the State (prosecutor) or for good cause supported by an affidavit presented to the court after notice to the other party, or by operation of law.
78. Non-contested cases may be tried or disposed of any time, whether set or not, and may be set at any time for any other time.
79. The request must be made in writing and filed with the clerk.
80. The request must be made within a reasonable time before the date set for trial on the non-jury docket, but not less than 30 days in advance.
81. The defendant must pay a jury fee of either $5 or $10, whichever the judge determines is applicable.
82. If the fee is not paid, the court may deny the jury trial.
83. The clerk summons prospective jurors in a bond forfeiture trial.
84. The clerk shall call off the first six names on the lists that have not been erased by challenges for cause or peremptory challenges.
85. After a judicial declaration of a bond forfeiture, the court may exonerate the defendant surety from liability on the forfeiture; remit the amount of the forfeiture; set aside the forfeiture; or approve any proposed settlement that is agreed to by the State and defendant surety.

86. The court may remit to the surety all or part of the amount of the bond less court costs, re-arrest costs, and interest on the bond amount after forfeiture.
87. The costs and interest.
88. True.
89. False (the principal and/or surety must appear before trial).
90. True.
91. False (the court may only consider the causes in Article 22.13 of the Code of Criminal Procedure and no others).
92. The State can make a motion for a default judgment.
93. Before the court can enter a default judgment, the citation with the officer's return must have been on file in the clerk's office for at least 10 days, exclusive of the date of filing and the date of judgment. Note: If there is more than one surety, each may have been served on different days and therefore may have different deadlines to answer. The clerk should make sure that the deadlines have passed for all defendants.
94. The State (prosecutor).
95. The State (prosecutor) must certify in writing to the clerk the last known mailing address of the defendant surety against whom the default is taken.
96. The clerk shall mail written notice of the default judgment to the defendant surety at the address shown in the certificate filed by the State (prosecutor). The clerk must also note on the scire facias docket the date that the notice was mailed.
97. The court may enter a default judgment against the defendant surety after the State has presented its evidence.
98. The court can dismiss with or without costs or dismiss and reinstate the bond.
99. The court makes the judgment on the bond forfeiture case final for the amount of the bond on which the defendant surety is bound.
100. A summary judgment is a motion filed after the adverse party has appeared or answered when a party to a lawsuit believes that there is no genuine issue of material fact and that the party is entitled to prevail as a matter of law.
101. In a bond forfeiture case, it is the State (prosecutor).
102. The party requesting the summary judgment must file and serve the motion and supporting affidavit at least 21 days before the time specified for hearing on the motion.
103. The surety must answer or file opposing affidavits no later than seven days prior to the hearing.
104. The prosecutor must prepare the judgment for the judge's signature.
105. If the judge denies the motion for summary judgment, the clerk sets the case on the scire facias trial docket.
106. An agreed judgment is one in which the State recommends to the court to settle the bond forfeiture lawsuit for an amount less than the amount of the bond.
107. The judge.
108. The State (prosecutor), principal defendant, and defendant surety may enter into an agreed judgment without having a trial.

109. The correction must be made in open court by the judge.

110. The notice can be served by:

- delivering a copy to the party to be served or the party's duly authorized agent or attorney of record either in person or by agent or by courier receipted delivery;
- certified or registered mail to the party's last known address;
- telephonic document transfer to the recipient's current telecopier number; or
- such other manner as the court in its discretion may direct.

111. The State (prosecutor) or the defendant surety may file a motion for new trial.

112. The motion must be in writing and signed by the party or his or her attorney.

113. The motion must be filed prior to or within 30 days after the judgment.

114. A special bill of review is a proceeding brought for the purpose of reversing a prior judgment of a forfeiture of a trial court after a judgment has become final.

115. The special bill of review must be filed within two years of the date of final judgment.

116. No.

117. A surety is considered to be at default when a final judgment is signed. However, Section 1704.212 of the Occupations Code, provides that a surety is not considered to be in default until the 11th day after final judgment is entered.

118. The clerk.

119. A corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bail bonds.

120. The corporation must deposit cash in the amount of the final judgment with the court in which the bond is executed.

121. Execution means carrying out some act or course of conduct to its completion. Execution upon a money judgment is the legal process of enforcing the judgment, usually by seizing and selling property of the debtor.

122. The costs are divided equally.

123. The execution shall be returnable in 30, 60, or 90 days from the time a final judgment is signed. Usually, the prosecutor requests that the execution be returnable in 30 days.

124. The clerk shall not issue the writ of execution upon the judgment until 30 days from the time the order overruling the motion is signed or from the time the motion is overruled by operation of law.

125. The State (prosecutor) must make application for the execution.

126. The writ of execution may be issued at any time before the 30th day upon the filing of an affidavit by the State that the defendant is about to remove personal property subject to execution out of the county or is about to transfer or hide such personal property for the purpose of defrauding his or her creditors.

127. A writ is a written order.

128. The writ of execution requirements are:

- the style shall be "The State of Texas;"
- shall be directed to any sheriff or any constable with the State of the Texas;

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

129. The officer is required to endorse the writ with the exact hour and day when he or she received it.

130. The writ must specify the amount of money to be recovered and when it was issued and the rate of interest due.

131. Civil court costs.

132. Costs include necessary and reasonable expenses in rearresting the defendant and any other costs involved in the bond forfeiture cases such as any costs for service of process.

133. Interest is assessed and begins to run from the date the judgment nisi is signed by the court.

134. The interest begins to accrue on the face amount of the bond at six percent per annum from the date of the judgment nisi if no specified rate of interest is agreed upon by the defendant surety or the State (prosecutor).

PART 4

135. A bond forfeiture case involving a personal bond is processed in the same manner as a bond forfeiture case involving a surety.

PART 5

136. The bond forfeiture is initiated in the same manner as a surety bond−with a judgment nisi. The judgment nisi is entered on the scire facias docket upon the defendant's failure to appear. If the defendant has provided his or her address on the bond, the court is required to give the defendant notice by regular mail.

137. Since this notice is sent by regular mail, the clerk should count three days from mailing the notice and then count the 20 days. The defendant's answer would be due in the court on the Monday after the 20 days. The rest of the case is processed the same as a surety bond forfeiture.

138. The notice is by citation, the same as for sureties. The court shall issue the citation and attach a copy of the judgment nisi and the forfeited bond to the notice.

139. True.

140. False (must be sent immediately).

141. False (can be sent by regular mail).

142. True.

143. False (the original bond is reinstated).
144. True.
145. True.

5

Children and Minors

Table of Contents

INTRODUCTION

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

PART 1
CRIMINAL RESPONSIBILITY AND PROCEDURE

A. Age Affecting Criminal Responsibility

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

B. Jurisdiction

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

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

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

Practice Note

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

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

C. Filing Criminal Cases Against Children in Municipal Court

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

1. Determining Which Criminal Procedures Apply

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

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

Practice Note

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

Child

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

School Offense

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

2. Criminal Procedure Under Subchapter E-1

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

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

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

D. Waiver of Jurisdiction

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

1. Mandatory Waiver

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

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

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

2. Exception to Mandatory Waiver

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

3. Discretionary Waiver

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

4. No Waiver

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

Practice Note

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

E. Procedure for Waiving

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

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

Practice Note

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

True or False

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

Short Answer

3. Define status offender. _____
   _____
   _____
4. List examples of status offenses. _____
   _____
   _____
5. When must a municipal court waive its jurisdiction over a child's case and transfer it to the juvenile court? _____
   _____
   _____
6. When does a municipal court have discretion to waive jurisdiction of a case involving a child?
   _____
   _____
   _____
7. List offenses over which municipal courts may not waive jurisdiction over a defendant. ___
   _____
   _____
8. When may a court retain jurisdiction over a child after there are more than two convictions for non-traffic offenses? _____
   _____
9. When a municipal court waives jurisdiction over a child's case in municipal court, what information should be sent to the juvenile court? _____

PART 2
TRANSPORTATION CODE

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

A. Appearance

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

B. Offenses

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

C. Penalty

1. Fines

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

2. Community Service

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

3. Additional Optional Requirements

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

True and False

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

PART 3
PENAL CODE

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

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

Even these exceptions, however, have exceptions:

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

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

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

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

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

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

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

A. Appearance

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

B. Offenses

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

C. Penalty

1. Fines

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

2. Community Service

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

3. Additional Optional Requirements

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

D. Expunction

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

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

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

Practice Note

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

True or False

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

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

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

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

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

PART 4
ALCOHOLIC BEVERAGE CODE

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

A. Appearance

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

B. Offenses

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

C. Penalty

1. Alcoholic Beverage Code Offenses Involving a Minor

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

a. Fine

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

b. Community Service

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

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

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

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

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

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

d. Driver's License Suspension or Denial

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

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

e. Immunity for Possession or Consumption in Certain Cases

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

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

a. Fine

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

b. Community Service

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

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

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

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

d. License Suspension or Denial

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

Practice Note

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

D. Deferred Disposition

1. Enhancement of a Charge

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

2. Not Eligible for Deferred Disposition

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

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

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

4. Community Service

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

E. Expunction

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

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

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

Practice Note

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

True or False

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

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

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

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

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

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

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

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

PART 5
HEALTH AND SAFETY CODE

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

A. Appearance

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

B. Offenses

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

C. Penalty

1. Fine

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

2. E-Cigarette and Tobacco Awareness Program

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

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

3. Subsequent Offenses

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

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

Practice Note

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

D. Expunction

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

True or False

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

PART 6
EDUCATION CODE OFFENSES AND SCHOOL ATTENDANCE LAW

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

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

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

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

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

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

A. Appearance

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

B. Offenses

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

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

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

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

C. Compulsory Attendance Enforcement

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

Practice Note

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

1. Truancy Prevention Measures

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

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

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

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

2. Title 3A of the Family Code

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

(1) General Provisions (Subchapter A);

(2) Initial Procedures (Subchapter B);

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

(4) Appeal (Subchapter D);

(5) Records (Subchapter E); and

(6) Enforcement of Orders (Subchapter F).

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

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

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

Practice Note

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

3. Parent Contributing to Non-Attendance

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

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

(1) $100 for a first offense;

(2) $200 for a second offense;

(3) $300 for a third offense;

(4) $400 for a fourth offense; or

(5) $500 for fifth and subsequent offenses.

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

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

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

D. Expunction

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

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

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

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

True or False

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

PART 7
PROCURING STATEMENTS: MAGISTRATE WARNINGS TO CHILDREN

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

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

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

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

True or False

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

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

PART 8
GENERAL PROCEDURES

A. Appearance in Court

1. Required in Open Court

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

2. Notification of Change of Address

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

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

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

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

Practice Note

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

B. Parent's Appearance

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

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

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

C. Failure to Appear

1. Jailing Children

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

2. Unadjudicated Children, Now Adults

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

a. Requirements Before 17th Birthday

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

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

b. Procedures When Children Turn Age 17

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

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

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

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

D. Violation of a Court Order or Failure to Pay

1. General Procedures

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

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

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

2. Capias Pro Fine

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

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

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

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

Practice Note

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

3. Waiver

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

E. Custody

1. General Custody Procedures

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

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

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

2. Education Code

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

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

3. Curfew Ordinances

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

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

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

F. Discharge by Community Service, Tutoring, and Waiver

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

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

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

G. Optional Rehabilitative Sanctions

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

Article 45.057 defines:

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

The additional optional requirements include the following:

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

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

H. Early Youth Intervention Services

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

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

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

I. Alternative Sentencing

1. Teen Court

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

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

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

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

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

2. Driving Safety Course

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

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

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

3. Deferred Disposition

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

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

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

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

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

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

True or False

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Short Answer

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

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

True or False

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

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

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

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

PART 9
REPORTS

A. Reports to Juvenile Court

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

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

1. Traffic Convictions

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

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

2. Failure to Appear or Failure to Pay

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

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

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

3. Alcoholic Beverage Code Convictions

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

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

4. Non-Attendance at a Required Program

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

C. Report to the Texas Alcoholic Beverage Commission

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

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

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

True or False

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

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

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

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

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

ANSWERS TO QUESTIONS

PART 1

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

PART 2

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

PART 3

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

17. False.
18. True.

PART 4

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

PART 5

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

PART 6

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

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

PART 7

53. True.
54. True.

PART 8

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

84. True.

85. True.

86. To be eligible, the defendant must:

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

87. Two $10 reimbursement fees.

88. False.

89. False.

90. False.

91. True.

PART 9

92. True.

93. True.

94. True.

95. True.

96. False.

6
Financial Management

Table of Contents

INTRODUCTION

This chapter provides a framework for the sound financial management of a municipal court. State law does not provide much guidance when it comes to court financial management, but proper management of money collected through court is one of the most important aspects of court administration. The public expects both sound financial management and proper accounting of the fines and costs paid by defendants. Proper court financial management and internal controls can not only prevent actual theft or misappropriation of funds, but also sloppy bookkeeping that can lead to improper collections or reporting.

Note: Clerks should have a firm grasp of the different costs in municipal court and required reporting to the State Comptroller. Entering the correct data is important to financial management, but this chapter assumes that the content has already been mastered in Level I. If it is necessary to review costs or reporting, please see Chapter 7, State and City Reports, in the Level I book.

PART 1
FINANCIAL MANAGEMENT

A. Procedure Manual

Any sound financial management system should be able to safeguard assets, ensure the reliability and timeliness of bookkeeping and accounting data and reports, promote operational efficiency, and encourage adherence to prescribed laws, regulations, policies, and procedures. One way to arrive at these goals is to create a procedure manual. A procedure manual is a detailed, written description of how each function in the municipal court should be performed. This enables court clerks to follow clear steps every time a process is performed.

A procedure manual may include:

- organizational chart;
- list of employee positions, including job requirements and responsibilities;
- judicial standing orders or standing prosecutor motions;
- description or flow chart of each function in the court from start to finish;
- description and location of each form and document used in the court;
- description and policies for collecting, processing, depositing, or remitting payments;
- description of the bookkeeping system to be used and how it is to be maintained;
- description of the reports to be completed, who is to complete them, how to complete them, and where and when to send them;
- internal control policies and procedures for city or department;
- any other information useful in carrying out the duties and responsibilities of the municipal court efficiently and effectively; and
- listing of contacts and agencies the court is responsible for reporting to or coordinating with.

1. Preparing a Procedure Manual

The manual for your court should be comprised of procedures specific to your court and always include any judicial standing orders to ensure court process is based upon the direction of the judge's order. One helpful practice is to review manuals from other courts. If you find a procedure from another court that looks good, review it in detail and make the necessary changes to

specifically fit it into your court's operation. It is also important to consult with appropriate staff within the city to ensure procedures related to financial management are not only sound and practical, but also are consistent with existing policies set forth by city council and city administration. City staff may also include the finance director, city treasurer's office, accounting department, or the internal auditor's office. Depending upon the size of the city and court, one individual or a team should be responsible for preparing a complete initial draft of the manual. A review process should be established and followed to ensure correctness, consistency, and completeness. Legal aspects of the manual should, of course, be reviewed by the city attorney's office.

Once completed, the procedure manual should be available to court clerks. This may be accomplished by providing copies or creating a "court copy" that is available for review. Using a version system which records the date of updates and changes helps the user feel confident the most recent copy is being accessed. It is recommended that the manual be reviewed annually for updates and changes.

2. Benefits of a Good Procedure Manual

Texas law does not require municipal courts to have a procedure manual, but it is an essential part of a sound internal control system. Benefits of a comprehensive manual may include better guidance for employees in performing their duties, helping train new employees, safeguarding assets, helping inform management of court operations, and helping auditors familiarize themselves with court operations. To understand the practical benefits of a procedure manual, ask yourself, if I quit today, how is anyone going to know how to do my job correctly?

True or False

1. It is OK to create a procedures manual that never refers to the judicial standing orders.____
2. A procedures manual should include a description of how payments should be collected, processed, deposited, or remitted. ____
3. A procedures manual is an essential part of a sound internal control system. ____
4. A good procedures manual guides employees in performing their jobs correctly and helps train new employees. ____

Short Answer

5. In addition to personnel within the municipal court, what other city offices should be consulted to help ensure financial management procedures are sound and practical?__
   _____
6. How often should a procedures manual be reviewed and updated?_____
   _____

B. Internal Control

1. Defined

"Internal control" is the plan of organization and procedures in the municipal court which is designed to provide assurance of reliable financial information, compliance with applicable laws

and regulations, and effective and efficient operations. Internal control was once primarily something that only auditors and accountants talked about. The frequency of publicized wrongdoing in governmental financial management operations has increased the need for awareness and understanding of internal controls at all levels in government. In addition to actual monetary losses that can result from poor control, perhaps the biggest loss is decline in the public's perception of and confidence in government. Sound control, however, should not dictate unnecessary red tape or waste time in performing duties. As a general rule, the cost of internal control should not exceed the expected benefit. For example, $10,000 should not be spent to protect $500.

One easy way to think of internal control is as a set of checks and balances. These checks and balances minimize the possibilities for errors and misuse of funds, provide a clear audit trail (show who did what and when they did it), and allow for earlier detection of errors or irregularities. Effective internal control also makes the work of both the internal auditor and independent auditor easier and less time consuming.

2. Basic Principles

There are four basic principles of internal control. Every good system of internal control has all four principles. The principles are:

- qualified personnel;
- appropriate division of duties;
- sound, written procedures for authorizing, recording, and reporting transactions; and
- actual performance consistent with the first three principles.

a. Qualified Personnel

The law contemplates a person selected to serve as a court clerk to exhibit a high degree of integrity and competence. This requires specialized training in the aspects of financial management. The key performance areas of municipal court process hold a high degree of consequence of error. All court personnel should understand their roles and have clear direction about what they are supposed to do and how they are supposed to do it. Additionally, personnel should understand how their duties fit in with the duties of others in the municipal court and with duties of other departments within their local government.

b. Appropriate Division of Duties

If possible, the following three basic functions should be performed by three different people in a municipal court: (1) authorization of transactions; (2) recording of transactions; and (3) custody of cash and other property. For example, a clerk making collections and issuing receipts should not be the person to balance and prepare the bank deposit, and neither of these persons should record the day's receipts in the treasury bookkeeping system. If one person performs all three of these functions, there is no independent check for mistakes, and errors are very likely to go undiscovered for long periods. Fraud or misappropriation of funds is also much easier if, for example, the same person collects cash, prepares the bank deposit, and records the receipts in the general ledger.

Particularly in smaller municipal courts, it may not be practical to maintain a strict separation of duties because staff size limitation. If such is the case, other means will take on added importance in helping assure reliable internal control. This may include the rotation of duties among personnel; closer supervision; additional training to improve work quality; and more frequent internal audits.

Reasonably good separation of duties for a small staff can be maintained with just two people. Ideally, no one person should handle a transaction from beginning to end. See the chart below for an example of the divisions of duties between two people when a payment is received. A sample checklist for an assessment is also included at the end of this chapter.

Task	Person A	Person B
1. Payment received and receipt issued.	X	
2. Deposit slip prepared (matched against receipts and cash drawer balance).		X
3. Deposit made.	X	
4. Receipts posted to general ledger.		X
5. Deposit total matched against total posted.	X	

c. Sound Procedures

All municipal courts should have written and consistent procedures that describe in detail the duties that must be performed, how they are to be performed, and who is to perform them. The procedures should cover all detailed aspects related to transactions. If personnel clearly understand what is expected of them and how they are supposed to do their job, they are more likely to do a better job. In addition, errors will likely be fewer and chances of fraud will be less if each person understands what they should be doing. Procedures should provide for:

- use and control of prenumbered forms/documents (receipts, checks);
- cross-referencing of documents (e.g., citation numbers, docket numbers, receipt numbers);
- periodic reconciliation of subsidiary records to control totals;
- proper authorization of transactions (remittances, disbursements, requisitions);
- effective, timely reporting of transactions (monthly reports);
- safeguarding of assets (money and other assets);
- appropriate flow of documents (e.g., citations, receipts, and deposit/remittance forms);
- reasonable amount of checking the work of others; and
- bonding of all employees with access to cash and other valuables.

d. Actual Performance

Checking to see if performance is appropriate should be part of the city's internal and external audit functions. This does not, however, relieve the municipal court of the responsibility of checking its own performance. In fact, it can be argued that an official's attitude and desire for good internal control in his or her office is the most important part of a good system. If an official does not think internal control in his or her office is important, it is not likely that his or her employees will either.

Practice Note

Remember this phrase: *Inspect what you expect*. Qualified personnel, good division of duties, and written procedures will not guarantee good internal control alone; rather, the system must be followed. Results must be periodically monitored to see if the system is actually working.

True or False

7. A sound system of internal control prevents errors and misuse of funds. ____
8. Good internal control systems simplify the work of auditors. ____
9. There is an increased need for awareness and understanding of internal controls at all levels of government. ____
10. An internal control system only needs three of the four basic principles to be considered a strong internal control system. ____
11. An appropriate division of duties is a basic principle of internal control. ____
12. Fraud is more difficult if the same person collects cash, prepares the bank deposit, or records the receipts in the general ledger. ____
13. Staff positions do not require specialized training in court processes. ____
14. Personnel should understand how their duties fit in with the duties of others in the municipal court and with duties of other offices in the city. ____
15. Procedures should be broad and general so the reader will not get bogged down in detail. ____
16. If personnel clearly understand what is expected of them and how they are supposed to do their job, they will do a better, more accurate job. ____
17. Even if a municipal court's performance is being checked by the city's internal audit department, the court should still check its own performance. ____

Short Answer

18. In addition to actual monetary losses that can result from poor internal controls, perhaps the biggest loss is:_____
19. As a general rule, the cost of internal control should not exceed the_____
    _____
20. In addition to safeguarding assets, an internal control system should _____
    _____
21. The three basic functions that should, if at all possible, be performed by three different people in a municipal court are: _____
    _____
    _____
    _____

22. Three other means that take on added importance in helping assure reliable internal control when a strict separation of duties cannot be maintained due to a limited staff size are _____

_____

_____

_____

23. The most important thing to remember about an appropriate division of duties is ____

_____

24. Two examples of items that should be prenumbered and controlled are _____

_____

25. In a municipal court, three of the tasks that sound procedures should provide for include

_____

_____

26. At a minimum, how frequently should a municipal court assess the adequacy of its internal controls? _____

C. Bank Accounts

1. Not Required by State Law

Some municipal courts maintain a court bank account. However, many do not and simply turn in money directly to the city treasurer. State law does not address the issue. The law neither requires municipal court bank accounts nor prohibits them.

2. Generally Best to Operate Without a Bank Account

A basic principle of governmental accounting is that only those funds required by law and sound financial administration should be established, with the number of different funds kept at a minimum. The same is true of bank checking accounts. The fewer the accounts, the easier it is to keep up with and reconcile them. If a municipal court maintains a bank account, it should be because it will somehow enhance overall city operations (e.g., better safeguarding of money or more efficient handling of court operations). Additionally, fewer bank accounts for a city can result in lower bank service charges or rates.

If the court can operate effectively without a bank account, it should consider doing so. It will save time and unnecessary safekeeping responsibilities. Some courts maintain a bank account just so they can make night deposits. These cities could consider making night deposits directly to an account under the control of the city treasurer. Of course, they would forward the appropriate paperwork for the treasurer to match with the validated deposit information when it is received. State court costs and fees do not have to be kept in a separate bank account pending transfer to the State.

3. If Bank Account Maintained

If a municipal court maintains a bank account, it should be appropriately authorized by either the city council or some other office depending how the city operates. There should not be any accounts that the city council and accounting office are not aware of. A municipal court bank

account should be at an institution that the city has a contract with. Banks, credit unions, and savings associations qualify as institutions that the city can contract with. City depositories are covered in Chapter 105 of the Local Government Code.

If an account is maintained, the court should make sure that the person signing the checks is not also someone who has recordkeeping or custodial functions. In a municipal court with a small staff it may be impractical or difficult to appropriately divide duties. Checks should be properly safeguarded. Checks should have an expiration period (60 or 90 days) printed on them to minimize the number of outstanding checks. Finally, it is a good idea to close an account and open a new one whenever there is a new person becoming primarily responsible for the account, such as a new court administrator or chief court clerk.

True or False

27. State law requires municipal courts to maintain a bank account. ____
28. The fewer the number of bank accounts a city has, the easier it is to keep up with and reconcile them. ____
29. Fewer bank accounts for a city can result in lower bank service charges and higher interest rates. ____
30. If a municipal court can operate effectively without a bank account, it should consider doing so. ____
31. State court costs and fees have to be kept in a separate bank account pending transfer to the State. ____
32. It is best for checks to have an expiration date printed on them. ____

Short Answer

33. If a municipal court maintains a bank account, it should be because_____
_____
34. If an account is maintained, the court should make sure that the person signing the checks is _____
_____
35. A small municipal court staff is an argument against the court having a bank account because _____
_____

D. Petty Cash and Change Funds

1. Petty Cash

Petty cash consists of a sum of money set aside for making small cash purchases on a contingency basis. Municipal courts should not have petty cash funds. Purchases made for the municipal court should be made centrally by the city. If for some reason municipal court operations are not separate from regular city operations and the city petty cash fund is handled by the municipal court, the petty cash fund should be kept separate from the municipal court change fund. Policies should be developed to ensure a single person has access to the petty cash fund and it is balanced daily. The system should also require purchases to be reported to the finance department daily.

2. Change Funds

A change fund is used for the purpose of making change for customers, not for making purchases. Change funds should not be used for petty cash purposes. There should be a separate change fund for each person taking in money and issuing receipts. The change fund should be secured by locking bank bag with controlled access to the fund by the employee responsible for balancing the fund each day. The fund should only be used to make change in connection with municipal court collections.

The amount of money in a change fund depends on the authorization of the city council, finance office, or other appropriate authority. It should be maintained at the lowest practical level based on the daily need for completing cash payment transactions. You may analyze prior daily transactions to determine the amount needed. Periodically, you may review the standard amounts for the change fund to determine adequacy for daily operations. Finally, one recommended practice is to post a sign stating that checks and money orders will be accepted for the amount of payment only and checks will not be cashed.

a. Creating a Change Fund

In order to create a change fund, the following steps may be followed: (1) After the appropriate authority authorizes the amount of each change fund, obtain amount from treasurer and sign for the receipt of it; (2) turn the money over to the individual responsible for operating the fund and have him or her count the fund and sign a receipt for the amount received; and (3) maintain the fund in a locking bank bag and a secured location (safe), with access to the fund generally limited to the individual with which it is assigned and a second person who would be responsible for auditing the fund at any given time; usually a manager or the treasurer.

b. Managing a Change Fund

The individual responsible for operating a fund should:

- Count and verify the change fund at the beginning of each day. The amount should be consistent from day-to-day.
- Make change as necessary. When making change, always count the change out loud 2 times.
- Count and verify the change fund at the end of each day. The dollar amount in the change fund after receipts are removed should equal the authorized amount of the fund.
- Record all overages and shortages as a part of daily balancing procedures.

Practice Note

Once a change fund is created, it is the municipal court's fiduciary responsibility to protect and control the fund. This can be done by maintaining it at the lowest practical level, usually $50 - $200 per cashier. Under no circumstances should the change fund be commingled with personal funds, used to make advances, or used to cash personal checks. The cash drawers should be appropriately secured at all times, both day and night. Finally, a good practice is unannounced reconciliations or audits on an irregular basis.

36. Petty cash consists of _____
_____

37. A change fund is used for _____
_____

38. There should be a separate change fund for _____
_____

39. It is helpful to have signs posted in a municipal court stating _____
_____

True or False

40. It is preferable for municipal courts to have petty cash funds and make their own small purchases. ____
41. Petty cash funds and change funds should be commingled. ____
42. A change fund should be maintained at a very high a dollar value to cover all possibilities. ____
43. An individual receiving a change fund amount should sign a receipt for the amount received. ____
44. Change fund amounts should be verified at the beginning and end of each work day. ____
45. For reasons of convenience, change funds should be used to cash personal checks. ____
46. Change funds should not be used to make advances to officials or employees. ____

E. Receipts

Each office should have a system that ensures that all money received by the office is properly processed, accounted, and deposited. A proper receipt form and process is important, and a municipal court should follow several basic guidelines when it comes to receipts:

- **Receipts should be prenumbered**. This is true regardless of whether receipts are computer-generated or not. If computer-generated receipts are the norm, regular prenumbered, hardcopy receipts should be available for use in the event of computer problems.
- **Receipts should be adequately controlled**. Regular hardcopy receipts should be ordered centrally by the city and distributed to the municipal court, as needed. Once received, the designated individual responsible for receipts should maintain strict control over the receipts for better accuracy.
- **A receipt should be prepared each time a payment is received**. Even if payment is by received mail and a receipt is not going to be sent to the payor, a receipt should still be prepared and copies made. Each city and municipal court is responsible for determining when receipts will be sent out on payments made through the mail. Most court software platforms have the capability to generate online receipts for payments that can be downloaded and retained by the municipal court for accounting and internal control purposes or sent, as needed, to the payor, city treasurer, or city auditor.

- **The receipt should contain adequate information**. Although no particular form is required, the receipt should provide space for the following information:
  - date issued;
  - docket number;
  - amount received;
  - who the money is being received from;
  - what the money is being received for;
  - method of payment (i.e., cash, check, money order, credit card) and check or money order number when applicable;
  - signature, electronic signature, or initials of individual preparing the receipt; and
  - any other information relevant in the circumstances.
- **The court should account for all receipts**. The municipal court should not just wait and rely on either internal audits done by city staff or outside audits performed by independent certified public accountants. Periodically (at least quarterly), the municipal court should account for all receipts that are issued and unissued.

True or False

47. Prenumbered receipts are not necessary as long as the court is audited frequently. ____
48. Receipts should not be prepared for mailed payments unless a self-addressed stamped envelope is included with the payment. ____
49. The municipal court should periodically account for all receipts, both issued and unissued. ____

Short Answer

50. If computer-generated receipts are the norm, what should be available if there are computer problems? _____
    _____
51. Regular hardcopy receipts should be ordered by _____
    _____
52. When should a receipt be prepared?_____
53. Eight things a receipt form should provide adequate space for include: _____
    _____
    _____
    _____
    _____
    _____

F. Payments

1. General Over-the-Counter Payments

The procedure below describes basic requirements for safeguarding general over-the-counter payments. Employees with access to money may be required by a municipality to be bonded.

- Each person receiving payments should have a separate cash box or drawer.
- Verify the beginning change fund amount each day before handling transactions.
  - The change fund should start off at the same amount each day.
- Maintain prenumbered receipts.
- When dealing with paper copies, enough paper copies should be made of the receipt to be able to issue a copy to the payor, send a copy to the city treasurer or city auditor, and retain a copy at the municipal court for accounting and internal control purposes.
- Restrictively endorse all checks and money orders upon receipt with the words "For Deposit Only" and the account number.
- Maintain strict control over access to money.
  - Money and receipts should be locked up when not in use.
  - Never leave a cash box or drawer unattended.
  - An individual receiving payments should never allow anyone access to his or her cash box or drawer except under his or her direct supervision.
- Handle transactions one at a time.
  - Put away all money and paperwork from the last transaction before starting a new one.
  - Do not put money received away until change is made (to help prevent someone from saying he or she gave you a larger amount).
- Handle money efficiently and consistently.
  - Always arrange currency, coins, and checks in a box or drawer in a consistent manner.
  - When counting money:
    - separate the currency from the coins;
    - count the currency before the coins;
    - count each currency denomination separately;
    - separate coins into denominations;
    - count each denomination of coins separately;
    - count all currency and coins in the presence of the person making payment; and
    - count the money as many times as necessary to come up with the same amount twice.
- Each individual receiving payments should be initially responsible for balancing out his or her box or drawer each day.
  - Balancing out should be verified and approved by someone else in the presence of the person responsible for the box or drawer.

- Make daily bank deposits or remittances to the city treasurer.
  - If remittances to the treasurer are not made daily, turn money in to the treasurer in a timely manner as prescribed by city policy.
- Forward receipt copies to appropriate personnel for accounting and auditing purposes.

2. Payments Made After Hours

Cities that accept after hours payments generally receive payments at the police department or provide some sort of lock or drop box for payments. Payment drop boxes should be placed in a secure location with adequate lighting and cameras which digitally record the activity at the box. The city should obtain appropriate burglary insurance for the municipal court, and employees with access to money should also be adequately bonded. Some cities only accept municipal court payments when the court office is open.

a. Payments Made at the Police Department

If possible, a city should avoid having the police department accept municipal court payments and issue receipts. Judicial and law enforcement functions should be separated, not only in fact, but in appearance. Cities where the police department does receive payments should use the following procedures:

- The person receiving payments should issue a receipt to each payor.
  - Avoid the practice of waiting for the municipal court to prepare and issue receipts.
- The person receiving payments should indicate to the payor that the municipal court will contact them with any questions or problems.
  - The payor should be advised that making a payment at the police department does not constitute complete acceptance or satisfaction by the municipal court. The court will have final say so. In fact, the city might want to consider putting up a sign stating such or printing up a card or sheet with the information and giving one to each payor.
- All checks and money orders should be restrictively endorsed upon receipt with the words “For Deposit Only” and the account number.
- A daily collections report should be prepared by the police department of each day’s receipts and should be forwarded to the city auditor or to the city treasurer if there is no auditor.
- The daily collections report should include the:
  - date;
  - name of payor;
  - amount received;
  - method of payment (including check number if by check);
  - purpose of payment;
  - accounting information; and
  - cause number.
- The daily collections report should be signed or initialed and dated by the person preparing it.

- A copy of the daily collections report and one copy of the receipt (along with any related paperwork) should be forwarded to the municipal court for entering in the accounting records and files.
- One copy of the receipt should be retained by the police department or forwarded to the city auditor (or city treasurer if there is no auditor), depending upon city policy.
- Make daily remittances.
  - If the municipal court does not maintain a bank account, payments should be remitted to the city treasurer on a daily basis.
  - If the municipal court does maintain a bank account, payments should be forwarded to the municipal court on a daily basis and the court should make daily bank deposits.

b. Payments Made at a Drop Box or Lock Box

When some sort of drop or lock box is used to receive payments after a municipal court is closed, cities should use the following procedures:

- The box should be opened and emptied daily.
- The box should be opened by one person who is not handling other monies.
  - If the person opening the box also has responsibilities for other monies, the box should be opened at a time of the day and in a location when other monies are not being handled.
  - The box should be opened out in the open, not in an enclosed office.
- The person opening the box should:
  - Restrictively endorse all checks and money orders upon receipt with the words "For Deposit Only" and the account number; and
  - Prepare the daily drop/lock box collections report.
- A daily drop/lock box collections report should be prepared for each day's receipts and should be forwarded to the city auditor or to the city treasurer if there is no auditor.
- The daily drop/lock box collections report should include the:
  - date;
  - name of payor;
  - amount received;
  - method of payment (including check number if by check);
  - purpose of payment;
  - accounting information; and
  - cause number.
- The daily drop/lock box collections report should be signed or initialed and dated by the person preparing it.
- Forward payments and report to appropriate individual for preparation of the receipts.
  - The individual should verify that the amount received matches the amount on the report.
- Make daily bank deposits or remittances to the city treasurer.

- If remittances to the treasurer are not made daily, turn in money to the treasurer in a timely manner as prescribed by city policy.

- Forward receipt copies to appropriate personnel for accounting and auditing purposes.

3. Mail Payments

Proper management of mail payments is particularly important because the payee is not present, and no receipt is issued at the time of payment. The goals concerning mail payments are to establish a clear-cut audit trail and ensure and document the proper handling of payments. The following procedures describe basic requirements for safeguarding payments made through the mail:

- All mail should be opened daily.
- Mail should be opened by one person who is not handling other monies.
  - If the person opening the mail also has responsibilities for other monies, mail should be opened at a time of the day and in a location where other monies are not being handled.
  - Mail should be opened out in the open, not in an enclosed office.
- The person opening the mail should:
  - separate all money from other correspondence;
  - restrictively endorse all checks and money orders upon receipt with the words “For Deposit Only” and the account number; and
  - prepare the daily mail collections report.
- The daily mail collections report should include the:
  - date;
  - name of payor;
  - amount received;
  - method of payment (including check number if by check);
  - purpose of payment;
  - accounting information; and
  - cause number.
- The daily mail collections report should be signed or initialed and dated by the person preparing it.
- Forward payments and report to appropriate individual for preparation of the receipts.
  - The individual should verify that the amount received matches the amount on the report.
- Make daily bank deposits or remittances to the city treasurer.
  - If remittances to the treasurer are not made daily, turn money in to the treasurer in a timely manner as prescribed by city policy.
- Forward receipt copies to appropriate personnel for accounting and auditing purposes.

4. Credit Card Payments

The law authorizes cities to accept credit cards as well as online payments. Section 132.002 of the Local Government Code provides that the city council may authorize city officials who collect

fees, fines, court costs, or other charges to accept payment by credit card, and Section 132.007 of the Local Government Code authorizes cities to accept payment for taxes, fines, fees, court costs, or other charges through the internet. The law also provides that an additional fee may be collected for the service. For example, assume a defendant owes $100 in court costs, fees, and fines. Also assume the credit card provider charges a five percent processing fee. The city would only net $95 after the processing fee ($100 x .05). Thus, pursuant to Section 132.003, the city could set the processing fee in an amount that is reasonably related to the expense incurred in processing the payment by credit card. The fee may not be in an amount that exceeds five percent of the amount of the fee, fine, court cost, or other charge being paid, even if the processing fee is higher than five percent.

There are several possible benefits to accepting credit card payments, including decreasing outstanding amounts owed, reducing the number of defendants on installment agreements, increasing taxpayer service by providing a convenient way to make payment, and reducing administrative costs of the municipal court. In deciding whether to accept credit card payments, the city should compare the cost of processing fees with the expected benefits. Even though each city needs to make its own decision, it should consider contacting other cities that accept credit card payments for their experiences. One area of concern is that the person's credit card being used is not always the defendant.

5. Installment Payments

Installment payments are not only authorized in the law, but in some circumstances may be required. In fact, when the judge determines that the defendant cannot immediately pay a fine and costs, the judge must permit installment payments. Article 45.041 of the Code of Criminal Procedure provides that the judge may direct the defendant to pay the entire fine and costs when sentence is pronounced, pay the entire fine and costs at some later date, or pay a specified portion of the fine and costs at designated intervals. In addition to establishing a clear-cut audit trail and properly handling payments, the goals concerning installment payments include ensuring that payments are made timely and that the court promptly follows up on missed payments.

When installment payments are utilized, a court should:

- Have a written description of under what circumstances installment or partial payments can generally occur.
  - Even though the decision rests with the judge in each case, it is best to have a written description of when installment payments are generally utilized. This indirectly forces the judge to think about the pros and cons, as well as the reasons for allowing or not allowing defendants to pay what they owe over a period of time. The result is usually a more consistent application of when payment plans are used.
- There should be a written installment agreement when payment plans are used.
  - The agreement should clearly spell out the terms of the agreement, including payment amounts, dates, and any statutory fees that may be added.
  - The agreement should be signed and dated by both the judge and the defendant.
  - A copy of the signed agreement should be given to the defendant.
- There should be an efficient way to keep up with payments and indicate past due amounts.

- Although most courts have computer software specifically designed to simplify the installment payment process, some do not. If your court does not have software to record payments and reports, check with the judge or city attorney to verify if any funds are available, for example, in the Municipal Court Technology Fund. This fund can be used to finance the purchase or maintenance of computer systems, which even small courts are finding necessary given the complexity of accounting and reporting requirements in municipal courts.
- If the court does not have an automated means of handling and keeping up with installment payments, some sort of manual system will be needed.
- One easy method is to use a copy of the installment agreement with columns on the back of the agreement (e.g., pre-printed or done with a stamp). A minimum of four columns would be needed: date paid, receipt number, amount paid, and balance. A separate sheet of paper or index card would work as well. One advantage of using the back of the agreement is that all necessary reference information is in one place and you do not have to pull a file to see what the requirements are.
- Simply file the agreement copies, index cards, or separate sheets in some sort of file folder, cabinet, or box based on due dates (or due dates plus a grace period), depending on how your court operates.
- Then each day pull the ones that are delinquent (or for which the grace period has expired) and work them.
- As payments are made, enter the appropriate information in the columns and file them for the next month if a balance is still owed or in the file folder if paid in full.
- Ensure that payments and other appropriate information are also entered in the regular bookkeeping system and records.
- Consider maintaining a list of those on payment plans, so if a defendant is going to be placed on an additional payment plan, the due dates can be made the same each month.

• Maintain a control total for all outstanding amounts owed and periodically check to ensure the control total is correct.

If the office has many repeat defendants, consider maintaining a list of individuals who default on payments and check that list before new payment plans are granted.

54. Why is proper management of mailed payments particularly important? _____

_____

55. If the person opening the mail also has responsibilities for other monies, when and where should mail be opened? _____

56. Name two possible benefits to accepting credit card payments. _____

_____

57. The goals concerning installment payments include _____

58. A written installment agreement should clearly explain what? _____

_____

True or False

59. Employees with access to cash should be adequately bonded. ____
60. Each person receiving payments should have a separate cash box or drawer. ____
61. It is best to have the change fund amount vary each day to keep everyone on their toes. ____
62. An individual receiving payments should allow trustworthy co-workers access to their cash box or drawer in their absence. ____
63. It is best to handle as many transactions at a time as possible. ____
64. It is best to always arrange currency, coins, and checks in a box or drawer in a consistent manner. ____
65. Each individual receiving payments should balance out his or her cash box or drawer each day. ____
66. Bank deposits or remittances to the city treasurer should be made daily. ____
67. If possible, a city should avoid having the police department accept municipal court payments and issue receipts. ____
68. When the police department does receive municipal court payments, it should not issue receipts, since that should be done by the municipal court. ____
69. A separate listing should be made of each day's receipts and it should be forwarded to the city auditor or to the city treasurer if there is no auditor. ____
70. The daily drop/lock box collections report should be signed or initialed and dated by the person preparing it. ____
71. All mail should be opened daily, with the exception of weekends or holidays. ____
72. Mail should be opened by someone while he or she is receiving payments and issuing receipts. ____
73. Mail should be opened out in the open, not in an enclosed office. ____
74. The law provides that a city council may authorize a city official to collect payment for court costs, fees, and fines by credit card. ____
75. In deciding whether or not to accept credit card payments, the city should compare the cost of processing fees with the expected benefits. ____
76. Since the decision rests with the judge in each case, it is best not to have a written description of when installment payments are generally utilized. ____
77. There should be a written installment agreement any time a payment plan is granted. ____
78. There should be an efficient way to keep up with payments and indicate past due amounts. ____
79. If the court does not have an automated means of handling and keeping up with installment payments, some sort of manual system should be used. ____

G. Credits

1. Jail Credit

In addition to satisfying a judgment by paying money, the law provides that a judgment or part of a judgment can be satisfied through time spent in jail (i.e., jail credit). The goals concerning jail credit are to establish a clear-cut audit trail and properly apply any credit to which the defendant is entitled.

Jail credit procedures should include the following information:

- Appropriate documentation providing a basis for jail credit:
  - A commitment order signed by the judge, or
  - A motion from the defendant requesting credit for any time previously spent in jail.
- Jail documentation showing the time the defendant was placed in jail and the time the defendant was released from jail.
  - It should be signed or initialed by the appropriate individual at the jail showing the date and time the defendant is *placed* in jail.
  - It should be signed or initialed by the appropriate individual at the jail showing the date and time the defendant is *released* from jail.
- Jail documentation should be forwarded to the municipal court.
- The appropriate individual in the municipal court should enter the credit in the accounting and other records and file the form with the case records.
  - If not previously entered, the cause number should be entered on the form.
  - The amount of credit and how the total was arrived at should be entered on the form.
  - The form should be signed or initialed and dated by the individual entering the credit in the accounting records.
- The court should determine if there are any additional amounts owed, and if so, appropriate procedures should be followed to satisfy any balance.
- Unless an order indicates otherwise, the court may consider applying jail credits on a FIFO (first-in-first-out) basis.
  - In other words, satisfying all costs, fees, and fine for the oldest case against the defendant first, then costs, fees, and fine for the next oldest case, and so forth.

2. Community Service Credits

A judgment or part of a judgment may also be satisfied by community service. Community service credit procedures should include the following:

- Appropriate documentation authorizing the defendant to perform community service.
  - An order signed and dated by the judge requiring the defendant to participate in community service.
  - The order must specify the number of hours the defendant is required to work.
  - The dates which the community service is to be completed.
- Verification that an entity or organization has agreed to supervise the defendant's community service and report it to the court.

- Verification that the judge did not order the defendant to perform more than 16 hours per week of community service unless the judge has determined that requiring additional hours will not work a hardship on the defendant or the defendant's dependents.
- Documentation that the community service order has been provided to the defendant.
- A form that may be used by an entity or organization supervising community service indicating.
  - Whether or not the work was performed as specified by the judge's order.
  - How many hours the defendant worked.
  - Additional comments concerning the defendant they feel are warranted.
  - The date and signature of an appropriate representative of the entity or organization.
- A process or procedure for following up to determine if the defendant has timely completed and documented completion of community service.
- Once the completed form is received from the entity or organization, the appropriate individual in the municipal court should verify the amount and enter the credit in the accounting and other records and file the form with the case records.
  - The form should be signed or initialed and dated by the individual entering the credit in the accounting records.
- The court should determine if there are any additional amounts owed, and if so, appropriate procedures should be followed to satisfy any balance.

True or False

80. The goal in recording both jail time and community service credit should be to properly apply any credit and establish a clear audit trail. ____
81. A copy of a completed form showing when the defendant was placed in jail and released from jail should be forwarded to the municipal court. ____
82. There should be an order signed and dated by the judge authorizing the defendant to participate in community service. ____
83. An entity or organization supervising community service should specifically indicate how many hours the defendant worked. ____
84. The court should rely on the defendant to determine if the defendant has timely completed and documented completion of community service. ____

H. Forfeiture of Cash Bonds

Article 45.044 of the Code of Criminal Procedure provides that a municipal judge may enter a conviction and forfeit a cash bond in satisfaction of fine and costs if a defendant has entered a written and signed plea of nolo contendere and a waiver of jury trial and fails to appear. Otherwise, a court must use the provisions of Chapter 22 of the Code of Criminal Procedure to forfeit a cash bond. The goal with cash bonds is to ensure that the right amount of money gets to the right place in a timely manner.

Article 17.02 of the Code of Criminal Procedure requires the officer (i.e., the clerk) receiving the cash bond to receipt the bond in the name of the person that posts the bond, and if the bond is to be refunded, on the court's order, the bond shall be refunded to the person named on the receipt. If no person comes forward with a receipt, then the refund can be made to the defendant.

A policy on handling cash bonds should include the following:

- Appropriately receive cash bond.
  - Ensure defendant has signed and received appropriate paperwork.
  - Prepare and issue a receipt to the person who posted the bond for the amount paid, indicating on the receipt that it is for a cash bond.
- Ensure money received is adequately safeguarded.
  - Deposit or remit money as with other collections. Cash should not be kept lying around in the office.
  - If all or part of the bond is refunded to the defendant, upon the court's order, any interest earned on the bond amount should be returned to the defendant as well. For this reason, many cities keep cash bonds in a non-interest-bearing account.
- Forward receipt copies to appropriate personnel for accounting and auditing purposes.
- If the defendant fails to appear, follow appropriate procedures in Chapter 22 or Article 45.044 of the Code of Criminal Procedure.
- When the appropriate amount of time has elapsed, forward appropriate paperwork for bookkeeping entries and transfer of funds (if necessary).
  - If the court is using the provisions in Article 45.044 of the Code of Criminal Procedure:
    - and the money has already been remitted to the city treasurer, the paperwork should simply indicate to the treasurer that the bond amount should now be applied to court costs, fees, and fines and how much to apply to each.
    - and the money has been kept in a cash bond account in the court, remit the appropriate amount to the treasurer, indicating how much is court costs, fees, and fine. If this is the only account the court has, remittance to the treasurer should be done in a practical manner, depending on the number of cash bonds forfeited. For example, it might be appropriate to remit forfeited cash bonds to the treasurer on a weekly basis.
  - If the defendant has been in jail, the court should either remit or notify the treasurer to remit any amount of the bond due the defendant for jail-time credit.
  - If the court is using the civil bond forfeiture provisions in Chapter 22 of the Code of Criminal Procedure:
    - and the money has already been remitted to the city treasurer, the paperwork should simply indicate to the treasurer that the bond amount should now be applied as general revenue for the city.
    - and the money has been kept in a cash bond account in the court, remit the appropriate amount to the treasurer, indicating that the bond amount should be applied as general revenue for the city. If this is the only account the court has, remittance to the treasurer should be done in a practical manner, depending on

the number of cash bonds forfeited. For example, it might be appropriate to remit forfeited cash bonds to the treasurer on a weekly basis.

True or False

85. A policy on cash bonds should include guidance that will ensure that the right amount of money gets to the right place in a timely manner. ____

86. A receipt should not be given to a defendant posting a cash bond until the bond is forfeited. ____

Short Answer

87. If all or part of the bond is refunded to the defendant, any interest earned on the bond shall be_____

88. If the court is using the provisions in Article 45.044 of the Code of Criminal Procedure, what should be included in any paperwork once the bond is forfeited?_____

_____

89. If the court is using the civil bond forfeiture provisions in Chapter 22 of the Code of Criminal Procedure, and the money has been kept in a cash bond account in the court, where should the money be deposited? _____

_____

I. Recording Financial Transactions

1. Receipts

An effective internal control system and accurate financial reports help properly manage money collected by the court. Most municipal courts have an automated financial management system that prepares receipts, journalizes transactions, makes subsidiary entries, and prepares various financial reports. For internal control, courts should have different employees performing each different task in collecting, recording, and making bank deposits. If a court does not have an automated system, a manually recorded receipts journal should be maintained.

Entries to the receipts journal should be made from the receipt copies maintained by the court. Daily entries should be verified for mathematical accuracy and should periodically be reviewed by someone other than the person making them, comparing them to appropriate source documents. Use a receipts journal to chronologically account for individual receipts issued. The journal enables the municipal court to properly keep track and account for each receipt issued; properly separate and account for the different types of monies collected; group types of collections in order to easily figure the total collections for each type; balance daily, weekly, and monthly reports; help reconcile the monthly bank statement; and leave a good audit trail for internal and external auditors.

A receipts journal should be maintained daily. It should include:

- date of transaction;
- name of payor;
- docket number;
- receipt number;

- an actual column to keep up with the total amount received; and
- several individual columns indicating what the money received is for (e.g., fines, fees by type, and court costs by type).

2. Disbursements

Most municipal courts transfer money to the city treasurer daily and do not maintain a bank account. However, courts that do maintain a bank account must ensure that all money disbursed by the office is properly documented and accounted for. The following procedures describe basic requirements necessary to safeguard disbursements for a municipal court that maintains a bank account:

- The court should maintain a bank account with the city depository. All deposits and disbursements should be processed through this account. Disbursements should not be made in cash.
- If the account is interest-bearing, a separate account should be used for cash bonds unless the court returns allocated interest when bonds are refunded.
- Checks should be prenumbered.
- Checks should be preprinted with the name of the city and indicate "municipal court."
- Adequately safeguard and periodically account for all unused checks.
- A checkbook should be used with sufficient room on the stub for a description of the disbursement.
- Once checks have been written to the appropriate payees, they should be posted to the disbursements journal.

A disbursements journal should be used to chronologically account for all municipal court disbursements and should be maintained on a daily basis. The journal should include:

- date of transaction;
- name of payee (and description when needed);
- check number;
- an actual column to keep up with total amounts disbursed; and
- several individual columns indicating what the disbursements are for (e.g., remittance to city treasurer, warrant fees to other law enforcement agencies).

Once transactions for a month have been completed and the disbursements journal is closed out, the receipts and disbursements journals should be reconciled with the bank statement. Entries to the disbursements journal should be made from the check copies or check stubs. If a court makes only a few disbursements each month, a journal is normally not needed. Adequate information can usually be included on a monthly report.

a. Issuing Refunds

Refunds should be issued by check. A refund should not be given in cash, and an explanation detailing the reasons for the refund should be included with the refund. In addition, reference the docket number on the check and stub. This will enable interested parties to go directly to the case file for a full explanation of the refund. The transaction should be entered in the disbursements journal; or alternatively, the court could enter the refund as a negative amount in the receipts journal.

b. Preparing Checks

Once supporting documentation has been prepared and all figures double-checked, then a check should be made out to the appropriate payee. The payee line is completed by the person preparing checks, not the person signing them. Checks should never be made out to cash or bearer and should be prepared and delivered timely. The check should be signed by someone not keeping the books or preparing the check.

Before signing the check, the supporting documentation and amount should be verified. Checks should never be pre-signed. Verify there is an adequate balance in the account before issuing the check. Checks should be mailed without allowing them to be returned to the person who approves them or does the bookkeeping for them. Finally, voided checks should be clearly marked as "void" and should be kept with the checkbook and later placed in the reconciliation envelope or folder. Do not destroy or tear up the voided checks.

True or False

90. If a court does not have an automated system, a receipts journal should be maintained manually. ____
91. The receipts journal should be maintained on a weekly basis. ____
92. The receipts journal should include both the date of the transaction and the name of the payor, but not the receipt number. ____
93. Those courts that do maintain a bank account must ensure that all money disbursed by the office is properly documented and accounted for. ____
94. Whenever possible, refunds should be made in cash. ____
95. Checks should be pre-signed if the person who normally signs them is going to go on vacation. ____

Short Answer

96. List at least three things a receipts journal enables a municipal court to do: _____

    _____

    _____

97. Who should sign disbursement checks? _____

J. Unclaimed Funds

Occasionally, a municipal court may become aware of money from an unknown source or for an unknown purpose. When this happens, the court should initiate action to try and determine the rightful owner, and if unsuccessful, contact the State of Texas. The procedures for handling unclaimed funds include the following:

- The person identifying the money should document in writing what was found, where it was found, how it was found, and then sign and date the documentation.
- The person identifying the money should communicate it to appropriate personnel within the court and the city.
- A thorough analysis should be made to try and determine to whom the money belongs. Occasionally, the court will determine that the amount represents a cash bond,

undeposited payment, or old change fund balance. If the owner can be determined, the money should be turned in to the city treasurer, and steps should be initiated to get it to the rightful owner. If the owner cannot be determined or located, the money should be turned in to the city treasurer who should contact the Unclaimed Property Section in the Comptroller's Office at 800.321.2274.

True or False

98. The person identifying the money should document in writing what was found, where it was found, how it was found, and then sign and date the documentation. ____

99. If it can be determined to whom the money belongs, the money should be kept in the municipal court until it is claimed by the rightful owner. ____

K. Daily Balancing

Each person receiving money should be responsible for cash reconciliation (balancing) of their cash drawer or box each day. He or she should fill out a daily reconciliation form, then sign and date it. The reconciliation should be verified and approved by someone else in the presence of the person responsible for the box or drawer. The person verifying and approving the reconciliation should also sign or initial and date the form. The total amount of money in the cash box or drawer less the amount of the change fund should equal the total amount shown on the receipts issued for the day. Any overages or shortages should be clearly shown on the reconciliation form.

True or False

100. Receipts should be balanced out daily. ____

101. If there are three individuals in the court receiving money and issuing receipts, the one with the most tenure should be responsible for balancing out all three cash boxes or drawers. ____

102. Any overages or shortages should be excluded from the reconciliation form unless it is known what the cause was. ____

Short Answer

103. The total amount shown on the receipts issued for the day should equal _____

_____

L. Remittance of Collections

How collections should be remitted to the city treasurer depends on whether the municipal court maintains a bank account.

1. Municipal Court Maintains a Bank Account

a. Remittances

Remittances should be made to the city treasurer on a consistent, periodic basis. The frequency will depend upon city and court policy, considering size of a city and court and amount of money

involved. Typically, this should be done at least monthly. The following are important considerations:

- Remittances should be made by check.
- A remittance form showing what the money is for should be included with the check. The breakdown should be detailed enough so the treasurer will know what fund and account to deposit the money into and how to complete any applicable related reports (e.g., state court costs and fees quarterly report).
- The remittance form should be signed by an appropriate individual in the court.
- The individual making the remittance to the treasurer should get a receipt from the treasurer showing the amount remitted. In some cities a receipt is not given when another department within the city makes remittance by check. If that is the case, the treasurer should sign and date the remittance form indicating agreement with the amount and a copy should be made for the person making the remittance, which should be returned to the court.

b. Bank Account Reconciliation

If the municipal court maintains a bank account, regular bank reconciliations need to be done. The purpose of the reconciliation is to ensure that the books in the office properly reconcile with the account at the bank. A prompt reconciliation of the bank statement with the books and accounts maintained by the court is necessary at the end of each month to assure that errors, if any, are found and corrected without delay. Where staff size permits, bank reconciliations should be performed by someone who is not responsible for writing, recording, or signing checks. After receiving the bank statement unopened from the bank, the court should use the following reconciliation procedures.

Step 1

- Enter the balance from the books in the space provided on the reconciliation form.
- Deduct any bank charges indicated on the bank statement.
- Make any other necessary adjustments, such as adding interest earnings.
- Total the amounts in the three bullets above to arrive at the adjusted book balance.

Step 2

- From the bank statement, write the stated bank balance in the space provided on the reconciliation form.
- Compare checks, deposits, and other transactions listed on the statement with the books.
- List, in the space provided on the reconciliation form, all outstanding checks.
- Add any deposits made by the end of the period not posted to the bank statement.
- Make any other necessary adjustments.
- Total the amount from the bank balance and add all outstanding checks and any deposits made by the end of the period to arrive at the adjusted bank balance.

Step 3

- Compare the amounts arrived at in Steps 1 and 2.
- If they do not agree, investigate and resolve any differences.

Step 4

- The completed reconciliation should be signed and dated by the person doing it.
- Submit statement and reconciliation to appropriate personnel for review and approval.

2. Municipal Court Does Not Maintain a Bank Account

- Remittances should be made to the city treasurer on a daily basis.
- A remittance form showing what the money is for should be included with the money. The breakdown should be detailed enough so the treasurer will know what fund and account to deposit the money into and how to complete any applicable related reports (e.g., state court costs and fees quarterly report). The total on the remittance form should equal the total of the daily balancing out forms. If there is only one person in the court who receives money and issues receipts, the balancing out form can serve as the remittance form.
- The remittance form should be signed by an appropriate individual in the court.
- The individual making the remittance to the treasurer should get a receipt from the treasurer showing the amount remitted.

True or False

104. If the municipal court maintains a bank account, remittances should be made by check. ____

105. A remittance form showing what the money is for should be included with the money. ____

106. Remittances should be no more often than once a month. ____

107. The remittance form does not need to be signed by anyone from the court if remittance is made by check. ____

108. The completed reconciliation should be signed and dated by the person doing it. ____

109. The bank reconciliation should be submitted to appropriate personnel for review only if an error was found. ____

Short Answer

110. The breakdown on the remittance form should be detailed enough so the treasurer will know what?_____
_____

111. Where staff size permits, bank reconciliations should be performed by who? _____
_____

M. Monthly Reporting

A financial report showing the municipal court's financial position at the end of the month and results of operations for the month should be prepared to provide information to officials, the public, and other interested groups or individuals.

1. Beginning Balance

The report should show the beginning balance the court was responsible for at the start of the month. The beginning balance should include the following categories: all change funds, any bank account book balances, and any other funds under the control of the court.

2. Receipts

The report should also show receipts for the month, breaking them down into detailed categories. The amount of detail will depend upon the law, the city's budget, bookkeeping system, and preferences. For example, court costs and fees should be shown separately, as should any funds where there is a restriction on how the money is used, such as certain traffic fines.

3. Disbursement/Remittances

All disbursements and remittances should be detailed. If the court maintains a bank account, this would be a listing of the checks written (or a summary of the checks written categorized by what they were for). If the court does not maintain a bank account, this part of the report would show the total amount of remittances made to the city treasurer, possibly broken down by week.

4. Ending Balance

Finally, the report would show an ending balance. The ending balance should include the following categories: all change funds, bank account book balances, and any other funds under the control of the court. For many automated courts, monthly report preparation is a breeze: the computer prepares them with just a simple set of commands. For other courts, the process will take a little longer, but should be fairly simple to do if the bookkeeping system is adequate. The report should be signed and dated by the person preparing it and should be reviewed and approved by appropriate personnel. The person approving the report should also sign and date it.

True or False

112. The report should show the beginning balance the court was responsible for at the start of the month. ____

113. The report should be signed and dated by the person preparing it and by the person reviewing and approving it. ____

N. Auditing

1. Defined

Auditing is simply examining information and operations for mathematical accuracy, legality, and propriety. It is a process of determining whether all transactions are properly recorded in the accounts and appropriately reflected in statements and reports. An internal audit is an audit done by someone who works for the organization being audited. For example, the audit performed by

someone employed by the city would be an internal audit. Audits performed by those not employed by the city are generally referred to as outside or external audits.

Practice Note

An audit typically includes various items, including documents, money, records, reports, systems of internal control, accounting procedures, and actual operations.

2. Objectives of Auditing

The broad purpose of auditing in municipal court is to help ensure the integrity of the court's financial operations. Specific objectives are to help assure that the court has collected all the money they are supposed to, money collected was properly remitted to the appropriate party, property is properly managed, money and other property is properly accounted for, properly reported, and adequately safeguarded, and operations conform to laws, rules, and prescribed procedures. Auditing cannot guarantee that collections, records, and reports are 100 percent complete and correct. However, auditing can be a means for early detection and correction of material mistakes and irregularities. Additionally, a good internal audit function can result in lower operating costs, more efficient ways of getting things done, better service to the public, and less costly outside audits.

3. Auditing Requirements

State law requires a city be audited annually and a financial statement prepared based on the audit. Sec. 103.001, L.G.C. Although the law provides that the audit can be done by someone employed by the city (Section 103.002 of the Local Government Code), it is often recommended that it be done by an independent certified public accountant.

Although the law does not require periodic internal audits in a city or municipal court, it is recommended that they be done. Some sort of audit work should be done relating to municipal court operations at least quarterly. Some cities have a internal audit department or an individual designated to regularly audit the court. Most cities do not. Similarly, it is not uncommon for a designated individual from the finance or treasurer's office or another department to periodically conduct an internal audit of the court.

Audit work that should be done includes conducting surprise cash counts, reviewing bank reconciliations, accounting for all receipts, auditing receipts for proper amount collected, deposited, or remitted and correct bookkeeping, confirming amounts paid (or the fact that nothing was paid) with defendants, and reviewing reports. All of these do not have to be done each quarter. The mere fact that some audit work is periodically and consistently done is a deterrent to wrongdoing.

4. Getting Ready for an Audit

In cities that have an internal audit function, a municipal court will normally be notified when an internal audit will be conducted. There are, however, some audit steps that are almost always done on a surprise basis, such as a cash count.

When a court is aware of an upcoming audit, steps should be taken to ensure that all information is available for inspection. Listed below are the major items an auditor may wish to examine during an audit.

- procedures manual, including any internal control procedures used in the court;
- bookkeeping system, including reports, ledgers, and journals;
- docket books;
- monthly bank reconciliations for each bank account, including canceled checks and bank statements for the period covered by the audit;
- fixed assets assigned to the court;
- change funds, receipts (issued and unissued), and monies collected; and
- office files and related correspondence.

These items, along with any other useful information, should be well organized and easily accessible by the auditor. Court employees should make every effort to assist the auditor in performing the examination.

114. Define auditing. _____

_____

_____

115. List at least three specific objectives of auditing. _____

_____

_____

116. List at least four examples of the type of audit work that should be done in a municipal court._____

_____

_____

117. List at least five items an auditor may want to examine during the course of an audit.

_____

_____

_____

True or False

118. Auditing can be a means for minimizing and providing for early detection and correction of material mistakes and irregularities. ____

119. An internal audit is an audit done by someone who does not work for the organization being audited. ____

120. State law requires that cities have annual audits conducted by independent certified public accountants. ____

121. At least quarterly, some sort of audit work should be done relating to municipal court operations. ____

122. A municipal court will always be notified when an internal audit is going to be conducted. ____

123. Some audit steps are almost always done on a surprise basis (without any notification), such as a cash count. ____

APPENDIX A
INTERNAL CONTROL CHECKLIST

		Yes	No	NA	Comments
Procedures Manual					
1.	Is there a procedures manual for the office?	____	____	____	_____
2.	Does the manual cover all duties and responsibilities?	____	____	____	_____
3.	At a minimum, does the manual include the following:				
	a) organizational chart?	____	____	____	_____
	b) list of employee positions, including job requirements and responsibilities?	____	____	____	_____
	c) description of each function in the court from start to finish?	____	____	____	_____
	d) description and sample of each form and document used in the court?	____	____	____	_____
	e) description of collecting, processing, and depositing, or remitting payments?	____	____	____	_____
	f) description of the bookkeeping system to be used and how it is to be maintained?	____	____	____	_____
	g) description of the reports to be completed, who is to complete them, how to complete them, and where and when to send them?	____	____	____	_____
	h) internal controls within the office?	____	____	____	_____
	i) any other information useful in efficiently and effectively carrying out the duties and responsibilities of the municipal court?	____	____	____	_____
4.	Where possible, are flowcharts used in addition to narrative descriptions to enhance readability and understanding of the procedures?	____	____	____	_____
5.	Have appropriate staff within the city been consulted to ensure procedures related to financial management are sound and practical?	____	____	____	_____
6.	Were the following consulted:				
	a) treasurer's office?	____	____	____	_____
	b) accounting department?	____	____	____	_____
	c) internal audit office?	____	____	____	_____
7.	Is there a review process for written/amended procedures to ensure correctness, consistency, and completeness?	____	____	____	_____

8. Were legal aspects of the manual reviewed by the city attorney's office? ____ ____ ____ _____

9. Is each municipal court employee given a copy of the manual? ____ ____ ____ _____

10. Is the manual reviewed and updated:

    a) whenever there are changes to laws, regulations, policies, or procedures? ____ ____ ____ _____

    b) at least annually? ____ ____ ____ _____

General Internal Control

11. Are the basic functions of (a) authorization or approval of transactions, (b) recording of transactions, and (c) custody of assets performed by three different people? ____ ____ ____ _____

12. Are duties periodically rotated? ____ ____ ____ _____

13. Is the amount of supervision adequate? ____ ____ ____ _____

14. Is there an adequate amount of double-checking of work? ____ ____ ____ _____

15. Is everyone required to take vacations? ____ ____ ____ _____

16. Is the work of persons on vacation performed by someone else during their absence? ____ ____ ____ _____

17. Are employees appropriately bonded? ____ ____ ____ _____

18. Is the adequacy of bonds periodically reviewed? ____ ____ ____ _____

19. Are employees performing their duties adequately? ____ ____ ____ _____

20. Are they adequately trained? ____ ____ ____ _____

21. Are training needs periodically assessed? ____ ____ ____ _____

22. Is the workload current? ____ ____ ____ _____

23. Is staffing adequate? ____ ____ ____ _____

24. Is there an inventory of all tangible court assets? ____ ____ ____ _____

25. Is the inventory up to date? ____ ____ ____ _____

26. Is responsibility for the assets fixed? ____ ____ ____ _____

27. Is the inventory periodically reviewed and the assets accounted for? ____ ____ ____ _____

28. Are staff positions filled with the most qualified and competent persons possible? ____ ____ ____ _____

29. Is information given on applications and resumes verified? ____ ____ ____ _____

30. Are references given on applications and resumes checked? ____ ____ ____ _____

31.	Do personnel clearly understand what is expected of them?	____	____	____	_____
32.	Do personnel understand how their duties fit in with the duties of others in the court?	____	____	____	_____
33.	Do personnel understand how the functions and responsibilities of the municipal court fit in with the functions and responsibilities of other offices in the city?	____	____	____	_____

Bank Accounts

34.	Are only the minimum number of bank accounts maintained?	____	____	____	_____
35.	Are any bank accounts appropriately authorized by the city?	____	____	____	_____
36.	Are bank accounts only at a financial institution that the city has a contract with?	____	____	____	_____
37.	Are balances appropriately safeguarded via provisions in the depository contract and FDIC coverage?	____	____	____	_____

Petty Cash and Change Funds

38.	Does the court have a petty cash fund?	____	____	____	_____
39.	If the court has a petty cash fund, is it kept separate from change fund(s)?	____	____	____	_____
40.	Are any change funds appropriately authorized by the city?	____	____	____	_____
41.	Has the individual responsible for a change fund signed for the amount received?	____	____	____	_____
42.	Are change funds maintained in a secure location?	____	____	____	_____
43.	Is access to a change fund limited to the individual responsible for it?	____	____	____	_____
44.	Are change fund amounts counted and verified at the beginning and end of each workday?	____	____	____	_____
45.	Are change funds maintained at the lowest practical level?	____	____	____	_____
46.	Are change funds prevented from:				
	a) being commingled with personal funds?	____	____	____	_____
	b) being used to make advances to officials or employees?	____	____	____	_____
	c) being used to cash personal checks?	____	____	____	_____
47.	Are unannounced reconciliations or audits of change funds made on an irregular basis?	____	____	____	_____

48. Are signs posted in the court stating that:

a) checks (if accepted) and money orders will be received for amount of payment only? ____ ____ ____ _____

b) checks will not be cashed? ____ ____ ____ _____

c) when paying in cash, please have as close to the exact amount as possible? ____ ____ ____ _____

Receipts

49. Are all receipts prenumbered? ____ ____ ____ _____

50. If the court generally uses computer-generated receipts, are regular prenumbered, hardcopy receipts in the event of computer problems? ____ ____ ____ _____

51. Are receipts adequately controlled? ____ ____ ____ _____

52. Are hardcopy receipts ordered centrally by the city and distributed to the court periodically as needed? ____ ____ ____ _____

53. When receipts are distributed, does the person receiving them count and make sure that all that are supposed to be there are in fact there? ____ ____ ____ _____

54. Does the person receiving receipts sign for them indicating responsibility? ____ ____ ____ _____

55. Do receipts have at least three parts:

a) the original for the payee? ____ ____ ____ _____

b) a copy for the appropriate city office? ____ ____ ____ _____

c) a copy for the court? ____ ____ ____ _____

56. Does the receipt contain space for the following:

a) date? ____ ____ ____ _____

b) docket number? ____ ____ ____ _____

c) amount received? ____ ____ ____ _____

d) who the money is being received from? ____ ____ ____ _____

e) what the money is being received for? ____ ____ ____ _____

f) method of payment and check number when applicable? ____ ____ ____ _____

g) signature or initials of individual preparing it? ____ ____ ____ _____

h) any other relevant information? ____ ____ ____ _____

57. Are all receipts (both issued and unissued) periodically accounted for? ____ ____ ____ _____

General Over-the-Counter Payments

58.	Does each person receiving payments have a separate cash box or drawer?	____	____	____	_____
59.	Is the change fund amount verified each day before handling transactions?	____	____	____	_____
60.	Is the change fund amount consistent from day to day?	____	____	____	_____
61.	Is a receipt prepared and given to each person making payment?	____	____	____	_____
62.	Are all receipts dated and signed or initialed by the person issuing them?	____	____	____	_____
63.	Are checks and money orders promptly and restrictively endorsed with the words "For Deposit Only" and the account number?	____	____	____	_____
64.	Is strict control maintained over access to cash?	____	____	____	_____
65.	Are money and receipts locked up when not in use?	____	____	____	_____
66.	Do individuals responsible for a cash box or drawer refrain from leaving them unattended?	____	____	____	_____
67.	Do individuals responsible for a cash box or drawer never allow anyone access to their box or drawer except under their direct supervision?	____	____	____	_____
68.	Are transactions handled one at a time?	____	____	____	_____
69.	Is money and paperwork from one transaction put away before starting another one?	____	____	____	_____
70.	Is money received not put away until change is made and the receipt is given?	____	____	____	_____
71.	Are currency, coins, and checks always arranged in a box or drawer in a consistent manner?	____	____	____	_____
72.	Is all cash and currency counted in the presence of the person making payment?	____	____	____	_____
73.	In making change, is the amount counted until the same amount is arrived at least twice?	____	____	____	_____
74.	Does each individual receiving payments balance out his or her box or drawer daily?	____	____	____	_____
75.	Is the balancing out verified and approved by someone else not receiving money in the presence of the individual who balanced out?	____	____	____	_____
76.	Are receipts deposited in the bank or remitted to the city treasurer daily?	____	____	____	_____

77. Are receipt copies forwarded timely to appropriate personnel for accounting and auditing purposes? ____ ____ ____ _____

Payments Made After Hours

78. Does the city avoid having the police department accept municipal court payments? ____ ____ ____ _____

79. If the police department does accept municipal court payments:

a) does the person receiving payments issue a receipt to each payor? ____ ____ ____ _____

b) does the person receiving payments somehow indicate to the payor that the municipal court will contact them with any questions or problems and that making payment at the police department does not constitute complete acceptance or satisfaction by the municipal court? ____ ____ ____ _____

c) are checks and money orders promptly restrictively endorsed with the words "For Deposit Only" and the account number? ____ ____ ____ _____

d) is a daily collection report prepared by the police department and forwarded to the appropriate office in the city? ____ ____ ____ _____

e) does the daily collection report include the:

- date? ____ ____ ____ _____
- name of payor? ____ ____ ____ _____
- amount received? ____ ____ ____ _____
- method of payment and check number when applicable? ____ ____ ____ _____
- purpose of payment? ____ ____ ____ _____
- accounting information? ____ ____ ____ _____
- cause number? ____ ____ ____ _____

f) is the report signed or initialed and dated by the person preparing it? ____ ____ ____ _____

g) is a copy of the collections report and one copy of the receipts forwarded to the court for entering in the accounting records and files? ____ ____ ____ _____

h) is one copy of the receipts retained by the police department or forwarded to the city auditor based on city policy? ____ ____ ____ _____

i) if the municipal court does not maintain a bank account, are payments remitted to the city treasurer on a daily basis? ____ ____ ____ _____

j) if the municipal court does maintain a bank account, are payments forwarded to the court on a daily basis and daily bank deposits made? ____ ____ ____ _____

80. If some sort of drop or lock box is used to receive payments after a municipal court is closed:

a) is the box opened and emptied daily? ____ ____ ____ _____

b) is the box opened by someone who is not handling other monies? ____ ____ ____ _____

c) if the person opening the box also has responsibilities for other monies, is the box opened at a time of the day and in a location when other monies are not being handled? ____ ____ ____ _____

d) is the box opened out in the open, not in an enclosed office? ____ ____ ____ _____

e) does the person opening the box restrictively endorse all checks and money orders with the words "For Deposit Only" and the account number? ____ ____ ____ _____

f) does the person opening the box prepare a daily drop/lock box collections report and forward it to the appropriate city office? ____ ____ ____ _____

g) does the daily drop/lock box collections report include the:

- date? ____ ____ ____ _____
- name of payor? ____ ____ ____ _____
- amount received? ____ ____ ____ _____
- method of payment and check number when applicable? ____ ____ ____ _____
- purpose of payment? ____ ____ ____ _____
- accounting information? ____ ____ ____ _____
- cause number? ____ ____ ____ _____

h) is the report signed or initialed and dated by the person preparing it? ____ ____ ____ _____

i) are the payments and report forwarded to the appropriate individual for preparation of the receipts? ____ ____ ____ _____

	j)	does the individual verify that the amount received matches the amount on the report?	____	____	____	_____
	k)	are receipts deposited to the bank daily or remitted to the treasurer daily?	____	____	____	_____
	l)	are receipt copies forwarded to appropriate personnel for accounting and auditing purposes?	____	____	____	_____

Mail Payments

81.		Is mail opened daily?	____	____	____	_____
82.		Is mail opened by someone who is not handling other monies?	____	____	____	_____
83.		If the person opening the mail also has to have responsibilities for other monies, is mail opened at a time of the day and in a location where other monies are not being handled?	____	____	____	_____
84.		Is mail opened out in the open, not in an enclosed office?	____	____	____	_____
85.		Does the person opening the mail:				
	a)	separate all money from other correspondence?	____	____	____	_____
	b)	restrictively endorse all checks and money orders with the words “For Deposit Only” and the account number?	____	____	____	_____
	c)	prepare a daily mail collections report?	____	____	____	_____
86.		Does the daily mail collections report include the:				
	a)	date?	____	____	____	_____
	b)	name of payor?	____	____	____	_____
	c)	amount received?	____	____	____	_____
	d)	method of payment and check number when applicable?	____	____	____	_____
	e)	purpose of the payment?	____	____	____	_____
	f)	accounting information?	____	____	____	_____
87.		Is the daily mail collections report signed or initialed and dated by the person preparing it?	____	____	____	_____
88.		Are the payments and the report forwarded to the appropriate individual for preparation of the receipts?	____	____	____	_____
89.		Does the individual verify that the amount received matches the amount on the report?	____	____	____	_____

90. Are payments deposited in the bank daily or remitted to the city treasurer daily? ____ ____ ____ _____

91. Are receipt copies forwarded to appropriate personnel for accounting and auditing purposes? ____ ____ ____ _____

Installment Payments

92. Is there a written description of under what circumstances installment or partial payments can generally occur? ____ ____ ____ _____

93. Is there a written installment agreement any time payment plans are used? ____ ____ ____ _____

94. Does the agreement clearly state the terms of the agreement, including payment amounts and dates? ____ ____ ____ _____

95. Is the agreement signed and dated by both the judge and the defendant? ____ ____ ____ _____

96. Is a copy of the signed agreement given to the defendant? ____ ____ ____ _____

97. Is there an efficient way to keep up with payments and indicate past due amounts? ____ ____ ____ _____

98. Are delinquents payments followed up on? ____ ____ ____ _____

99. Does the office maintain a list of individuals who did not adhere to an agreement so that can be taken into account if they are ever considered for another agreement? ____ ____ ____ _____

100. Is there a control total for all outstanding amounts? ____ ____ ____ _____

101. Is the control total periodically compared to subsidiary records? ____ ____ ____ _____

Jail Credits

102. Is there appropriate documentation for the time defendant spent in jail? ____ ____ ____ _____

103. Is there a form at the jail showing the time the defendant was placed in jail and the time the defendant was released from jail? ____ ____ ____ _____

104. Is the form signed or initialed by the appropriate individual at the jail showing the date and time the individual was placed in jail? ____ ____ ____ _____

105. Is the form signed or initialed by the appropriate individual at the jail showing the date and time the individual was released from jail? ____ ____ ____ _____

106. Is a copy of the completed form forwarded to the municipal court? ____ ____ ____ _____

107. Does the appropriate individual in the court enter the credit in the accounting and other records and appropriately file the form? ____ ____ ____ _____

108. If not previously entered, is the cause number entered on the form? ____ ____ ____ _____

109. Is the amount of the credit and how it was arrived at entered on the form? ____ ____ ____ _____

110. Is the form signed or initialed and dated by the individual entering the credit in the accounting records? ____ ____ ____ _____

111. Is there a determination made as to whether there is anything still owed by the defendant? ____ ____ ____ _____

112. If an additional amount is owed, are appropriate procedures followed to satisfy the balance? ____ ____ ____ _____

Community Service Credits

113. Is there appropriate documentation for the defendant to perform community service? ____ ____ ____ _____

114. Does the order specify:

a) the number of hours the defendant is required to work? ____ ____ ____ _____

b) the date the work must be completed? ____ ____ ____ _____

115. Has the court verified that the entity or organization:

a) qualifies under Art. 45.049, C.C.P.? ____ ____ ____ _____

b) agrees to supervise the defendant's work and report on the work to the judge? ____ ____ ____ _____

116. Has it been verified that the judge did not order the defendant to perform more than 16 hours per week of community service unless the judge has determined it will not work a hardship on the defendant or the defendant's dependents? ____ ____ ____ _____

117. Is a copy of the order given to the defendant? ____ ____ ____ _____

118. Is a copy of the judge's order and a form sent to the entity or organization? ____ ____ ____ _____

119. Does the form provide space for the entity or organization to indicate whether or not the work was performed as specified in the judge's order? ____ ____ ____ _____

120. Do entities or organizations specifically indicate how many hours defendants work? ____ ____ ____ _____

121. Does the form provide space for the entity or organization to enter any additional comments about defendants it feels are warranted? ____ ____ ____ _____

122. Are forms signed and dated by appropriate entity or organization representatives? ____ ____ ____ _____

123. Are orders kept in some sort of tickler system so they can be timely pulled and followed up on if not received back when due? ____ ____ ____ _____

124. When completed forms are received back from entities or organizations, does the appropriate individual in the court verify the amount and enter the credit in the accounting and other records and file the form with the case records? ____ ____ ____ _____

125. Does the individual in the court entering the credit in the accounting records sign or initial and date the form? ____ ____ ____ _____

126. Does the court determine if there are any additional amounts owed, and if so, follow appropriate procedures to satisfy any balance? ____ ____ ____ _____

Forfeiture of Cash Bonds

127. Does the defendant sign and receive appropriate paperwork? ____ ____ ____ _____

128. Is a receipt issued to the person posting the bond when payment is made? ____ ____ ____ _____

129. Is it indicated on the receipt that payment is for a cash bond? ____ ____ ____ _____

130. Is money adequately safeguarded until deposited or remitted? ____ ____ ____ _____

131. If part or all of the bond is refunded to the defendant, is any interest earned on the refunded amount returned to the defendant as well? ____ ____ ____ _____

132. Are receipt copies forwarded to appropriate personnel for accounting and auditing purposes? ____ ____ ____ _____

133. If a defendant fails to appear, are the appropriate procedures in Chapters 22 (appearance bond) or 45, C.C.P. followed? ____ ____ ____ _____

134. If the bond is collected under Article 45.044. C.C.P., and the money has already been remitted to the city treasurer, is appropriate paperwork forwarded to the

treasurer, indicating that the bond amount should now be applied to court costs, fees, and fine and how much to apply to each? ____ ____ ____ _____

135. If the bond is collected under Article 45.044. C.C.P., and the money has been kept in a cash bond account in the court, is the appropriate amount remitted to the city treasurer, indicating how much should be applied to court costs, fees, and fine? ____ ____ ____ _____

136. If the court is using the bond forfeiture provisions of Chapter 22 and the money has already been remitted to the city treasurer, is appropriate paperwork forwarded to the treasurer, indicating the amount that should be applied as general revenue for the city? ____ ____ ____ _____

137. If the court is using the bond forfeiture provisions of Chapter 22 and the money has been kept in a cash bond account in the court, is the appropriate amount remitted to the city treasurer, indicating the amount that should be applied as general revenue for the city? ____ ____ ____ _____

Receipts Journal

138. Is a receipts journal used to chronologically account for individual receipts issued? ____ ____ ____ _____

139. Is the receipts journal maintained on a daily basis? ____ ____ ____ _____

140. Does the receipts journal include:

a) date of transactions? ____ ____ ____ _____

b) names of payors? ____ ____ ____ _____

c) docket numbers? ____ ____ ____ _____

d) receipt numbers? ____ ____ ____ _____

e) an actual column to keep up with the total amount received? ____ ____ ____ _____

f) individual columns indicating what the money is received for (e.g., fines, fees by type, court costs by type)? ____ ____ ____ _____

141. Are entries to the receipts journal made from the receipt copies maintained by the court? ____ ____ ____ _____

142. Are entries verified for mathematical accuracy? ____ ____ ____ _____

143. Are entries periodically reviewed by someone other than the person making them, comparing the entries with appropriate source documents? ____ ____ ____ _____

144. Are entries made by someone not receiving payments, preparing bank deposits, or approving disbursements? ____ ____ ____ _____

Disbursements

If the court maintains a bank account:

145. Are all disbursements by check? ____ ____ ____ _____

146. Are all checks prenumbered? ____ ____ ____ _____

147. Are all checks preprinted with the name of the city and indicate "municipal court"? ____ ____ ____ _____

148. Are all unused checks accounted for and adequately safeguarded? ____ ____ ____ _____

149. Does the checkbook contain sufficient room on the stubs for adequate descriptions of disbursements? ____ ____ ____ _____

150. Are checks prepared only when supporting documentation is present and after such is verified? ____ ____ ____ _____

151. Is the payee line on checks completed by the person preparing the checks, not the person signing them? ____ ____ ____ _____

152. Are checks prevented from being made out to "cash" or "bearer"? ____ ____ ____ _____

153. Are checks prepared and delivered timely? ____ ____ ____ _____

154. Are checks signed by someone not keeping the books or preparing the checks? ____ ____ ____ _____

155. Are authorized check signatures kept to a minimum? ____ ____ ____ _____

156. If a stamp or check-signing device is used, is it appropriately safeguarded? ____ ____ ____ _____

157. Are checks prevented from being pre-signed? ____ ____ ____ _____

158. Are checks issued without allowing them to be returned to the person who approves them or does the bookkeeping for them? ____ ____ ____ _____

159. Are all voided checks clearly marked "void" and kept with the checkbook and later placed in the reconciliation envelope or folder? ____ ____ ____ _____

160. Has a determination been made as to whether a disbursements journal is needed (based on number of disbursements per month)? ____ ____ ____ _____

161. If it is determined that a journal is needed:

a) is it used to chronologically account for all disbursements? ____ ____ ____ _____

b) is it maintained on a daily basis? ____ ____ ____ _____

c) does it include:

- date of transaction? ____ ____ ____ _____
- name of payee? ____ ____ ____ _____
- check number? ____ ____ ____ _____
- an actual column to keep up with total amounts disbursed? ____ ____ ____ _____
- several individual columns indicating what the disbursements are for? ____ ____ ____ _____

d) are entries to the journal made from check copies or check stubs? ____ ____ ____ _____

Unclaimed Funds

162. When someone identifies money that he or she does not know who paid it or what it was for, does he or she document in writing what was found, where it was found, and how it was found? ____ ____ ____ _____

163. Does he or she sign the documentation? ____ ____ ____ _____

164. Does the person identifying the money communicate it to appropriate personnel within the court and city? ____ ____ ____ _____

165. Is a thorough analysis made to try and determine who the money belongs to? ____ ____ ____ _____

166. If it can be determined who the money belongs to, is it turned in to the city treasurer and are steps initiated to get it to the rightful owner? ____ ____ ____ _____

167. If it cannot be determined who the money belongs to, is it turned in to the city treasurer for contacting the Unclaimed Property Section in the Comptroller's Office? ____ ____ ____ _____

Daily Balancing

168. Are receipts balanced out daily? ____ ____ ____ _____

169. Is each person receiving money initially responsible for balancing out his or her cash box or drawer? ____ ____ ____ _____

170. Does each person receiving money fill out a daily reconciliation form? ____ ____ ____ _____

171. Does the individual preparing the form sign or initial and date it? ____ ____ ____ _____

172. Is the reconciliation verified and approved by someone else in the presence of the person preparing it? ____ ____ ____ _____

173. Does the person approving the reconciliation also sign or initial and date the form? ____ ____ ____ _____

174. When doing a reconciliation, does the person check to see that the total amount of money in the cash box or drawer less the amount of the change fund equals the total amount shown on the receipts issued for the day? ____ ____ ____ _____

175. Are any overages or shortages clearly shown on the reconciliation form? ____ ____ ____ _____

Remittance of Collections

176. If the municipal court maintains a bank account:

a) are remittances made to the city treasurer on a consistent basis? ____ ____ ____ _____

b) in determining the frequency of remittances, has size of the city and court and the amount of money involved been taken into consideration? ____ ____ ____ _____

c) are remittances made no less frequently than monthly? ____ ____ ____ _____

d) are remittances made by check? ____ ____ ____ _____

177. If the municipal court does not maintain a bank account, are remittances made to the city treasurer on a daily basis? ____ ____ ____ _____

178. Is a remittance form showing what the money is for included with the remittance? ____ ____ ____ _____

179. Is the breakdown on the remittance form detailed enough so that the treasurer will know what fund(s) and account(s) to deposit the money into and how to complete any applicable related reports? ____ ____ ____ _____

180. Is the remittance form signed by an appropriate individual in the court? ____ ____ ____ _____

181. Is a receipt obtained from the treasurer showing the amount remitted? ____ ____ ____ _____

182. If a receipt cannot be obtained, does the treasurer sign and date the remittance form indicating agreement with the amount? Is a copy made and kept for the court? ____ ____ ____ _____

Bank Account Reconciliation

183.	Are bank statements reconciled promptly upon receipt?	____	____	____	_____
184.	Are bank reconciliations performed by someone who is not responsible for writing, recording, or signing checks?	____	____	____	_____
185.	Does the person who reconciles the bank statements receive those statements unopened from the bank?	____	____	____	_____
186.	Are reconciliations done correctly?	____	____	____	_____
187.	Are completed reconciliations signed or initialed and dated by the person doing them?	____	____	____	_____
188.	Are reconciliations reviewed and approved by someone other than the person doing them?	____	____	____	_____

Monthly Reporting

189.	Is a financial report showing the court's financial position and results of operations prepared each month?	____	____	____	_____
190.	Does the report show the beginning balance the court was responsible for at the beginning of the month?	____	____	____	_____
191.	Does the beginning balance include the following:				
	a) all change funds?	____	____	____	_____
	b) all bank account book balances?	____	____	____	_____
	c) any other funds under the control of the court?	____	____	____	_____
192.	Does the report show a detailed breakdown of receipts?	____	____	____	_____
193.	Does the report show a detailed breakdown of disbursements/remittances?	____	____	____	_____
194.	Does the report show an ending balance?	____	____	____	_____
195.	Does the ending balance include the following:				
	a) all change funds?	____	____	____	_____
	b) all bank account book balances?	____	____	____	_____
	c) any other funds under the control of the court?	____	____	____	_____
196.	Is the report signed and dated by the person preparing it?	____	____	____	_____
197.	Is the report reviewed and approved by appropriate court personnel?	____	____	____	_____

198. Is the report signed and dated by the person approving it? ____ ____ ____ _____

199. Is the report turned in based on city policy? ____ ____ ____ _____

Computer System Selection Process

200. Is there a computer system selection process for the court? ____ ____ ____ _____

201. Does the process include the following steps:

a) becoming familiar with computer systems and their capabilities? ____ ____ ____ _____

b) deciding the need and ability to automate? ____ ____ ____ _____

c) defining hardware and software needs? ____ ____ ____ _____

d) developing a request for proposals? ____ ____ ____ _____

e) accepting and evaluating bids/ proposals? ____ ____ ____ _____

f) selecting the system? ____ ____ ____ _____

202. Does the step on becoming familiar with computer systems and their capabilities include the following:

a) reading and studying books and periodicals? ____ ____ ____ _____

b) visiting and reviewing computer systems already owned by the city? ____ ____ ____ _____

c) visiting and reviewing computer systems operated by other municipal courts? ____ ____ ____ _____

d) visiting computer system displays at conferences, seminars, and meetings? ____ ____ ____ _____

e) identifying people knowledgeable about computer systems and discussing computer systems with them? ____ ____ ____ _____

f) developing a file on computer system information and capabilities? ____ ____ ____ _____

203. Does the step on deciding the need and ability to automate include the following:

a) determining the specific objectives of the court? ____ ____ ____ _____

b) flowcharting and writing out what is done, how it is done, when it is done, and who does it? ____ ____ ____ _____

	c)	analyzing in detail the flow of documents and reports along with their format and contents?	____	____	____	_____
	d)	determining how long each phase of the court's operation takes?	____	____	____	_____
	e)	determining how much each phase of the court's operation costs?	____	____	____	_____
	f)	anticipating the court's future workload?	____	____	____	_____
	g)	determining which phases of the court's operation lend themselves to automation?	____	____	____	_____
	h)	identifying what capabilities automation may bring that the court currently does not have?	____	____	____	_____
	i)	listing the pros and cons of automation?	____	____	____	_____
	j)	determining if automation will be feasible with current personnel?	____	____	____	_____
	k)	determining if additional personnel will be needed?	____	____	____	_____
	l)	determining what training will be necessary?	____	____	____	_____
	m)	making an initial decision of whether automation is financially possible?	____	____	____	_____
	n)	determining what changes can be made in present operations as a result of reviewing operations?	____	____	____	_____
204.		Are hardware and software needs determined jointly?	____	____	____	_____
205.		Does the step on defining hardware components and software package needs include the following:				
	a)	identifying specifically, and in detail, what the court wants a computer system to do?	____	____	____	_____
	b)	evaluating the different types of computer systems and related software?	____	____	____	_____
	c)	deciding on the type of computer system needed and the related software?	____	____	____	_____
	d)	deciding on the type of hardware and software packages needed?	____	____	____	_____
206.		Are specifications prepared by the person or department responsible for the purchasing function within the city?	____	____	____	_____

207. Does the municipal court have input concerning the content of the specifications? ____ ____ ____ _____

208. Are the criteria used for evaluating bids/proposals determined prior to the time bids/proposals are received? ____ ____ ____ _____

209. Is the relative importance of evaluation criteria predetermined? ____ ____ ____ _____

210. In evaluating bids/proposals, does the criteria used to make the evaluation include the following:

a) costs, both current and future? ____ ____ ____ _____

b) reputation of the vendor? ____ ____ ____ _____

c) experience of the vendor? ____ ____ ____ _____

d) training provided by the vendor? ____ ____ ____ _____

e) service of the vendor? ____ ____ ____ _____

f) expected reliability of the hardware? ____ ____ ____ _____

g) terms of the proposed contract? ____ ____ ____ _____

h) specifics concerning the hardware (e.g., capacity, speed, computability, expandability)? ____ ____ ____ _____

i) specifics concerning the software (e.g., what it will do and ease of use)? ____ ____ ____ _____

j) software/hardware security? ____ ____ ____ _____

Auditing

211. Is the court audited annually by an independent CPA? ____ ____ ____ _____

212. Is the office audited periodically by city internal auditors? ____ ____ ____ _____

213. Is some audit work done each quarter? ____ ____ ____ _____

214. Does audit work include the following:

a) surprise cash counts? ____ ____ ____ _____

b) reviewing bank reconciliations? ____ ____ ____ _____

c) accounting for all receipts? ____ ____ ____ _____

d) auditing receipts for proper amount collected, deposited, or remitted and correct bookkeeping? ____ ____ ____ _____

e) confirming amounts paid (or the fact that nothing was paid) with defendants? ____ ____ ____ _____

f) reviewing reports? ____ ____ ____ _____

215. Are appropriate audit recommendations implemented? ____ ____ ____ _____

216. Are the appropriate recommendations implemented timely? ____ ____ ____ _____

Excerpts from *City and County Financial Management Newsletter Systems*, a publication of the State Comptroller. Used with permission.

ANSWERS TO QUESTIONS

PART 1

1. False.
2. True.
3. True.
4. True.
5. The treasurer's office, the accounting department, and the internal auditor's office.
6. At least annually.
7. True.
8. True.
9. True.
10. False.
11. True.
12. False (it is easier).
13. False.
14. True.
15. False.
16. True.
17. True.
18. The decline in the public's perception of and confidence in government.
19. Expected benefit.
20. Protect those people who do their job and do it right.
21. The three basic functions that should, if at all possible, be performed by three different people in a municipal court are:
    - authorization (approval) of transactions;
    - recording of transactions; and
    - custody of assets (cash and other property).
22. Three other means that take on added importance in helping assure reliable internal control when a strict separation of duties cannot be maintained due to a limited staff size are:
    - rotation of duties among personnel;
    - more strict supervision;
    - special double-checking of work;
    - enforced vacations;
    - additional training to improve quality of work; and
    - more frequent internal audits.
23. That no person should handle a transaction from beginning to end.
24. Receipts and checks.
25. In a municipal court, three of the tasks that sound procedures should provide for include:
    - use and control of prenumbered forms/documents;

- cross-referencing of documents;
- periodic reconciliation of subsidiary records to control totals;
- proper authorization of transactions;
- effective, timely reporting of transactions;
- safeguarding of assets;
- appropriate flow of documents;
- reasonable amount of checking the work of others; and
- bonding of all employees with access to cash and other valuables.

26. Annually.
27. False.
28. True.
29. True.
30. True.
31. False.
32. True.
33. It will somehow enhance overall city operations (e.g., better safeguarding of money or more efficient handling of court operations).
34. Not also someone who has recordkeeping or custodial functions.
35. It makes it even more difficult to appropriately divide duties.
36. A sum of money set aside for making small cash purchases on a contingency basis.
37. The purpose of making change for customers.
38. Each individual receiving money and issuing receipts.
39. It is helpful to have signs posted in a municipal court stating
    - checks and money orders will be accepted for amount of payment only;
    - checks will not be cashed;
    - when paying in cash, please have as close to the exact amount as possible.
40. False.
41. False.
42. False.
43. True.
44. True.
45. False.
46. True.
47. False.
48. False.
49. True.
50. Regular prenumbered, hardcopy receipts.
51. Centrally by the city and distributed to the municipal court as needed.
52. Each time a payment is received.

53. Eight things a receipt form should provide adequate space for include:
    - date issued;
    - docket number;
    - amount received;
    - who the money is being received from;
    - what the money is being received for;
    - method of payment (i.e., cash, check, money order, credit card) and check or money order number when applicable;
    - signature, electronic signature or initials of individual preparing the receipt; and
    - any other information relevant in the circumstances.
54. Because the payee is not present and no receipt is issued at the time of payment.
55. Mail should be opened at a time of the day and in a location where other monies are not being handled.
56. Possible benefits to accepting credit card payments are:
    - decreasing outstanding amounts owed;
    - reducing the number of defendants on installment agreements;
    - increasing taxpayer service by providing a convenient way to make payment; and
    - reducing administrative costs of the municipal court.
57. Ensuring that payments are made timely and that missed payments are promptly followed up on.
58. The terms of the agreement, including payment amounts and dates.
59. True.
60. True.
61. False.
62. False.
63. False.
64. True.
65. True.
66. True.
67. True.
68. False.
69. True.
70. True.
71. True.
72. False.
73. True.
74. True.
75. True.
76. False.
77. True.

78. True.
79. True.
80. True.
81. True.
82. True.
83. True.
84. False.
85. True.
86. False.
87. Returned to the defendant as well.
88. The paperwork should:
    - indicate to the treasurer that the bond amount should now be applied to court costs, fees, and fines and how much to apply to each; and
    - indicate the amount to be refunded to the defendant if the defendant is entitled to jail-time credit.
89. As general revenue for the city.
90. True.
91. False (on a daily basis).
92. False.
93. True.
94. False.
95. False.
96. At least three things a receipts journal enables a municipal court to do are:
    - properly keep track of and account for each receipt issued;
    - properly separate and account for the different types of monies collected;
    - group types of collections in order to easily figure the total collections for each type;
    - balance daily, weekly, and monthly reports;
    - help reconcile the monthly bank statement; and
    - leave a good audit trail for internal and external auditors.
97. A person not keeping the books or preparing the check, with authorized check signatures kept to a minimum.
98. True.
99. False.
100. True.
101. False (each person should balance their own).
102. False.
103. The total amount of money in the cash box or drawer less the amount of the change fund.
104. True.
105. True.

106. False (at least once a month if the court maintains its own account; daily if the court does not).
107. False
108. True.
109. False.
110. What fund(s) and account(s) to deposit the money into and how to complete any applicable related reports (e.g., state court costs and fees quarterly report).
111. Someone who is not responsible for writing, recording, or signing checks.
112. True.
113. True.
114. Examining information and operations for mathematical accuracy, legality, and propriety. It is a process of determining whether all transactions are properly recorded in the accounts and appropriately reflected in statements and reports.
115. Objectives of auditing include assuring that:
    - the court has collected all the money they are supposed to;
    - money collected was properly remitted to the appropriate party;
    - property is properly managed;
    - money and other property is properly accounted for, properly reported, and adequately safeguarded; and
    - operations conform to laws, rules, and prescribed procedures.
116. Examples of the type of audit work that should be done in a municipal court are:
    - conducting surprise cash counts;
    - reviewing bank reconciliations;
    - accounting for all receipts;
    - auditing receipts for proper amount collected, deposited, or remitted and correct bookkeeping;
    - confirming amounts paid (or the fact that nothing was paid) with defendants; and
    - reviewing reports.
117. Items an auditor may want to examine during the course of an audit are:
    - procedures manual, including any internal control procedures used in the court;
    - bookkeeping system, including reports, ledgers, and journals;
    - docket books;
    - monthly bank reconciliations for each bank account, including canceled checks and bank statements for the period covered by the audit;
    - fixed assets assigned to the court;
    - change funds, receipts (issued and unissued), and monies collected; and
    - office files and related correspondence.
118. True.
119. False (that is an external audit).
120. False (it is recommended it be conducted by an independent person).

121. True.
122. False.
123. True.

7

Court Records

Table of Contents

INTRODUCTION

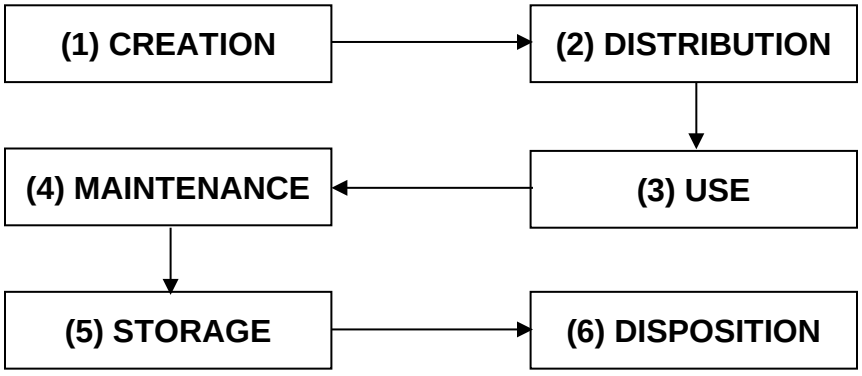
Managing court records is one of the most important aspects of the court clerk's role. How is every step in the court process documented? Does the integrity of the case file stand up to public scrutiny to prove that the court is following the law? Anything that happens in municipal court with a case file must be properly documented, filed, and efficiently moved through the court. In addition, upon request, courts should be prepared to follow the law regarding the release of records while also respecting legal protections built into the law to protect defendants' information. This chapter will discuss the important role that court clerks play in establishing a successful records management system, managing the caseflow of municipal court cases, and processing cases within the laws and rules that govern court records.

PART 1
RECORDS MANAGEMENT

A record is any form of recorded information. It can be paper (including sticky notes on the file), microfilm, audiotapes, videotapes, photographs, slides, or any computer-readable medium such as computer tapes, disks, compact disks, optical disks, or USB drives. Records management is the active supervision and control of records, which includes the economical and efficient creation, organization, use, maintenance, and disposition of records. In other words, records management is the systematic control of recorded information from creation to final disposition. Each stage of the record's life cycle has different needs and requirements.

A considerable part of records management is the development of a records control schedule. Although the Texas State Library and Archives Commission has established required minimum retention periods, cities must prepare records retention schedules that control records management decisions in each city. These control schedules provide retention periods for records created and maintained in all city departments, including municipal court, and schedules should contain information about how the records are maintained, when they are sent to storage, and how they are destroyed.

A records management program helps retrieve information faster, reduces lost or misplaced records, saves space, minimizes expenditures for filing equipment and supplies, and protects records. Generally, records have a six-stage cycle: (1) creation; (2) distribution; (3) active use; (4) maintenance; (5) inactive in storage; and (6) disposition, which includes destruction.



During the active stage of records, the record is distributed, efficiently stored for fast retrieval and use, and then maintained during its use. During the inactive stage, the record must still be properly maintained for retrieval, if needed, and kept in a manner that will not harm or destroy the record until such time as the record may be disposed of by legal destruction. During both the active and inactive stages, protection of records is essential.

Practice Note

In 1989, the Legislature adopted Subtitle C of the Local Government Code, known as the Local Government Records Act, recognizing the importance of local government records in the lives of all citizens. The Legislature found that, among other things, the efficient preservation of records could document the rights of citizenship and provide efficient management of local government. A part of this act established requirements for local governments, record management officers, and custodians of records. The act also removed restrictions buried in historic practices, such as requiring records to specifically be kept in a "well-bound book." This allowed local governments, and more importantly courts, to begin to use modern recordkeeping methods, laying the foundation for today's court.

1. What does the Local Government Records Act establish?_____

   _____

2. What is a record? _____

   _____

3. What is records management? _____

   _____

4. What are records control schedules? _____

   _____

5. List the benefits of having a records management program. _____

   _____

   _____

   _____

6. List the six stages of a records life cycle._____

   _____

   _____

   _____

   _____

   _____

7. What happens during the active and inactive stages of a record?_____

_____

_____

_____

A. Staffing a Records Management Program

The Texas State Library and Archives Commission requires each city to designate a records manager who is usually someone at a managerial level. Since many cities are unable to hire a person specifically for that position, the city secretary is most often designated as the records manager. Staffing a records management program might include filing clerks, document imaging operators, data entry individuals, and records center staff. Most municipal court personnel juggle these duties with other court duties.

B. Developing a Records Management Program

Developing a records management program is a project that must be carefully planned and monitored. It usually takes months to plan, develop, test, monitor, train personnel, and develop a records manual. The court should establish a committee to begin development of a program. After a committee determines the activities of the project, the activities should be sequenced with time frames established for each activity. An excellent tool for this is a *Gantt chart* (shown below), which shows planned times for tasks and actual dates of completion. The chart can also show who is responsible for each activity. After the project is underway, the Gantt chart can be used to monitor performance.

		Months									
Activity		**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
1	**P**										
	A										
2	**P**										
	A										
3	**P**										
	A										
4	**P**										
	A										
5	**P**										
	A										

P = planned date

A= actual date

The Gantt +chart is a graphic representation of project progress in terms of planned start and completion dates for each activity. You can see that the actual start date (Activity 1) is a month late. Activity 2, however, catches up and is on time. Activity 4 is late and eventually throws the

project off by one month. The Gantt chart should help project managers make up for lost time or review the time schedule and adjust the plans; whatever is necessary to help the project come to completion as timely as possible.

The steps to develop a records management program include:

- determining what the court wants to accomplish;
- setting goals and objectives;
- developing time frames with deadlines;
- determining how records are created (manual and/or computer);
- determining where records will be stored;
- determining what filing equipment and systems will be used;
- establishing records retention periods (governed by statute);
- establishing a system for the maintenance and retrieval of records;
- establishing a system for archiving records; and
- establishing a system for the destruction of records.

To make sure that implementation of a records management program is successful, the court should inventory the records, determine the mandatory retention periods in accordance with state regulations, prepare and obtain approval of a records schedule, and implement the schedule.

After a records management program is established, it should be continually monitored. This oversight helps the program to be effective. As part of the monitoring, the court should schedule periodic performance audits.

8. What might staffing a records management program include? _____

_____

9. List the steps to develop a records management program. _____

_____

_____

_____

10. What is a Gantt chart? _____

_____

C. Organizing an Efficient Case Filing System

Case filing encompasses the creation, maintenance, use, and disposition of case files. A case file is a folder or other file unit containing material relating to a specific transaction, event, person, place, project, or other subject. A case file may contain several citations on a defendant or just one citation with separate files made for each citation.

Because of the large volume of paperwork in municipal courts, it is essential to develop and organize an efficient case filing system. Successful case filing depends on competent records management and careful planning and appropriate action by records managers. The following items will contribute to a successful program:

- studies on the creation or improvement of case filing systems (including preparing for a digital filing system);
- pilot installations to test all aspects of a case file plan prior to final adoption;
- standardized and centralized case files;
- protocol for maintaining, using, and disposing of case files;
- a cost/benefit analysis of file equipment and supplies;
- written instructions or manuals for the establishment and operation of case files; and
- periodic reviews to ensure compliance with overall objectives of the case filing program.

1. Improving Existing Case Files

Establishing steps to improve existing case files is less time-consuming than recreating new case files but approaches for both are similar.

To improve existing case files, the court should:

- select and examine a cross section of existing filing systems in different city departments;
- identify areas that need improvement in the court files;
- explore potential modifications;
- study the present system and its needs;
- develop a revised system, including new forms and records;
- implement the revised system for a trial operation and modify it as needed; and
- prepare the final system for adoption and prepare written instructions for implementation and maintenance.

2. Determining the Volume

Each year, the court must project the volume of cases that will be filed in the court in order to prepare the budget for supplies necessary to maintain the filing system. The court might consider the following when determining the future volume of cases:

- the last five years of cases filed in court to determine a trend in the number and type of cases filed;
- the previous two to three years funding for police officers and future projections for more officers;

- traffic and crime statistics for the city to determine the number and types of crimes occurring in the city; and
- future projections from the police department for number of cases that might be filed.

3. Case Files

After a plan is established to create new case files, the court may develop, test, and make necessary revisions in the system. If a court determines that some files need special handling, such as juvenile files, the court may want to establish and develop handling procedures for those specific files. Note requirements for accessibility of the records in the future.

a. Digital Files

Courts are increasingly turning to document imaging and digital files instead of maintaining cases in physical files. When a document is imaged, it is scanned and converted into a digitized format that can be read by computers and electronically stored and retrieved. Data attached to each image enables the computer to link it to a specific case, individual, or other documents. The stored image is a duplication of the original. The image can be written into the storage device only once, but it can be read many times without making any alterations. Imaging systems allow the court to copy files into an electronic medium for storage, freeing up office space occupied by paper files.

b. Court's Reference Needs for Retrieving Files

Courts should assess reference needs of case files before making changes to filing systems. To determine the court's reference needs, the court might consider some of the following issues:

- appearance date;
- bond filed;
- plea;
- pre-trial date;
- trial date;
- payment schedule;
- driving safety course:
  - appearance date;
  - due date of DSC certificate;
  - show cause hearing date;
- deferred disposition:
  - appearance date;
  - due date of evidence;
  - show cause hearing date;
- warrants, capiases, capias pro fines;
- appeals;
- notice of final convictions;
- court costs quarterly reports; and
- monthly reports to OCA.

c. Case File Folders

The following questions should be considered when establishing a case folder:

- One file folder per defendant or one file folder per citation or case filed?
- Temporary file folders for active files or the same file folder as archived files?

- File folders, stapled documents, or case jackets?

(1) One Case File Folder for Each Defendant

In this filing system, one case jacket or file folder is created for each defendant per arrest. For example, a defendant may have several charges written on one citation or several citations may have been written at one time. All documents concerning the arrest, including a failure to appear case filed later, are contained in that one file jacket. If this method is used, it is necessary to post the actions occurring with each case contained within that case jacket. One problem with this method is that each case in the jacket may have different dispositions (e.g., driving safety course, payment schedule, etc.), creating confusion when filing.

(2) One Case File Folder for Each Case Filed

In this filing system, one case jacket is created for each case filed. If a defendant has more than one complaint filed, the court prepares separate case jackets for the documents pertaining to each case. If a failure to appear complaint is filed, the court creates a separate case jacket for that charge. If this method is used, a cross reference is necessary to link the cases together.

(3) Temporary Active Case Files

Another approach is to establish a temporary folder while the case is active and then remove the contents when the case is closed. The closed files are then maintained in filing sequence without folders or in groups within large-capacity folders.

(4) No Case File Folder

In this type of system, papers in each case are stapled or paper clipped together. This type of case filing is not recommended because documents may be lost.

(5) Information Posted to Case Files

Generally, courts post actions occurring in a case on the exterior of the case jacket. Posting information to case files helps courts manage the files. It is important to decide which information is useful and necessary for managing the files. Commercial case jackets are printed with spaces for a docket number and the defendant's name. Usually, there is a space for notes. If the court uses file folders, they can be customized with specific information, or if that is too expensive, a stamp can be designed with the required information. If a stamp is used, the clerk may stamp a number of file folders each morning to prepare them for the filing of the day's cases.

(6) Determining Necessary Information on Case File Folders

It may also be necessary to determine the information to be posted on the outside of the case file. Posting information on the case file folder helps courts to keep track of the actions occurring in the case and when and how the file should be referenced. Information that is useful for reference and that should be posted on a case file folder could include:

- Docket number;
- Defendant's name;
- Date case was filed;

- Prosecuting attorney;
- Defense attorney, if any;
- Complainant's name;
- Bond (if any) and whether personal, cash, surety, amount of bond, and date of judgment nisi if one is entered;
- Plea entered, method of plea, and date of plea (in open court, in clerk's office, by mail, in person, through attorney);
- Type of trial requested (jury or bench) and date(s) of trial setting;
- Continuances if any;
- Deferred disposition if granted, and due date of evidence of completion;
- Driving safety course if requested and granted, and due date of evidence of completion;
- Witnesses and dates subpoenas issued, if any;
- Motions filed if any, dated filed, and judge's ruling;
- Judgment;
- Fines or fees assessed;
- Court costs assessed;
- Jail time credit;
- Extensions for payment or payment plan due dates;
- Receipt numbers and dates written;
- Appeal, if one (date notice given, date bond approved or not approved, date transcribed, type of bond, date sent to county);
- Date notice of final conviction sent to State; and
- Date warrant, capias, or capias pro fine issued and served.

(7) Determining the Physical Type of Case File Folder

Many factors may be considered when determining the physical type of case folder. They could include identifying the documents that will be filed in jacket, determining the arrangement of documents in jacket, deciding on the file cabinet size and orientation; and evaluating the cost of file folder or jacket. Some cities that are automated use continuous feed file folders that are separated after a defendant's information is printed on the outside of the file folder. Automated courts that do not use continuous feed file folders and non-automated courts may want to consider using file folders, lateral file folders, envelopes, or commercial case jackets. File cabinet size and type will be determined by the dimensions of the case file folder, so it should also be a factor considered when planning the type of case file folder or file jacket to be used.

(8) Designing Case File Folders

- **Non-Automated System**

In courts that are not automated, the planning and design of file folders or case jackets depends upon the information the court decides is necessary for reference and use. Cost is an important factor, particularly for small cities. Commercial case jackets or ones that are specially printed for a court are more expensive than ones that have no printing. In order to keep printing costs to a minimum, the court might consider using a rubber stamp containing the information the court deems necessary for reference purposes and stamp each file folder or case jacket.

- **Automated System**

Some courts with automated recordkeeping systems have designed case file folders or jackets to include the complaint and docket. In this instance, one side of the file folder or jacket is printed with the complaint; the other side is the docket, which includes the judgment and minutes. All loose documents pertaining to a particular case are filed inside the file folder or jacket. Some courts with automated system file folders or jackets use a rubber stamp noting certain information designed with fill-in blanks to facilitate completion of information required for managing the case.

- **Loose Files**

The advantages of filing papers loosely in a case folder may be time and cost savings when filing papers and easy removal of documents for reference. Filing papers loosely is generally appropriate for case files that are small, have a low reference rate, are scheduled for short-term retention, or rarely leave the office or file room. The loose file system also has disadvantages, though, as papers may be lost or misplaced easily. It may also lack uniform arrangement of the folder contents and make it more difficult to find a particular document.

- **Fastened Files**

Fastened files are usually preferred for large case files that receive extensive use, have long retention periods, and are likely to be taken out in their entirety for extended periods of time. The usual practice is to fasten papers inside the folder with prong fasteners but without compressors. If a fastener is used on only one side of the folder, simply arrange and secure the papers in reverse chronological order. If fasteners are used on both the left and right side of the folder, specify in advance which papers are to be placed on each side.

- **Commercial Jackets**

Common commercial jackets are rectangular in shape, narrow in width, and usually red in color. The papers must be folded in order to be placed in this type of jacket. Also, this type of jacket requires a particular type of file cabinet or insert in the file drawers to accommodate the jacket.

(9) Determining Arrangement

It is important to determine a standard arrangement of case files in filing cabinets. Due to the different reference needs of the court, an efficient method of identifying and retrieving files should be taken into account when deciding file arrangement. The nature of the records and how they will be retrieved should be the first determining factor in the selection of file arrangement. Other issues to consider are the volume of records to be maintained, the size of the office, who will be using the records, and the type of access that is appropriate.

Practice Note

The file arrangement could directly affect the efficiency with which the clerk or judge can access the files. When tasked with evaluating a file arrangement system, consider whether the system is logical. An arrangement that makes sense to users is often the best approach. Other considerations may include functionality, flexibility, and whether the system is standardized.

(10) Selecting an Access System

There are two main types of access systems: direct access and indirect access.[1]

Direct access allows a person to locate a particular record by going directly to the files and looking under the name of the record. This system is cumbersome to use when storing a large volume of records. Confusion can occur when dealing with files with common, similar, or identical names. Alphabetic systems are generally designed to be direct access.

An indirect access system requires an index that must be consulted before a file can be retrieved. This type of system provides some security because people unfamiliar with the coding system cannot gain access to specific records. This is the most efficient system when a court needs to store a large volume of records. Duplication of records can be avoided because each code is used only once. Generally, there is greater accuracy in filing and retrieving records. Several different sets of files and indexes, however, are necessary to maintain control, and misfiled records can be difficult to locate. The following three arrangements are examples of direct and indirect access systems.

- **Alphabetic File Arrangement**

  Alphabetic files are arranged according to the last name of the defendant. The alphabetic arrangement is usually referred to as a direct system because it is self-indexing, so a cross-index is not necessary.

  It is essential in alphabetical filing to adopt a set of rules in a consistent manner to ensure not only the alphabetic sequence, but rules for filing cases with foreign names, hyphenated last names, numerals in names, names of organizations and institutions, and prefixes.

  Some courts may want to use color-coding to help with filing and retrieving files. A color code for the letters of the alphabet can be placed on a projecting tab. Color-coded

[1] *The Local Record*, a newsletter of the Local Records Division of the Texas State Library and Archives Commission (Summer 1990).

edges aid in fast scanning. The blocks of color created by the color-coded edges instantly reveal misfiles within a group. Folders are available with top tabs for vertical filing and with side tabs for lateral filing.

The principal advantage of the alphabetical system is that it is not necessary to look up a docket number when a file must be retrieved.

The primary disadvantage of this system is that it does not lend itself to expansion as readily as does the numerical system and will require more shifting of folders.

When alphabetical files are closed or transferred to storage, make cross-indexed cards. To avoid shifting archived files, store them by newly created transfer numbers or by the docket number. This works well if each case has a separate file. If several cases are filed in one case jacket, a transfer number is assigned either to the file that would pertain to all the cases or to the documents removed from the case jacket and stapled and stored according to the docket number. The files are then placed in the storage files in numerical order. If storing files alphabetically, the file drawers are numbered and the drawer number in which the file is placed is indicated on the cross-indexed cards.

- **Numerical File Arrangement**

  A numerical file arrangement can have numbers assigned to the case files arbitrarily or under a standard plan. In municipal court, the numbers assigned to case files are usually docket numbers. Numeric filing systems can include straight-numeric, middle-digit, terminal-digit, duplex-numeric, and decimal-numeric filing systems explained below.

  Under the straight- or consecutive-numeric filing systems, case files are arranged consecutively in ascending numerical order according to docket number. This is an indirect filing system since it must be used in connection with a cross-index. The defendant's name is put on an index card and the cards are arranged alphabetically. If the court uses this type of system, all documents including letters must have the identifying docket number. Color-coding numbers can facilitate the filing and retrieving of files and will minimize errors.

  A terminal-digit numeric system is considered by many to be the most efficient of the numeric filing systems. In this system, the last digit or group of digits is the primary unit used for filing. For example, the number 7123490 could be broken down as follows: 71-234-90, with 90 as the primary unit (first group) for filing, 234 as the secondary unit, and 71 as the tertiary (third) unit. The terminal digit system can accommodate large volumes of records, because long numbers can be divided into groups of several digits and still be easily managed. How numbers are broken down depends on the current and projected capacity of the filing system.

  The middle-digit system is similar to terminal-digit but is often more limited. Although the file numbers in the index are still listed in consecutive numeric sequence, the middle group of digits becomes the primary indexing unit, the first group is the secondary indexing unit, and the terminal group is the tertiary unit.

  Terminal- and middle-digit systems allow equal distribution of records throughout the records storage area, permit assignment of different file clerks to different sections of

the files and provide a measure of security over records from those persons who do not have access to the index or who are unfamiliar with the system.

A duplex-numeric system uses two or more sets of code numbers for records, with the sets separated by dashes, commas, periods, or spaces. Records are filed consecutively by the first number, then sequentially by the second number, and so on. The duplex-numeric system lends itself to the subject system that uses the encyclopedia arrangement, with subdivisions for each major category. For example:

- Traffic offenses	12
Adult defendants	12-10-1
Juvenile defendants	12-10-2
- Penal Code offenses	13
Adult defendants	13-10-1
Juvenile defendants	13-10-2
- Citizen complaints	14
Adult defendants	14-10-1
Juvenile defendants	14-10-2

A relative index must be developed if the system is to be used effectively. List the primary numbers assigned to the major categories of information with appropriate listings of the various subdivisions within the major headings. The decimal-numeric system is perhaps the most commonly used and widely known numeric filing system. Developed initially for library use, the decimal system is based on 10 general categories. The major numeric groupings are each further divided into 10 parts, which are then subdivided into 10 subunits.

When transferring numerical files, withdraw from the active index all cards relating to the closed case, stamp the cards “closed,” and note the date closed and where the files are stored. Then withdraw from the active files all jackets or folders holding the completed case and file numerically. Keep the index of closed cases available to locate completed cases.[2]

The advantages of the numeric system are speed and accuracy of refiling and the opportunity for unlimited expansion. The disadvantages are the need for maintenance of the auxiliary card index and the necessity of making two searches when files must be retrieved−one of the index and one of the files. Automated courts can locate the file number by entering the defendant’s name using a name-search on the computer. Also, if the system is used over a long period of time, eventually the numbers may become long.

[2] *The Local Record*, a newsletter of the Local Records Division of the Texas State Library and Archives Commission (Spring 1991).

- **Alphanumeric File Arrangement**

  In an alphanumeric system, files use a combination of personal or business names and numbers or, more commonly, subject headings and numbers. The use of numbers sequentially filed reduces the number of misfiles dramatically; captions (subject headings) help a user to quickly determine the contents of the file.[3]

4. Case Filing Equipment

Before choosing equipment to house case files, it is necessary to consider a number of basic questions, such as:

- What are the physical characteristics of the case records? What is their volume, physical form, and size?
- What is the cost of purchasing, installing, maintaining, and operating the available types of equipment?
- How much office space is available, and how is it laid out?
- Who needs to refer to the records, and how frequent and urgent is the need to do so?
- What safeguards are needed to protect the files from unauthorized use, theft, fire, insects, dust, and other potential hazards?

a. Vertical File Cabinets

The standard steel vertical file cabinet with two to five drawers is the type of housing most frequently used for case files. These cabinets offer low operating costs per filing inch. They provide easy access for filing and reference and protect the records. These cabinets are available in both letter and legal sizes to accommodate different size case folders. Selection of file cabinets by the number of drawers is based primarily on capacity requirements, office layout, space availability, and function.

b. Shelf Files

Shelf files are available in various heights and are adaptable to office areas. Those with doors have a maximum of six shelves. Those without doors have seven to 10 shelves. Shelf files with fixed dividers help keep case folders in a vertical or upright position and, when combined with file guides, contribute to filing efficiency.

(1) Open Shelf Files

Open shelf files are convenient for filing and retrieval, but they are not recommended because of the exposure hazards that might damage the records. Also, there is no way to secure the records from persons who should not have access to the files.

---

[3] *Id.*

(2) Closed Shelf Files

Closed shelf files are recommended for case filing. Although more expensive than open shelf files, the doors reduce fire hazards and protect records from dust and other elements that can damage or destroy records.

c. Lateral Cabinets

Lateral cabinets serving as drawer or shelf files have rollout shelves that make them more versatile than vertical file drawers and shelf file equipment. Compressors and suspension file bars permit adjustment of lateral equipment to legal and letter size. The folders may be arranged laterally, side-to-side as on shelves, or front-to-back as in a vertical file drawer. The cost, however, limits their usefulness to offices that have a comparatively small volume of records.

d. Mobile Shelf Cabinets

Mobile shelf file cabinets are installed on tracks or suspended from the ceiling, to provide more usable floor space by eliminating some individual aisles. The disadvantage to this type of equipment is the higher cost.

e. Motorized Files

Motorized files bring the record to the user instead of the other way around. The files are stored on shelves in a large, enclosed metal unit that looks like a huge box. The operator stands or sits before the unit and presses a button to indicate the appropriate shelf. The shelf automatically moves into position in front of the operator for retrieval. This type of file provides fast access to a large volume of records that need to be stored in a small space. The negatives to using these files are: the equipment is very heavy; if the files are only partially filled, the unit must be loaded in such a manner as to evenly distribute the weight; only one person at a time can operate the unit; and the files are costly.

f. Lateral Traversing Suspension File Unit

The lateral traversing suspension file unit is based on the open-shelf concept. The equipment is designed as a double row of shelf-style units with the front shelves blocking the rear shelves. One unit in the front set is omitted to permit access to the rear. With this type of equipment, the whole shelf unit moves. Electric motors are used with this type of housing to reduce manual effort.

g. Rotary File Units

Rotary file units are also available for housing case files. The units are circular in design and maintain the case folders vertically. Sizes and capacities vary. One of the problems associated with this type of file system is that only one person can use the file unit at a time. Before selecting this or other specialized equipment, it is necessary to conduct feasibility studies to determine which best suits your needs.

11. List the steps that will contribute to a successful case filing program._____

_____

_____

12. What steps should be taken to improve existing case files?_____

_____

_____

13. List what the court would consider when determining the future volume of cases._____

_____

_____

14. What are the issues that a court will want to consider when determining the court's reference needs regarding case files?_____

_____

_____

15. What should a court consider when establishing case folders? _____

_____

16. Why is it necessary to determine what information should be posted on the outside of case file? _____

_____

17. What information on the outside of a case file might be useful as a reference tool? _____

_____

18. What are the factors that should be considered when determining the physical type of a case file folder? _____

_____

_____

19. What are the advantages and disadvantages of filing papers loose in a case file? _____

_____

_____

20. When are fastened files usually preferred? _____

_____

21. What questions should a clerk ask when evaluating file arrangement systems? _____

_____

22. What is the first determining factor in the selection of file arrangement? _____

_____

23. What is a direct access filing system? _____

_____

24. What is an indirect access filing system?_____

_____

25. What is an alphabetical file arrangement? _____

_____

26. What are the advantages and disadvantages of an alphabetical filing system? _____

_____

_____

_____

27. What is a numerical file arrangement?_____

_____

28. What is straight- or consecutive-numeric filing? _____

_____

29. What is a terminal-digit numeric system? _____

_____

30. What is a middle-digit system? _____

_____

31. What is a duplex-numeric system?_____

_____

32. What is a decimal-numeric system?_____

_____

33. What are the advantages and disadvantages of a numerical filing system? _____

_____

34. What is an alphanumeric system? _____

_____

True or False

35. It is better to have multiple filing places than to centralize control of the files. ____

36. To help maintain records properly, every clerk should be a file clerk. ____

37. How records are retrieved can affect file arrangement. ____

38. Having a manual on filing procedures ensures that filing decisions are not erratic. ____

39. When setting up files in filing cabinets, clerks should pack the files as tightly as possible to save on the number of filing cabinets the court must have. ____

40. The court should have a check-out and check-in system to keep track of case files. ____

41. What basic questions should a clerk consider when selecting filing cabinets? _____

_____

_____

D. Considering Fire Safety

Many factors affect the fire safety of case files. The intensity and severity of a fire depends on the type of building construction and height, the fuel load that comprises the building's combustible contents, including the kinds of furnishings, and the quantity of files and type of equipment used for them. If files are housed in metal files, cabinets, or other closed metal containers, the ability of the fire to spread from combustible materials in one location to materials in nearby locations is relatively low. If open shelving is used, the ability of the fire to spread is much higher.

Space utilization and minimum cost factors favor open shelf filing for case files. However, the fire protection factor makes shelf files with doors a wiser choice, as long as other factors are considered, such as automatic sprinkler systems, smoke detection systems, and the quantity of other combustible materials. Courts should assess fire hazards when purchasing and placing files in the office space.

42. What does the intensity and severity of a fire depend on? _____

_____

_____

43. What factors should be considered to assess fire safety when purchasing filing equipment? _

_____

E. Conducting a Records Inventory

The purpose of a records inventory is to determine what records a court has, where they are located, and how many records there are. It provides a picture of the records that need to be managed and analyzed. An effective records management program cannot be established without a complete records inventory. When conducting an inventory, the goal is not to inventory every piece of paper, but to determine and identify records categories. For example:

- cases waiting for defendants to appear;
- cases set for trial;
- cases being held for completion of driving safety course or deferred disposition;
- cases on payment plans;

- cases with warrants issued;
- cases in bond forfeiture; and
- inventory computer printouts, microfilm, magnetic media, photographs, and any record or information on computer files.

The benefits of a records inventory are to help save space, release equipment for more productive use, provide a proper evaluation of file functions and activities, assist in the detection of unnecessary copies of records, provide a way of assessing the length of usefulness of records, and help in the appraisal of legal implications of records. When preparing for an inventory, the following steps will help make the process successful:

- define objectives;
- communicate plans to management and staff;
- specify data to be collected;
- determine file locations;
- prepare an inventory form (a separate inventory worksheet should be used for each records series);
- establish work schedules and completion dates; and
- select personnel for the inventory process.

A successful inventory should provide the following information:

- identity of records by category or record series;
- physical location of all records;
- categorization of equipment and supplies;
- reference activity;
- methods used for disposing of obsolete records; and
- analysis of the cost of recordkeeping.

1. Records Terminology

Make sure that staff understands the concepts involved in records terminology. The smallest unit is the “page” or “document.” The next smallest unit is the “file.” The largest unit of information is the “records series.” A records series is a group of identical or related records that are normally used or filed as a unit.

Next, the court should differentiate between “records” and “non-records.” Generally, records are the “official copy” when they supply information on organization, function, policy, procedure, and operation; or it is the original case file. Usually copies or duplicates of records are “non-records” and are only kept in the office for as long as they are needed and then destroyed when the retention period has ended.

An example of what might be considered an “official copy” and needs to be kept until the retention period has ended is an appeal from a non-record municipal court. When a case is appealed from a

non-record municipal court, the original records are sent to the appellate court and the municipal court keeps a copy. In some instances, however, the appellate court may determine that it does not have jurisdiction and send the case back to the municipal court. The municipal court's judgment is then due. Remember that an appealed case is still active until the appeal has been completed, and the copy of the case should be handled the same as the original.

2. Administrative Files

Administrative files often contain duplicate information or miscellaneous information that no one knew where to file but did not want to destroy. It is almost impossible to assign a separate retention schedule for these files because they change daily. The person who oversees the inventory might have to decide which of these records are essential and establish records retention schedules for them. It might be that some of these records need to be stored separately or combined with other department records. Generally, miscellaneous files that need to be kept should be listed as departmental administration files.

3. Computer Records

When inventorying computer records, a court not only needs to consider the records on the computer, but also the backup medium. The person preparing the inventory needs to know what the current policy is on information backed up and the policy on writing over the data stored on the media.

When a court changes hardware and software, the older records may be in a computer medium no longer used by the court. The State requires courts to keep and maintain hardware and software so that all computer records are accessible, including both active and inactive records.

Also, an inventory should include files that are on all personal computers. While it may not be possible to inventory all files users create, the court should identify files or records that are of long-term importance to the court. This is important because the court should know the information it has and be able to set retention periods for these records so that they are monitored. The information developed from the inventory can help a court to decide how best to maintain this information.

4. Types of Information Included in Inventory

The types of information that a court should collect when conducting an inventory includes:

- title of records series;
- purpose or description of the records series;
- time span covered by the series (inclusive dates);
- linear measurement of the series;
- physical description (media, size, and color);
- description of storage equipment;
- frequency of use;
- rate of accumulation;

- date of inventory;
- source of the information used to create the records series;
- what records are created from the information in the series;
- original and secondary purposes of the records series; and
- where duplicate sources are located.

5. Worksheet

The most important information on an inventory worksheet, after the records series title, relates to the record's function, which is the basis for the record's retention period. The inventory worksheet should also include a floor plan showing the physical location and the organizational location of records for office space and storage locations. Be sure to include records in all the formats in which they are maintained.

44. What is the purpose of a records inventory? _____

_____

45. What is the goal of a records inventory? _____

_____

46. What are the benefits of a records inventory? _____

_____

47. What steps will help make a records inventory successful?_____

_____

_____

48. What information will a successful records inventory provide? _____

_____

49. What is the official copy of a record? _____

_____

50. What are non-records? _____

_____

51. What is an example of a non-record that is also an official copy? _____

_____

52. What are administrative files? _____

_____

_____

53. A person performing an inventory would need to know what information when inventorying computer records? _____

_____

54. List the types of information that an inventory should collect. _____

_____

_____

_____

55. List the information that should be included on an inventory worksheet. _____

_____

_____

_____

F. Records Retention

1. Records Retention Program

Every city was required to establish a records management program by ordinance on or before January 1, 1991. Sec. 203.026, L.G.C. The ordinance must provide methods and procedures to enable the governing body, custodians, and the records management officers to fulfill the duties and responsibilities of a records management program under Sections 203.021, 203.022, and 203.023 of the Local Government Code. These sections provide for the duties and responsibilities of the governing body, custodians, and records management officers.

Each city is also required to establish the office of records manager. Sec. 203.025, L.G.C. The duties of a records management officer are found in Section 203.023 and include coordinating the city's records management program and making certain that it complies with state regulations. On or before January 4, 1999, the records management officer had to prepare and file with the Texas State Library and Archives Commission a records control schedule listing city records and retention periods. The retention periods could not be less than those prescribed by state or federal law or an established records retention schedule issued by the Texas State Library and Archives Commission. Sec. 203.042, L.G.C.

The Texas State Library and Archives Commission has established mandatory retention schedule for local governments. Sec. 441.158, G.C. "Retention period," as defined by Section 441.151(13) of the Government Code and Section 201.003 of the Local Government Code, means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction. Section 201.003 defines "records retention schedule" to mean a document issued by the Commission under authority of Chapter 441 of the Government Code, which establishes mandatory retention periods for local government records.

Practice Note

Section 441.158 of the Government Code requires the Texas State Library and Archives Commission to prepare and distribute records retention schedules for each type of local government record to records management officers of local governments.

The retention schedule for the records of justice and municipal courts, Local Schedule LC, can be found at www.tsl.texas.gov/slrm/localretention/schedule_lc. No local government can dispose of a record listed in the TSL mandatory retention Local Schedule LC prior to the expiration of its retention period.

2. Local Government Records

"Local government record" is defined in Section 441.151(8) of the Government Code and Section 201.003 of the Local Government Code to mean "any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of the physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. The term does not include:

- extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government;
- notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience;
- blank forms;
- stock of publications;
- library and museum materials acquired solely for the purposes of reference or display; or
- copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552 of the Government Code or other state law.

3. Retention Periods

Although it is impossible to list every record in each city, the Texas State Library and Archives Commission has compiled a manual that provides a list of groups of types of records and the required retention periods for each of the groups. For retention periods for municipal court records, case file records are listed in one section, while the financial, administrative, and personnel records are listed in other sections. The retention period for a record applies regardless of the medium in which it is maintained. Unless otherwise stated, the retention period for a record is in calendar

years from the date of its creation.[4] Clerks should check with their records management officer for the records retention schedule of court records filed with the Texas State Library and Archives Commission.

a. Official Records

The retention periods, unless otherwise noted, apply only to official records. Working copies created for informational purposes do not have to be retained according to the mandatory retention schedule. When several copies are maintained, each local government decides which shall be the official records and in which divisions or departments those records will be maintained.

b. Bound Volumes

If records are maintained in bound volumes in which the pages cannot be removed, the retention period, unless otherwise stated, dates from the date of last entry.

c. Records Maintained Together

When two or more records listed on the retention schedules are maintained together and are not severable, the combined record must be retained for the length of time of the component with the longest retention period.

d. Administratively Valuable (AV) Records

The retention period of a record that is assigned the retention period of "AV" means the record is kept as long as administratively valuable at the discretion of the city. Although "AV" may be used as a retention period on records control schedules submitted to Commission, it is a better management practice to assign fixed retention periods for each record series because "AV" records have a fairly subjective retention period and tend to accumulate and go unmanaged.

e. Electronically Stored Data

Section 205.002 of the Local Government Code authorizes local governments to store records electronically in addition to or instead of in paper or other media. Article 45.017 of the Code of Criminal Procedure authorizes judges to process and store dockets by the use of electronic data processing equipment. These records are subject to the same requirements as the source documents.

Before electronically storing any local government record data of permanent value or any with a retention period of at least 10 years, an electronic storage authorization request must be submitted to the Commission. Sec. 205.007, L.G.C.

Electronically stored data used to create a record or the functional equivalent of a record described in the Local Schedule LC must be retained, along with the hardware and software necessary to access the data, for the retention period assigned to the record, unless backup copies of the data generated from electronic storage are retained on paper or microfilm for the retention period.

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[4] *Texas Municipal Records Manual,* published by the Texas State Library and Archives Commission.

G. Electronic Mail

Section 201.003 of the Local Government Code defines "local government record" to include any electronic medium created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. If email that is created or received meets the definition of a local government record, it is subject to the same rules that govern other local government records.

Email has become commonplace to conduct government business, and government officials should take steps to develop policies and procedures to ensure records created or received on email systems are managed according to the requirements of local government records. All electronic mail systems, including messages, calendars, directories, distribution lists, attachments (such as word processing documents), and messages sent or received, should be evaluated to identify documentary materials that satisfy the definition of a local government record.

An electronic mail policy should include the following:

- purpose of email;
- use of business language in email;
- use of humor in email;
- how received email is acknowledged; and
- how and when email is edited or deleted.

Guidelines for the use of electronic mail should include:

- do not use offensive language or engage in offensive topics;
- do not use sarcasm or language with potential for misunderstanding;
- do not forward email without permission;
- do not use email for sensitive or confidential information; and
- do not use office email for informal, personal communication.

H. Microfilming Local Government Records

The Texas State Library and Archives Commission has adopted rules establishing standards and procedures for microfilming local government records. Sec. 204.004, L.G.C. If the city's records management officer does not have a copy of these rules, a copy can be requested from the Commission.

Section 204.001 of the Local Government Code defines "microfilm" to mean roll microfilm, microfiche, and all other formats produced by any method of microphotography or other means of miniaturization on film. That section also defines "microfilming" to mean the methods, procedures, and processes used to produce roll microfilm, microfiche, or other microphotographic formats. Local governments are authorized to maintain on microfilm local government records, in addition to or instead of paper, or other media. All microfilm produced before June 1, 1990, under prior law is validated to the extent the microfilm was produced in the manner and according to the standards prescribed by prior law. Sec. 204.003, L.G.C. Regardless of the medium used to maintain the record, the records are still subject to the same requirements. Sec. 204.002, L.G.C.

Section 441.168 of the Government Code provides that on request of a local government, the Commission may provide for the microfilming of a local government's records. The city must pay a fee for this service to cover the costs of administering and expanding the microfilming services of the records management division of the Commission. A microfilmed record created in compliance with Chapter 204 of the Local Government Code and rules adopted under it is an original record and must be accepted by any court or administrative agency of this State. Sec. 204.011, L.G.C.

The city is required at the request of the Commission to supply to them a copy of the microfilm of any permanent record to which access is not restricted by law. The Commission shall reimburse the city for the cost of the copy. Sec. 204.009, L.G.C. An index to a microfilmed record must show the same information that may be required by state law for an index to the same record if it is not microfilmed. Sec. 204.006, L.G.C. This index can be maintained digitally.

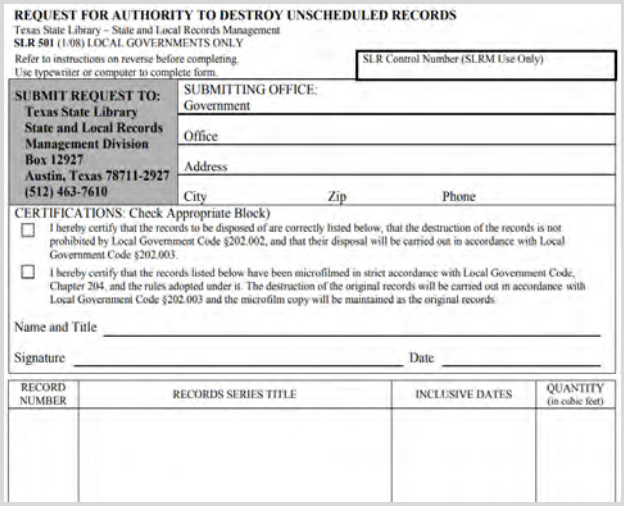
Microfilming is generally considered to be one of the safest methods of protection, but the film does require a special storage environment. Since moisture affects microfilm, the court should select storage cabinets and vaults that are designed specifically to protect film products. The main disadvantages of placing case files on microfilm include the expenses involved in producing high quality, readable film; the requirement for viewing equipment; the visual discomfort and fatigue resulting from prolonged viewing; and the constant need to update open case files already on microfilm.

Organized case files are ideal candidates for miniaturization, particularly if the microfilm process constitutes part of an information system at the time the case files are created. Normally, microfilming is used to maintain and store closed files.

I. Damaged Records

Records whose minimum retention periods have not expired and are less than permanent may be disposed of when they have been badly damaged by fire, water, insect or rodent infestation, or are unreadable or unintelligible.

Practice Note



REQUEST FOR AUTHORITY TO DESTROY UNSCHEDULED RECORDS
Texas State Library – State and Local Records Management
SLR 501 (1/08) LOCAL GOVERNMENTS ONLY
Refer to instructions on reverse before completing.
Use typewriter or computer to complete form.
SLR Control Number (SLRM Use Only)

SUBMIT REQUEST TO:
Texas State Library
State and Local Records Management Division
Box 12927
Austin, Texas 78711-2927
(512) 463-7610

SUBMITTING OFFICE:
Government
Office
Address
City Zip Phone

CERTIFICATIONS: Check Appropriate Block)
☐ I hereby certify that the records to be disposed of are correctly listed below, that the destruction of the records is not prohibited by Local Government Code §202.002, and that their disposal will be carried out in accordance with Local Government Code §202.003.
☐ I hereby certify that the records listed below have been microfilmed in strict accordance with Local Government Code, Chapter 204, and the rules adopted under it. The destruction of the original records will be carried out in accordance with Local Government Code §202.003 and the microfilm copy will be maintained as the original records.

Name and Title _____
Signature _____ Date _____

RECORD NUMBER	RECORDS SERIES TITLE	INCLUSIVE DATES	QUANTITY (in cubic feet)

Damaged records that are required to be kept permanently may not be destroyed unless authorization to do so is obtained from the director and librarian of the TSL. The Request for Authorization to Destroy Unscheduled Records form is used to make the request. This form need not be filed for records shown as exempt from the requirement in the authority/comments column of the Local Schedule LC. These records should appear on the records control schedule submitted by the city. Records management forms can be found at https://www.tsl.texas.gov/slrm/forms.

56. When was every city required to establish a records management program by ordinance?___

_____

57. What are the general duties of a records management officer? _____

_____

58. What commission establishes mandatory retention schedules for local governments? _____

_____

59. Define records retention period._____

_____

_____

60. What is the court clerk's responsibility in the citywide records management program required by Texas State Library and Archives Commission? _____

_____

61. What is a local government record?_____

_____

62. List documents that are not considered to be local government records. _____

_____

_____

_____

63. Unless stated otherwise, how are retention periods figured? _____

_____

True or False

64. Retention periods apply to all local government records. ____
65. If records are stored in bound volumes, the retention period dates from the date of the last entry. ____
66. When records are maintained together, the combined record must be retained for the length of time of the component with the longest retention period. ____
67. For administratively valuable records, the retention period is at the discretion of the city. ____
68. Municipal court dockets may be stored electronically. ____
69. Documents that are stored electronically have a different retention period from paper documents. ____
70. The hardware to access electronically stored data must always be maintained by the city for documents that are stored. ____

71. When is electronic mail considered to be a government document? _____

_____

72. Who is responsible for adopting rules establishing standards and procedures for microfilming local government records? _____

_____

73. Define microfilm._____

_____

74. What state agency for a fee may provide microfilming of local government records? _____

_____

75. When may a damaged record be destroyed? _____

_____

76. When may a damaged record that has a permanent retention period be destroyed? _____

_____

J. Managing a Records Management Program

1. Implementing Records Schedules

After records schedules are approved by the Texas State Library and Archives Commission, they may be implemented. The person responsible for the control, maintenance, and archival of records should set up a display schedule of events, such as:

- a method of reviewing files to determine when the retention periods are expired;
- which records are to be disposed of; and
- which records go to storage.

A record should be kept of all records stored and/or destroyed.

After schedules are implemented, the court should conduct a records audit to determine that the implementation was proper. This helps to ensure that the standards are being met. To check compliance, the person conducting the audit should do the following:

- verify that an up-to-date records manual is available;
- check all the major records categories to ensure compliance with records schedules;
- spot check individual offices, computer terminals, and files for compliance; and
- verify compliance with records management criteria.

The audit report should detail all findings and indicate whether follow-up action is required.

2. Updating Records Schedules

Records retention programs are ongoing. When developed, the retention plan should include provisions for annually reviewing the schedules and updating them when necessary, including checking categories to determine if any should no longer be maintained, if others should be added, or if the current schedules are adequate. The destruction of records should be reviewed to determine if personnel are properly complying. An audit of the records should also be conducted in the same manner as the audit that was conducted when the schedules were implemented.

If records schedules need to be updated, that process should be coordinated with the records management officer, and a schedule should be developed to complete the project. Section 441.160 of the Government Code provides for revisions to records retention schedules. The statute states that the TSL must approve new schedules. However, editorial changes that do not substantively change the description of the record or its retention period do not require approval. If any changes to the retention period are the result of changes in a federal or state law, rule of court, or regulation, those new schedules do not require approval by the Commission. The records management officer is required to review records schedules and prepare amendments to the schedules as needed. The amended schedules are filed in the same manner as the original schedules. Sec. 203.041, L.G.C.

3. Storing Active Records

For most records created within city government, the record copy is filed and maintained by the department that created it. This means that municipal court records are kept in the municipal court. Although other city departments may maintain the personnel records, attendance records, or financial records, copies may be also kept in the municipal court. The original copy is generally the record that is maintained according to the records retention schedule. Copies of records generally are non-records and are maintained only as long as they are useful, and then they are destroyed. An exception to this rule is an appealed case from a non-record municipal court. The copy of the appealed case papers maintained by the municipal courts become the official copy and is maintained according to the record retention schedule. Other examples of copies of records in municipal court that are subject to record retention include:

- notice of final conviction reports submitted to the Department of Public Safety;
- quarterly reports of court costs submitted to the State Comptroller's Office; and
- monthly reports submitted to the Office of Court Administration.

Some of these records might be maintained in the municipal court and the finance department. If there is more than one copy retained by the city, the city must determine which of these records are to be maintained according to the records retention schedule and which are reference copies for convenience. The reference copies should only be retained as long as they are administratively useful.

For records that originate outside of city government, generally, the department or office that receives the record maintains it. For example, in the instance of correspondence, certificates, or other evidence received by a court from defendants, if copies are made for the prosecutor, the original copy received by the court would be subject to retention periods for case files.

The Commission does not require that cities file notice of intent to destroy records for non-record copies (administratively useful copies of records). Similarly, if a record copy is replaced by another

copy, such as microfilm, the original of a record may be destroyed. Sec. 204.007, L.G.C. However, if the original record is a permanent record, the record may not be destroyed until the Commission has granted permission. Sec. 204.008, L.G.C.

The location of archived records is a decision that is usually made by the city—not the court clerk. The clerk should work with the records management officer to ensure that the court records are properly stored and labeled so that they can be retrieved if necessary. Another question involving storage is the medium in which the record is to be maintained in storage. Some cities, in order to reduce the costs of storage, microfilm records and only store the microfilm and destroy the paper copy of the record. Thus, the location of stored records may be dependent upon the medium of the stored records.

4. Maintaining Records

a. Identifying and Protecting Essential Records

An "essential record" is any record necessary to the resumption or continuation of government operations in an emergency or disaster, to the recreation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the State. Sec. 201.003, L.G.C., and Sec. 441.151, G.C. Each court must decide which records fall into this category.

The court should also develop ways in which paper records can be protected from unsupervised public access, natural disasters, human-made disasters, disgruntled employees, or employee carelessness. The court might want to consider:

- secure, fire-resistant filing cabinets;
- specially designed vaults;
- computer passwords;
- duplicate copies;
- back-ups maintained at different locations; and
- off-site storage.

Every plan that is formulated to protect essential records should also include recovery steps to take if a disaster occurs.

b. Indexing Active Files

If a file needs to be retrieved by more than one identifier, then computer indexing is the most efficient method of indexing the records. A case file is an example of records that might need to be retrieved using different information. Most defendants do not know the docket number of their case; if they have lost their ticket, they do not know their ticket number, so there needs to be more than one method of accessing those records, particularly if the court is using a numeric system of filing. Courts that do not have computers should keep a card index system for case files and other records used by the court. Both types of indices need to be closely monitored and checked for accuracy.

c. Managing the Files

Courts must decide how to best manage case files regardless of whether the filing is alphabetical or numerical. The main issue is whether to centralize or to have a decentralized system for the active files. Decentralization allows files to be maintained in separate locations, which may allow for easier use. The negative side of this type of system is that files are more easily lost and harder to retrieve. With a central file system, all active files—except those that are being created or used at that time—are maintained in a central file room. The files must be checked out, and if the files are not returned, follow-ups must be conducted.

For easier retrieval of records and reduction of misfiles, files can be color-coded. If the court is using a numeric filing system, a different color can be used for each digit. With an alphabetical system, a different color may be assigned to each letter.

If bar coding is used, a system of checking files in and out should be established. For example, the bar code would be scanned into the system when it is checked out and rescanned when it is brought back. This works well with a centralized filing system. When files are being used, it may make refiling easier if an out-card is inserted where the file was removed.

A "floating file" may cause a problem regardless of the type of filing system. For example, a clerk checks out a file and then passes it on to the prosecutor instead of taking the file back to the central file, checking it back in, then letting the prosecutor check it out. If the clerk forgets that he or she gave it to the prosecutor, the court might have to spend time looking for the file. The only way to avoid this problem is to establish a policy of requiring the person who checked out the file to return it to the file system and not allow the file to be given to another person without it going through the check-out/check-in system. Another way to manage this problem is to use routing forms. When the person who has checked out a file transfers it to another person, a routing form is sent to the central files.

5. Archiving Records

a. Storage Media

(1) Micrographics

Micrographics is the process of producing or reproducing information in miniature form. It is also termed microprinting or microphotography and encompasses the creation, use, and storage of microforms, which is another name for various film formats. Microphotography is the filming of records. Microfilm is a fine-grain, high-resolution film that can record images greatly reduced in size. Microfiche is sheets of film containing a number of images in a grid format. Micrographics refers to the technology of recording images on microfilm. The decision of whether to film records is a matter left to each city to consider. However, if a city decides to film records, the filming must be done in accordance with state statutes and rules adopted under those statutes, and micrographics clauses should be added to the ordinance establishing a records management program. Sec. 204.002, L.G.C. Section 7.26 of the Texas Administrative Code requires original microfilm to be stored in a separate building from that in which duplicate copies, if any, or the original records are housed. The storage must meet the conditions provided for in the Texas Administrative Code. Courts can contact TSL for information on storage requirements of microfilmed records.

For a micrographics program to be successful, a determination must be made on which records to film. Any records that are marginal or of short-term value most likely should not be filmed. The program should be centrally located and under control of the records management officer. When records retention schedules are developed, establish the purpose of filming. It may be that the purpose is to ensure permanent preservation, security for vital records, or convenience. The Commission can advise cities on micrographic standards and procedures. Cities considering such a program should contact the Local Records Division before establishing a program.[5]

(2) Electronic Document Imaging

Courts may store records electronically in addition to or instead of the source documents in paper or other media. However, electronic storage is subject to the requirements of Chapter 205 of the Local Government Code and the rules adopted under it. Sec. 205.002, L.G.C. If the city's records management officer does not have a copy of the rules, the court should contact the Commission because the rules contain necessary, specific handling provisions.

In imaging systems, a document is "scanned" and converted into a digitized format that can be read by computers and electronically stored and retrieved. Data attached to each image enables the computer to link it to a specific case, individual, or other documents. The image can be written into the storage device only once but can be read many times without making any alterations. The stored image is a duplication of the original. The digitized images can be stored on a hard drive, optical disk, or other computer-readable media.

(3) CD-ROM/DVD

With optical disks, documents can be added to the disk over an extended period of time until the disk is filled.

- CD-R

  A CD-R is recordable CD-ROM technology using a disk that can be written only once. A CD-Reader/Writer can be used as a regular CD-ROM reader once burned or written. These images cannot be removed or altered. All documents are written to the disk at once. After a file has been closed, information cannot be added to the file. The life span of a CD-R varies, depending on the quality of the disk. Information should be transferred periodically to save the data.

- CD-RW

  A CD-RW is rewritable CD-ROM technology. CD-RW drives can also be used to write/read CD-R discs and read CD-ROM technology. CD-RW is different from CD-R because if left open, data on a CD-RW can be deleted or data can be added. A CD-RW can also be used over and over again. Even after the CD-RW is closed, the disk can be reformatted and be re-used. If the disk is reformatted and re-used the original data is no longer accessible. Because CD-RWs last about four years, any information stored on a CD-RW should be transferred to another CD-RW every four years.

- DVD

[5] *Texas Municipal Records Manual,* published by the Texas State Library.

A DVD is an optical disc storage media format. DVD originally stood for Digital Versatile Disk or Digital Video Disk. DVDs offer higher storage capacity than compact disks but have the same dimensions. DVDs are not readable as long as other mediums. Depending on the manufacturing quality and storage practice, it is estimated that the DVD will remain readable for 2 to 15 years.

b. Permanent Records

Any records that are required to be kept permanently must be properly stored so that they are not damaged or destroyed. Contact the TSL for information on rules adopted under Section 203.048 of the Local Government Code regarding standards for the proper care and storage of records of permanent value.

c. Cartons and Shelving

If the court is storing the actual paper records, the type and size of the cartons need to be coordinated with the type and placement of shelving. The size of the storage area is also important when considering shelving. The type of records to be stored might also dictate the type of cartons. For example, computer printouts might have to be stored flat while file folders could be stored upright in a carton.

d. Records Organization

A method to organize records is to assign box numbers that would also indicate where in the storage area the box is to be stored. This will assist in the retrieval process. The person in charge of archiving records should maintain an index of boxes and their contents. To assist in locating stored records, two numbers should be used—one number for the location in the storage area and the other number for identifying the contents of the box.

For easy retrieval, the court might consider bar coding cartons and shelves instead of using numbers. When a box is shelved, both the box bar code, shelf bar code, and content bar code can be scanned.

e. Storage Index

All records that are stored should be indexed. The index should be cross-referenced with a box number. This enables anyone needing to retrieve a record to provide just the index number of the record to the custodian of the stored records. Records that are microfilmed must have an index that shows the same information required by state law for an index to the same record if it is not microfilmed. Sec. 204.006, L.G.C.

A computer index is the easiest to update and maintain. If a manual system is used to index stored records, a card index must be maintained. A separate card should be maintained on each carton stored. A destruction log should also be maintained. When determining how to index records, the following questions should be asked.

- Do you want to index every file or document in the box?
- How do you want to index the records? For example, do you want to index case files according to their docket numbers, by defendants' names, or by some other method? Do you want to index by record title or category?

- Depending on how you index, how do you sequence the index and summarize the contents?
- How do you link the storage of the records to the retention schedules so that the destruction date of the records is easily tracked?
- How are control box numbers and location numbers assigned to the indexed records?
- How is the listing of the index records to be maintained?
- What type of system will be used to retrieve the records?

f. Transfer of Records to Storage Area

A plan to transfer records should include who is responsible for verifying that the records belong in storage, boxing up the records, labeling the records, and transporting the records. Boxing of records would include how the records are placed in the box, whether file folders or fasteners are boxed, and how the records are bundled together. After the boxes are filled, a transfer form should be completed. One copy of the transfer form would accompany the box to the storage area and another copy would stay with the court.

6. Documenting the Records Management Program

A records management manual should include:

- a records management policy;
- instructions on the use of records retention schedules;
- procedures for updating records retention schedules;
- forms used to manage records;
- procedures on implementing the program on an ongoing basis;
- procedures on internal operation;
- staff procedures;
- disaster recovery procedures;
- filing procedures;
- procedures on transferring and storing records; and
- procedures for updating the manual.

7. Checklist to Help Evaluate Maintenance Program

The following is a list of questions that will help evaluate the court's maintenance program.[6]

- Does your court have a files handbook, manual, or other directive to provide uniform file maintenance procedures?

[6] *Evaluating Files Maintenance and Records Disposition Programs,* National Archives and Records Administration.

- Are file maintenance procedures correlated with approved records control schedules for the prompt removal of inactive records from office space?
- Is physical access to records controlled to prevent unauthorized disclosure or access?
- Is each records series arranged in its own internally consistent pattern, such as, alphabetical, chronological, numerical, or subject order?
- Is each records series arranged based on the way people in the office usually access the records?
- Are cross references prepared when needed?
- Are periodic checks made for misfiles?
- Are records filed on a daily basis?
- Are out-cards or other charge-out controls used whenever documents or files are removed from the official file stations?
- Before filing, are documents examined to ensure that they are complete and that the following materials have been removed: envelopes, paper clips, routing slips, cover sheets, superseded drafts showing no substantive changes, and duplicate copies, other than those needed as cross reference?

True and False

77. The court does not need to keep a record of records that are destroyed. ____

78. The court should periodically perform a records audit to determine if record schedules have been properly maintained. ____

79. What should an auditor conducting a records audit look for?

_____

80. How often should records schedules be reviewed? _____

81. Who must approve new records schedules?_____

82. When can non-record copies be destroyed?_____

_____

83. List records that are copies of records that should be maintained as original copies._____

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_____

_____

84. Define essential records. _____

_____

_____

85. List some ways that municipal court records can be secured from disasters such as fire. ____

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_____

86. What is the most efficient method of indexing court records? _____

87. What is a decentralized filing system? _____

_____

88. What is a centralized filing system? _____

_____

89. What is a bar coding system? _____

_____

90. What is a floating file? _____

_____

91. What is microphotography? _____

_____

92. What is microfilm? _____

_____

93. What is microfiche? _____

_____

94. What is the process of micrographics? _____

_____

95. When should the purpose of microfilming be established? _____

_____

96. What does an electronic document imaging system do? _____

_____

97. How can digitized images be stored? _____

_____

98. How can records be organized for storage? _____

_____

99. List questions that should be considered when determining how to index stored records. ___

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100. What should a plan for transferring records to storage include? _____

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101. List the type of documentation that a records management manual should include. _____

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102. What questions help evaluate a court's maintenance program?_____

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K. Destroying Records

Section 202.001 of the Local Government Code establishes criteria governing the destruction of local government records. Records do not have to be microphotographed before destruction. A record may not be destroyed if it is currently in litigation or if there is an open records request. A local government record may be destroyed if:

- it appears on the local government's records control schedule that has been accepted for filing by the Commission and its retention period has expired on the schedule;
- it appears on a list of obsolete records approved by the Commission;
- a request for authorization to dispose of unscheduled records is submitted to the Commission and approved;
- its destruction or obliteration is ordered by a court expunction order issued by a district court pursuant to state law;
- the record is listed as exempt from the destruction request requirement on a records retention schedule issued by the Commission;

- the retention period on a records retention schedule issued by the Commission has not yet expired, but the record is non-permanent, and it has been microfilmed according to Commission standards (if the record is a permanent record on the state-issued schedule, a destruction notice must be submitted and approved);
- the retention period on a records retention schedule issued by the Commission has not yet expired, but the record has a retention period of less than 10 years, and it has been converted to an electronic medium in accordance with Chapter 205 of the Local Government Code; or
- the retention period on a records retention schedule issued by the Commission has not yet expired and the record has a retention period of 10 years or more, and the local government has submitted to the Commission and has approved an electronic storage authorization request.

An original record that has been microfilmed pursuant to state rules can be destroyed before the expiration of its retention period on a records retention schedule issued by the Commission. A list of the originals of microfilmed records destroyed shall be filed with the records management officer. The microfilm record must be retained until the expiration of the retention period for the original record. Sec. 204.007, L.G.C. A permanent record may not be destroyed even though it is microfilmed until a *Destruction Authorization Request* is submitted to and approved by the Texas State Library and Archives Commission. Sec. 204.008, L.G.C. This request shall be submitted by the records management officer or under the officer's direction. Sec. 204.008, L.G.C.

After media conversion, the microfilm of records and electronically stored data are subject to the conditions listed above.

Electronic records may be destroyed only in accordance with Section 202.001. See rules noted above. Magnetic storage media previously used for electronic records containing confidential information cannot be reused if the previously recorded information can be compromised by reuse in any way. Sec. 7.78, T.A.C.

1. Notice of Destruction

If cities have not developed and published records retention and disposition schedules approved by the Commission, a notice of proposed destruction or other disposition of records (such as transfer to a county historical commission) shall first be given to the Texas State Librarian who decides if the records should be preserved. If they are, the records are transferred to the Commission and placed in one of its regional historical resource depositories. The notice to dispose of records is called *Notice of Intent to Dispose of Public Records*. Copies of the form may be obtained by contacting the Local Records Division of the Commission. A city that has records retention and disposition schedules developed may, in lieu of filing intent to dispose notices, submit a copy of the schedules to the State Librarian. The schedules must be approved in writing by the city attorney and be accompanied by a copy of the ordinance that established the records management program from which the schedules are derived. Any amendments or additions to the schedules approved by the city attorney must be filed with the State Librarian. Cities must submit a *Notice of Intent to Dispose of Public Records* for records that are not yet scheduled or records not on the schedules in order to destroy the records.

2. Methods of Destruction

Section 202.003 of the Local Government Code provides for methods of destruction of records. The methods include:

- burning;
- shredding;
- pulping;
- burying in landfill; and
- selling or donating for recycling.

Records that are confidential under the Public Information Act or other state laws cannot be destroyed by burial in a landfill or by sale or donation for recycling. They must be burned, pulped, or shredded. Cities that sell or donate records for recycling purposes shall establish procedures for ensuring that the records are rendered unrecognizable as local government records by the recycler. Sec. 202.003(c), L.G.C.

3. Alienation of Records

Alienation of a city record is the act of selling, donating, loaning, transferring, or otherwise passing out of the custody of the city the city record. The only places where these records may be passed to are a public institution of higher education, a public museum, a public library, or other public entity with the approval of the city's records management officer and after the expiration of the record's retention period under the city's records control schedule. Sec. 202.004(a), L.G.C.

A city record may not be sold or donated except for the purpose of being recycled, loaned, transferred, or otherwise passed out of the custody of a local government to any private college or university, private museum or library, private organization of any type, or an individual, except with the consent of the TSL director and librarian and after the expiration of its retention period under the city's records control schedule. Sec. 202.004(b), L.G.C.

A records management officer or custodian (the court clerk is the custodian of municipal court records) may temporarily transfer a city's record to a person for the purposes of microfilming, duplication, conversion to electronic media, restoration, or similar records management and preservation procedures. Sec. 202.004(c), L.G.C.

4. Unlawful Destruction of Records

An officer or employee of a city commits a Class A misdemeanor offense if he or she knowingly or intentionally violates any of the requirements of the Local Government Records Act or rules adopted under it by destroying or alienating a local government record or by intentionally failing to deliver records to a successor in office. Sec. 202.008, L.G.C.

Section 37.10(3) of the Penal Code makes it an offense to intentionally destroy a governmental record. It is an exception if the governmental record is destroyed pursuant to legal authorization, which includes the destruction of a local governmental record in compliance with the provision of Subtitle C of Title 6 of the Local Government Code. An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event, the offense is a state jail felony. An offense under this section is a felony of the third degree if it is shown at the

trial of the offense that the governmental record was a license, certificate, permit, seal, title, or similar document issued by a government, unless the person's intent is to defraud or harm another, in which event the offense is a felony of the second degree.

To avoid criminal penalties for unlawfully destroying records, city employees need to adhere strictly to records retention and disposition schedules developed by the city and approved by the Commission.

103. When may a record not be destroyed? _____

_____

104. List the criteria for when a local government record may be destroyed. _____

_____

_____

105. Who in the city maintains a list of original records that have been microfilmed and destroyed? _____

106. When can a permanent record that has been microfilmed be destroyed?_____

_____

_____

107. What is a Notice of Intent to Dispose of Records? _____

_____

108. List the methods that a city may use to destroy records. _____

_____

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_____

109. What records may a city not sell or donate for recycling purposes? _____

_____

110. Where may the city sell, donate, loan, or transfer records? _____

_____

_____

111. When may the court clerk temporarily transfer the custody of court records?_____

_____

_____

112. What type of offense does a court clerk commit if he or she violates any requirements of the Local Government Records Act? _____

PART 2
RECORDS REQUESTS

As discussed above, municipal courts and local governments maintain a significant number of records. Many of these records, particularly in municipal court, contain both sensitive information and also information that is relevant to the public. Municipal courts routinely receive requests for some combination of this information. Court clerks should be familiar with the laws and rules governing these requests to assist the judge in formulating a response, direct the request to the appropriate authority, and ensure that records are disclosed in accordance with the law. There are three broad bodies of law that govern records requests: The Public Information Act (PIA), Common Law Right of Inspection, and Rule 12. Each is discussed below.

A. Public Information Act

The law that most city officials are familiar with regarding records is the Public Information Act. The Act, usually referred to as the PIA for short, is found in Chapter 552 of the Government Code. This Chapter, along with Chapter 551 governing open meetings, makes up almost the entirety of Title 5 of the Government Code, which is titled with the descriptive, "Open Government."

The PIA defines "public information" broadly, to include information that is written, produced, collected, assembled, or maintained under a law or ordinance in connection with official business by a government body, for a government body, or by an individual officer or employee of the government body in that person's official capacity. Sec. 552.002, G.C. The definition also includes any electronic transmission or communication if it is in connection with official business. Sec. 552.002(a-1), G.C. With certain specific exceptions that are listed in the PIA, any of this information is available for public inspection upon written request. This means that records held by the city, if they do not fall within an exception, must be provided to the requester within a reasonable time. The city must, however, produce information or inform the requester about the request within 10 business days. Sec. 552.221(d), G.C. Records requested under the PIA typically include documents pertaining to city business, such as developments, zoning, or communications between city officials.

Practice Note

The Public Information Act is an important tool for open government, but it *does not* apply to the courts. Considering the breadth of the PIA, it may be understandable that many individuals and organizations assume that it also applies to municipal court records. The court is operated through the city and even appears as a branch on most organization charts. Indeed, almost every other request for information made to a city operates under the PIA. The municipal court, however, is excluded from the PIA. Access to records of the judiciary is specifically excluded by Section 552.0035 of the Government Code; and the judiciary is listed as an exception from the definition of "governmental body." Sec. 552.003, G.C.

B. Common Law Right of Inspection

Even though courts are not subject to the Public Information Act, it has long been recognized that the public has a right to inspect court records. Courts are open to the public and, under common law, records maintained by the courts have generally been available for public inspection. This is

known as the Common Law Right of Inspection. As the Supreme Court stated in a landmark case on the issue of court records, "It is clear that the courts recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978).

The Texas Attorney General has opined, however, in open records decisions that while the public has a common law right of inspection, the judge has discretion to control public access to its records when justice so requires or when it is shown that permitting inspection would result in harm to the public interest. Tex. Atty. Gen. Op. No. H-826 (1976). This means that although the first consideration should be that court records are open under common law, the second consideration is that the judge has final discretion to decide what to release. For this reason, it is important for court clerks to timely forward any such requests to the judge for review.

Additionally, as the Common Law Right to Inspection is something that has evolved through case law over hundreds of years, there is little guidance as to specific processes and procedures. Unlike the PIA, there are no clear guidelines on timelines or costs for copies. It is important that courts have a policy on how to handle requests for court records. The policy may include a request form, an information sheet about potential costs, length of time it takes to provide the records, and in what format the records are available. Requests for municipal court records must always go to the judge, who will decide whether to release the records or not. Someone in the court should keep on file all requests and document when and how the information is provided.

1. Confidentiality

In certain areas, the Code of Criminal Procedure does provide guidance regarding public access to cases depending on case disposition and the age of the defendant. In two areas, roughly defined as adult court records and juvenile court records, the law provides for confidentiality. Confidentiality is defined in *Black's Law Dictionary* as "the state of having certain information restricted." This means that the records are generally unavailable to the public but that they may be accessed by certain individuals or entities. Confidentiality deals with restricting existing records, rather than destruction of the records, and should not be confused with expunction. Under expunction, the records are actually erased.

a. Adult Cases

Following the fifth anniversary of final conviction or dismissal following completion of deferred disposition, municipal court records are generally confidential and may not be disclosed to the public. Art. 45.0218, C.C.P. This not only includes the case file itself, but also any information stored by electronic means from which information on the case could be generated. This means that if any case in municipal court meets these requirements, information on the case cannot be provided to a requestor by the court. There are, however, exceptions outlined in the statute. If the requestor is from a list including the judge, court staff, criminal justice agency, Department of Public Safety, a prosecutor, defendant or defendant's attorney, an insurance company seeking a traffic offense, or pursuant to federal law, then the record is open to inspection. Art. 45.0218(b), C.C.P. These are important exceptions, as anyone not included on the list would otherwise be prohibited from receiving any information about the case.

b. Juvenile Cases

Juvenile confidentiality works similarly to adult confidentiality above but with a number of important exceptions. The records of a case involving a juvenile, other than for a traffic offense, are confidential and may not be disclosed to the public if the records relate to a charge, conviction, acquittal, dismissal, or deferred disposition for a fine-only misdemeanor. Art. 45.0217, C.C.P. Like the confidentiality under Article 45.0218, this includes information stored by electronic means from which information on the case could be generated. There are also similar, albeit fewer, exceptions, including judges, court staff, criminal justice agency, Department of Public Safety, child defendant, defendant's attorney, and the parent, guardian, or managing conservator. Art. 45.0217(b), C.C.P. Also noteworthy is that juvenile cases do not have any prescribed time limit as to when they become confidential. The case would become confidential simply upon one of the requirements listed in the statute.

c. Truant Conduct Cases

There are also special provisions for juvenile records relating specifically to truant conduct proceedings. Remember that all municipal courts are also truancy courts, but these courts operate under Title 3A of the Family Code and handle only truant conduct cases. Records created during these proceedings may only be disclosed to certain parties, including the judge of the truancy court, court staff, prosecutor, the child or attorney for the child, certain state agencies, or another party with leave of the truancy court. Sec. 65.202, F.C. In addition, the truancy court is required to order the destruction of any records relating to allegations of truant conduct held by the court or prosecutor if a petition to begin proceedings is not filed. Sec. 65.203, F.C.

2. Expunctions

Expunction means to wipe out or completely erase a municipal court record. As discussed in Chapter 7 of the *Level I Guide*, there are four types of expunctions in municipal court. The expunction type depends on the defendant's age, offense alleged, and case disposition. Some cases are available for expunction only following dismissal or completion of deferred disposition, while others allow for expunction even after conviction. The four expunction statutes are found in Chapter 55 for municipal courts of record, justice courts, and district courts; Section 106.12 of the Alcoholic Beverage Code for minors with only one arrest or one conviction while a minor; Section 161.255 of the Health and Safety Code for tobacco, cigarette, and e-cigarette convictions; and Article 45.0216 of the Code of Criminal Procedure for certain Penal Code offenses committed under the age of 17. Regardless of the manner in which the expunction is ordered, the municipal court should be prepared to process the order properly. This means that the record is physically removed and erased from any electronic storage or case management software.

3. Certain Personal Information

Although court records are generally open to public inspection, there are some other exceptions provided by the law. Article 35.29 of the Code of Criminal Procedure states that information collected by the court or prosecutor about persons who serve as jurors, including a juror's home address, home telephone number, social security number, driver's license number, and other personal information is confidential. Only on a showing of good cause by a party to the case or a bona fide member of the media shall the court permit disclosure of the information. If someone

wants access to this information, they must make a motion to the court. The court should then conduct a show cause hearing to determine if good cause exists for releasing the information.

Additionally, some social security numbers are confidential. Municipal courts are required under Section 543.202 of the Transportation Code to report to DPS a person's social security number upon conviction of a traffic offense if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or a commercial learner's permit. Some cities collect social security numbers to aid in locating defendants who fail to come to court or fail to satisfy their judgments.

The Attorney General in Open Records Decision No. 622 (1994) stated that "a social security number is excepted from required public disclosure under Section 552.101 of the Open Records Act in conjunction with the 1990 amendments to the Social Security Act, 42 U.S.C. Section 405(c)(2)(C)(vii), only if it was obtained or is maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990." Requests for information that contain a social security number should be reviewed by the city attorney and judge to determine if it can be released, though most courts decline to release social security numbers under the premise that it would result in harm to the public interest.

4. Affidavits for Arrest and Search Warrants

An arrest warrant and affidavit presented in support of the issuance of the warrant are public information beginning after the warrant is executed. The clerk shall make a copy of the warrant and affidavit available for public inspection in the clerk's office during normal business hours. A person can request a copy of the warrant and affidavit, which the clerk must then provide on payment of the cost for providing the copies. Art. 15.26, C.C.P.

Likewise, an affidavit for a search warrant is public information once the warrant is executed. Article 18.01(b) of the Code of Criminal Procedure provides that a sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

113. Why does the Public Information Act not apply to judiciary? _____

_____

_____

114. Why does the public have a right to inspect municipal court records? _____

_____

_____

_____

115. When and to whom may the court disclose personal information about jurors? _____

_____

_____

116. When the public requests a record that contains a social security number, what should a clerk do?

_____

B. Rule 12

Rule 12 of the Texas Rules of Judicial Administration provides for public access to judicial records. Rule 12 defines judicial record to mean "a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced or filed in connection with any matter that is or has been before a court is not a judicial record. A record is a document, paper, letter, map, book, tape, photograph, film, recording, or other material, regardless of electronic or physical form, characteristics, or means of transmission."

Thus, Rule 12 does not apply to records pertaining to the court's adjudicative function, which essentially are the cases filed in the court. The Common Law Right of Inspection would govern case files, while Rule 12 will govern other records held by the court, for example, budgets, audits, court policies and procedures, etc.

There are specific rules governing a request made under Rule 12. Among them, the requestor must be notified within 14 days of denial of a request, and the requestor may appeal a denial to the Administrative Director of the Office of Court Administration. To assist the judge with records requests under Rule 12, court clerks should be familiar with the rule. The full text of the rule is available on the TMCEC website at http://www.tmcec.com/programs/judges/rule_12/. Additionally, for more information on Rule 12, including decisions on whether requested information must be released under Rule 12, visit the Office of Court Administration's website atwww.txcourts.gov/open-records-policy/.

117. What is Rule 12? _____

_____

True or False

118. Under Rule 12, a record relating to a case filed in the court is a judicial record. ____

119. Under Rule 12, a court that receives a request for a judicial record has 14 days to allow the requestor to copy or inspect the record. ____

120. Under Rule 12, if a judge refuses to release the requested information, the requestor can appeal to the Attorney General. ____

Practice Note

Courts throughout Texas often receive "records requests" from individuals and various organizations. Individuals, and even a surprising number of attorneys and organizations, do not readily know the difference between a request to a city under the Public Information Act and a request to a municipal court. The nature of the request will dictate the appropriate timelines, requirements, and information that may be released. The most important point to take away for court clerks is that cities are subject to the Public Information Act, but municipal courts and the judiciary are specifically excluded. The courts are generally subject instead to the Common Law Right of Inspection for court records, and Rule 12, for judicial records. Finally, all of these methods are separate and distinct from the right to discovery afforded the prosecution and defense in an active criminal case.

PART 3
CASEFLOW MANAGEMENT

Caseflow management is the continuous supervision of cases. In other words, caseflow management is the process of managing time and events involved in the movement of a case through the court system. Generally, this movement is not steady, but is characterized by a series of events separated by times during which there is no court activity. In order for the court to effectively oversee the movement of a case, the court must determine its phases, how it is maintained, and its disposition. This includes the adoption of goals, standards, and timelines; the monitoring of the cases; and the proper response to the failure to comply with the deadlines. If courts want to be efficient and effective in administering justice, clerks need to understand how to manage the progress of cases. Caseflow management assumes that the court is going to actively manage each case filed.

A caseflow management system should be designed to accommodate varying degrees of management for the variety of cases that are filed in municipal courts. Because of the difference in complexity of the cases, they should not be subject to the same processing procedures and time frames. The court should create multiple tracks for case processing, each with different procedures and time frames designed to reflect the range of management and preparation requirements of the cases filed.

121. What is caseflow management?_____

_____

_____

122. In order for the court to effectively oversee the movement of a case, what must the court determine? _____

_____

123. Why should courts create multiple tracks for case processing? _____

_____

A. Goals of Caseflow Management

The goals of caseflow management are to:

- make the sequence and time of events more predictable and timely;
- provide equal treatment of all defendants;
- have timely disposition consistent with the circumstances of the individual case;
- enhance the quality of the court process; and
- enhance public confidence in the court.

B. Elements of Caseflow Management

The essential elements of caseflow management are:

- supervision and control of the movement of cases from the time of filing through final disposition (includes establishing policies and procedures for tracking and monitoring the movement of cases through all the different possible phases of a case);
- time standards;
- a system of monitoring time standards;
- identification procedures for cases that require special handling procedures;
- procedures for handling cases outside the timeline standards;
- procedures for setting trials; and
- a policy for minimizing continuances.

C. Steps to Achieve Caseflow Management

Because municipal courts see more people than all the other courts combined, the volume of cases handled by municipal courts can be intimidating and overwhelming. In order to provide fair and effective justice, courts must learn how to manage and control the movement of cases through the court. A well-designed caseflow management system will help to ensure that each case will receive the type and amount of court attention required by its nature and complexity. The following steps will help the court to develop a caseflow management program:

- Define a mission statement (identifies desired results of caseflow management).
- Define a purpose of caseflow management.
- Define goals, objectives, and standards.
- Identify resources.
- Develop a plan to analyze and evaluate current caseflow process.
- Develop an action plan for developing a caseflow management system.
- Develop a new caseflow management system.
- Develop documentation.

- Install the new system.
- Train users.

1. Resources for a Caseflow Management System

After defining the mission, purpose, and goals of caseflow management, the next step is to identify the resources available to develop a caseflow management system. The following resources should be considered:

- people (court employees and other city employees);
- equipment (computers, software, printers, etc.);
- forms (forms for assessing current system and forms used by current system);
- state and local agencies (e.g., TSL; OCA; training sessions provided by TMCEC; etc.);
- outside consultants (consider cost, benefits, and expertise); and
- any other resources that the city can provide.

2. Project Management

Development of a caseflow management system is a project that requires management of the project itself. Project management is a dedicated effort with a distinct beginning and end, conducted by people to develop or produce a new project or service that meets defined specifications and quality standards within specified parameters of costs, schedules, and resources. Project management is the combination of people, systems, and techniques required to coordinate the resources essential to complete a project according to established goals, standards, and deadlines.

a. Project Life Cycle

During the conceptual phase:

- purpose of the project is identified;
- resources are assessed;
- most time and cost effective ways of developing the project are identified;
- budget is developed;
- schedule, with a general plan of action, is proposed; and
- start-up project team is chosen.

During the planning phase:

- start-up team clarifies project objectives;
- start-up team decides how to organize the planning process; and
- groundwork for project structure, schedule, and staffing is laid.

During the implementation phase:

- people are recruited from appropriate technical and functional areas to develop the caseflow management system according to specified standards and schedules;
- caseflow management system is tested;
- user manual is prepared; and
- users are trained.

b. Project Management Activities

Project management activities include managing the:

- scope of the project, which includes coordinating activities through meetings and using controls, such as formal procedures, forms, and monitoring of the project;
- time by establishing schedules for various phases of the project and monitoring the schedules;
- money by controlling costs to keep the project within budgetary constraints and monitoring employees' schedules and other costs;
- quality by establishing standards for monitoring the team's performance and then following those standards;
- communications by establishing formal communications channels, establishing how information is disseminated, and establishing authority to make decisions; and
- human resources for the project by determining how many people possessing which qualifications are going to be needed during what period of time by managing and coordinating employees' time between regular duties and project duties; and by motivating people, managing conflict, monitoring performance, and training personnel.

c. Project Manager

A project manager should be appointed to plan, organize, coordinate, control, and manage the project.

d. Project Plan

The project plan outlines the framework for organizing project activities:

- sequence project activities;
- identify who will carry out each task;
- establish milestones for the completion of each task; and
- set benchmarks against which to measure performance/quality.

e. Control Point Identification Charts

A control point identification chart helps to manage the project by determining problems that might occur and the action needed to solve the problem. This type of chart identifies each task and then

asks what is already working or what could go wrong, how and when the project manager would know of the problem, what could be done to resolve the problem, and when is the last possible time to act. This type of management will help to keep a project on schedule.

f. Development of an Action Plan

An action plan is part of the project management. It is developed by the project team and includes the following issues:

- developing goals and objectives;
- developing significant events for the project;
- determining information to be monitored;
- determining what constitutes successful monitoring;
- determining accountability procedures;
- developing task list;
- developing checkpoint events for the project;
- determining time estimates;
- developing a new system;
- developing test pilot policy;
- installing and testing new system;
- determining implementation policy;
- developing documentation; and
- training users.

124. What are the goals of caseflow management? _____

_____

_____

125. What resources should be considered when developing a caseflow management system? __

_____

_____

126. What is project management?_____

_____

_____

127. What is a project's life cycle? _____

_____

_____

128. What issues should be considered as part of an action plan for project management? _____

_____

_____

D. Caseflow Management System

The active supervision of a caseflow management system provides a means of evaluating, monitoring, and accounting for cases in municipal court. A caseflow management system should provide information that focuses on the goal of caseflow management.

1. Writing Documentation

The main documentation of a caseflow management system is a procedures manual. At a minimum, the manual should include documentation of case processing procedures that include creation, use, and maintenance of files; judicial activity; and disposition, archival, and destruction procedures.

2. Creating Standards

Standards, along with goals, define the direction of the caseflow management system. The court should have time standards for the overall disposition of cases and timelines for events that may occur. Time standards define the outer limits of delay. They provide a basis for measuring the effectiveness of the court's caseflow management system and a basis for case progress decisions in the management of individual cases.

The choice of time standards depends on the way they will be used. Generally, time standards fall into two categories: management (as in comparing each case against the time limit for completion for intermediate events and overall disposition) and statistics (for example, summary reports concerning the age of cases at disposition or the age of the pending case load).

Generally, there are three types of overall time standards used:

- a specified acceptable median age of cases at disposition (measured from filing);
- a maximum time interval between filing and disposition; and
- a specified percentage of cases concluded within a stated interval after filing.

Although a median age standard is easy to compute, it cannot easily be applied in the management of individual cases or to the pending case inventory. If a court uses this type of standard, the court will also have to develop time standards for management of individual case progress.

A court may want to specify a maximum time standard for each type of case in the court. Usually, there will be different timelines for the different types of cases. For example, municipal court cases might be divided into traffic (state law violations and city ordinance violations), non-traffic (state law violations and city ordinance violations), and citizen complaints. Courts might want to make a distinction between cases involving adults and cases involving juveniles. Bond forfeiture cases would have different timelines because the Rules of Civil Procedure apply to those cases. Included in these types of time standards would be timelines for intermediate events, such as trials, driving safety courses, and deferred disposition.

A possible problem with any time standard is to measure compliance solely by computing the age of cases at disposition. This type of measurement fails to take into account cases that are still pending, some of which may be very old. To achieve a comprehensive caseflow management system, courts should measure and monitor all cases in the various stages in the system and not just the disposition.

Event standards are standards that measure cases in the various stages in the system and not just the disposition. Event standards are a significant component of a dispositional time standard. It is through these types of standards that the court is able to control and monitor the progress of a case. Events that the court might want to establish and monitor time standards for are:

- length of time from filing to preparation of complaint and jacket;
- length of time from filing to docket entry;
- length of time from filing to plea;
- length of time processing mail-in and window payments;
- driving safety course times (90 days to present certificate, scheduling time of show cause hearing, time to final disposition of cases);
- deferred disposition times (standards for median time case is in deferred status, time to final disposition of cases);
- length of time to filing failure to appear;
- length of time to issuance of warrants;
- length of time to trial (separate standards for pre-trial, bench, and jury trials); and
- length of time for issuance of capias pro fine after default in fine payment or community service.

3. Monitoring

A caseflow management system should provide methods of monitoring significant events and the overall status of a case to ascertain if the case is falling within the time guidelines established by the system or if special handling procedures are required. The information that is derived from a monitoring system supports the caseflow management system. Monitoring compliance with deadlines and timetables can trigger court action in cases that are in danger of exceeding disposition time standards. Monitoring helps reduce the delay of cases moving through the system.

a. Significant Events

Significant events in individual cases that should be monitored include:

• age of case; • arrest date; • plea date; • trial dates; • sentencing and judgment date;	• alternative sentence date and return time to court; • payment date(s); and • community service compliance.

b. Overall Status

The overall status of cases that should be monitored includes:

• number of cases currently pending; • average age of pending cases; • median time of case disposition; • number of warrants; • number of trials conducted within a certain time period; • number of jury trials;	• number of bench trials; • case dispositions by judge; • number of cases pending trial; • number of cases paying the fine by community service; and • number of time payments and the amount in accounts receivable.

c. Monitoring Activities

A caseflow management system should provide at least the following monitoring activities:

- Measurement of activity - A measurement of activity includes aggregate figures for filings and dispositions, as well as other specific counts for specific purposes. Generally, the most useful activity measures are those that report *system rates,* such as the proportion of filed cases that go to trial, or changes in measures, such as filings and dispositions over time. Comparative information highlights trends that can be useful for planning. (Examples of activities to be monitored are: filing, dispositions, continuances, driving safety courses, pre-trials, trials, and cases falling outside of normal case process.)
- Measurement of inventory - This is the measure of the number of cases pending. To make this category more useful, the measures should be categorized into group

measures, such as case types and number of cases pending at each stage in the system (juvenile cases, traffic cases, and city ordinance cases). It should also include changes in each category since the last reporting period and the number of cases of each type that exceed the court's time standard for disposition.

- Measurement of delay - This monitoring activity measures the age of pending case load, computed for each major case type.
- Evaluation measurement - This activity measures what a court wants to control based upon established goals and standards. This measurement should include not only the activity of a case, but also the procedures themselves.
- Individual case progress information - This type of monitoring is not statistical; rather, it is a measure of the activity in an individual case. It is case specific information that allows a court to actively manage the progress of the case. The information provided by this type of monitoring should allow courts to:
  - determine current status of each pending case;
  - compute and monitor compliance with procedural deadlines for case events;
  - identify cases that are not in compliance with time deadlines set by the court; and
  - audit the information system (e.g., identify cases that do not have all necessary information or do not have future action dates assigned).

4. Scheduling for Trial Date Credibility and Continuances

Courts should be willing to incorporate a restrictive continuance policy into the caseflow management system and not over-schedule trials. To manage trials, courts should establish categories for different groups of trials. For example, the court may want to group trials in this manner:

- continued at request of counsel;
- reset or held over because no judge available;
- settled or dismissed without judicial intervention or before the trial days;
- settled by trial judge; and
- trial started.

If a court has more than one judge, the court might want to determine this information for each judge. Breaking the trial cases into different categories will help the court to determine the accuracy of the scheduling system.

Since the granting of continuances is a judicial duty that cannot be delegated, in order to manage continuances, clerks need to work with their judges to develop a policy for granting continuances. Some of the issues that might be considered when establishing a continuance policy are:

- continuances limited to verified good cause;
- number of continuances generally allowed; and
- how cases are reset after a continuance has been granted.

Clerks should keep track of the reasons and the number of continuances being granted so that the effectiveness of the policy can be measured.

129. What information should be included in the documentation of a caseflow management system? _____

_____

_____

130. What do time standards define? _____

_____

_____

131. What are the two general main categories of time standards? _____

_____

_____

132. List the three general types of overall time standards. _____

_____

_____

133. What is a possible problem with any time standard? _____

_____

_____

134. What are event standards? _____

_____

_____

135. Why should a caseflow management system be monitored? _____

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_____

_____

_____

ANSWERS TO QUESTIONS

PART 1

1. It establishes requirements for local governments, record management officers, and custodians of records.

2. A record is any form of recorded information. It may be paper, microfilm, audiotapes, video tapes, photographs, slides, or any computer-readable medium such as computer tapes, disks, compact disks, or USB drives.

3. Records management is the active supervision and control of records. It is the economical and efficient creation, organization, use, maintenance, and disposition of records. In other words, it is the systematic control of recorded information from creation to final disposition. Records management also includes the development of records control schedules.

4. Records control schedules provide retention periods for the records created and maintained in all city departments, including municipal court. The schedules can also contain information about how the records are maintained, whether they are sent to storage, and how they are destroyed.

5. A records management program helps retrieve information faster, reduces lost or misplaced records, saves space, minimizes expenditures for filing equipment and supplies, protects records, and complies with state regulation for maintaining public records.

6. The stages of a record's life cycle are:

   - Creation;
   - Distribution;
   - Use;
   - Maintenance;
   - Storage; and
   - Disposition.

7. During the active stage of records, the record is distributed, efficiently stored for fast retrieval for use, and then maintained during its use. During the inactive stage, the record must still be properly maintained for retrieval and kept in a manner that will not harm or destroy the record until such time as the record may be legally disposed. During both the active and inactive stage, protection of the record is essential.

8. Staffing a records management program generally includes filing personnel, document imaging operators, data entry individuals, and records center staff.

9. The steps to develop a records management program are:

   - Determining what the court wants to accomplish;
   - Setting goals and objectives;
   - Developing time frames with deadlines;

- Determining how records are created (manual and computer);
- Determining where records will be stored;
- Determining what filing equipment and systems will be used;
- Establishing records retention periods (governed by statute);
- Establishing a system for the maintenance and retrieval of records;
- Establishing a system for archiving records; and
- Establishing a system for the destruction of records.

10. It is a chart that shows the schedule of activities and time frames. It includes estimated times for each task, whether task is completed on schedule, and whether task was rescheduled and the new time frame. The chart also shows who is responsible for each activity. After the project is underway, the Gantt chart can be used to monitor performance.

11. The steps that contribute to a successful case filing program are:

- Conduct studies on the creation or improvement of case filing systems;
- Establish pilot installations to test all aspects of a case file plan prior to final adoption;
- Require the standardization and centralization of each case file;
- Develop techniques for maintaining, using, and disposing of case files;
- Do a cost/benefit analysis of file equipment and supplies;
- Issue written instructions or manuals for the establishment and operation of case files; and
- Conduct periodic reviews to ensure compliance with overall objectives of the case filing program.

12. Steps that should be taken to improve existing case files are:

- Select and examine a cross section of filing systems in different city departments;
- Identify areas that need improvement in the court files;
- Explore potential modifications;
- Study the present system and its needs;
- Develop a revised system, including new forms and records;
- Implement the revised system for trial operation and modify it as needed; and
- Prepare the final system for adoption, and prepare written instruction for implementation and maintenance.

13. The court would consider when determining the future volume of cases:

- The last five years of cases filed in court to determine a trend in the number and type of cases filed;

- The previous two to three years funding for police officers and future projections for more officers and thus, more cases filed;
- Traffic and crime statistics for the city to determine the number and types of crimes occurring in the city; and
- Future projections of the police department for number of cases that might be filed.

14. Issues that a court will want to consider when determining the court's reference needs regarding case files are:

- Appearance date;
- Bond filed;
- Plea;
- Pre-trial date;
- Trial date;
- Payment schedule;
- Driving safety course—appearance date, due date of DSC certificate, show cause hearing date;
- Deferred disposition—appearance date, due date of evidence, show cause hearing date;
- Warrants, capiases, capiases pro fines;
- Appeals;
- Notice of final convictions;
- Court costs quarterly reports; and
- Monthly reports to OCA.

15. Issues that should be considered when establishing case folders are:

- Whether to create one folder per defendant or create one folder per citation/case filed;
- Whether to create temporary folders for active files or the same folder as archived files; or
- Whether to have folders or staple the documents together, or use a case jacket.

16. Because the court has many reference needs and posting information on the case file helps courts keep track of the actions occurring in the case and when and how it should be referenced.

17. The following information on the outside of a case file would be useful as a reference tool:

- Docket number;
- Defendant's name;
- Date case was filed;
- Prosecuting attorney;

- Defense attorney, if any;
- Complainant's name;
- Bond (if any) and whether personal, cash, surety, amount of bond, and date of judgment nisi if one is entered;
- Plea entered, method of plea, and date of plea (in open court, in clerk's office, by mail, in person, through attorney);
- Type of trial requested (jury or bench) and date(s) of trial setting;
- Continuances if any;
- Deferred disposition if granted, and due date of evidence of completion;
- Driving safety course if requested and granted, and due date of evidence of completion;
- Witness and dates subpoenas issued, if any;
- Motions filed if any, date filed, and judge's ruling;
- Judgment;
- Fines or fees assessed;
- Jail time credit;
- Extensions for payment or payment plan due dates;
- Receipt numbers and dates written;
- Appeal, if any (date notice given, date bond approved or not approved, date transcribed, type of bond, date sent to county);
- Date notice of final conviction sent to the State; and
- Date warrant, capias, or capias pro fine issued and served.

18. The factors that should be considered when determining the physical type of a file folder are:
    - Identifying the documents that will be filed in jacket;
    - Determining the arrangement of documents in jacket;
    - Deciding on the file cabinet size and orientation; and
    - Evaluating the cost of file folder or jacket.
19. The advantages are:
    - requires less time to file papers;
    - costs less money initially; and
    - permits easy removal of documents for reference.

    The disadvantages are:
    - Papers may be lost or misplaced easily; and

- The lack of uniform arrangement of the folder contents makes it more difficult to find a particular document.

20. They are usually preferred for large case files that receive extensive use, have long retention periods, and are likely to be taken out in their entirety for extended periods of time.

21. Questions that a clerk should ask when evaluating file arrangement systems are:

    - Is the system logical?
    - Is the system practical?
    - Is the system simple?
    - Is the system functional?
    - Is the system retention-conscious?
    - Is the system flexible?
    - Is the system standardized?

22. The nature of the records and how they will be retrieved should be the first determining factor in the selection of file arrangement.

23. A direct access filing system is a system that allows a person to locate a particular record by going directly to the files and looking under the name of the record.

24. An indirect access filing system is a system that requires an index that must be consulted before a file can be retrieved.

25. Alphabetic files are arranged according to the last name of the defendant.

26. The principal advantage of the alphabetical system is that it is not necessary to look up a docket number when files must be retrieved. The disadvantages are that the system does not lend itself to expansion as readily as does the numerical system and requires more shifting of folders.

27. A numerical file arrangement may have numbers (usually a docket number) assigned to the case files arbitrarily or under a standard plan.

28. This is where files are arranged consecutively in ascending numerical order according to docket number.

29. It is a system where the last digit or group of digits is the primary unit used for filing.

30. It is a system where the file numbers in the index are still listed in consecutive numeric sequence; however, the middle group of digits becomes the primary indexing unit, the first group is the secondary indexing unit, and the terminal group the tertiary unit.

31. It is a system that uses two or more sets of code numbers for records, with the sets separated by dashes, commas, periods, or spaces. Records are filed consecutively by the first number, then sequentially by the second number, and so on.

32. It is a system developed initially for library use and is based on 10 general categories. The major numeric groups are each further divided into 10 parts, which are then subdivided into 10 subunits.

33. The advantages are: the rapidity and accuracy of refiling and the opportunity for unlimited expansion. The disadvantages are the need for maintenance of the auxiliary card index and the necessity of making two searches when files must be retrieved−one for the index and one of the files.

34. It is a system where the files use a combination of personal or business names and numbers, or more commonly, subject headings and numbers. The numbers are sequentially filed.

35. False.

36. False.

37. True.

38. True.

39. False.

40. True.

41. The basic questions are:

- What are the physical characteristics of the case records? What is their volume, physical form, and size?
- What is the cost of purchasing, installing, maintaining, and operating the available types of equipment?
- How much office space is available, and how is it laid out?
- Who needs to refer to the records, and how frequent and urgent is the need to do so?
- What safeguards are needed to protect the files from unauthorized use, theft, fire, insects, dust, and other potential hazards?

42. The intensity and severity of a fire depends on the type of building construction and height, the fuel load that comprises the building's combustible contents, including the kinds of furnishings, and the quantity of files and the type of equipment used for them.

43. Space utilization and fire protection factors, such as automatic sprinkler systems, smoke detection systems, and the quantity of other combustible materials.

44. The purpose of a records inventory is to determine what records a court has, where they are located, and how many records there are.

45. The goal of a records inventory is not to inventory every piece of paper, but to determine and identify records categories.

46. The benefits of a records inventory are:

- Helps save space;
- Releases equipment for more productive use;
- Provides a proper evaluation of file functions and activities;
- Assists in the detection of unnecessary copies of records;
- Provides a way of assessing the length of usefulness of records; and

- Helps in the appraisal of legal implications of records.

47. The steps that will help make a records inventory successful are:

    - Define objectives;
    - Communicate plans to management and staff;
    - Specify data to be collected;
    - Determine file locations;
    - Prepare an inventory form (a separate inventory worksheet should be used for each records series);
    - Establish work schedules and completion dates; and
    - Select personnel for the inventory process.

48. It will provide:

    - Identity of records by category or record series;
    - Physical location of all records;
    - Categorization of equipment and supplies;
    - Reference activity;
    - Methods used for disposing of obsolete records; and
    - Analysis of the cost of recordkeeping.

49. An official record is one that supplies information on organization, function, policy, procedure, operation, or it is the original case file of a defendant.

50. Non-records are generally copies or duplicates of official records.

51. An example of a non-record that is an official copy is the copy of a case that has been appealed from a non-record court to an appellate court. Because an appealed case is still active until the appeal has been completed, the copy of the case should be handled the same as the original official copy.

52. Administrative files often times contain duplicate information or miscellaneous information that nobody knows where to file but does not want to destroy.

53. He or she would need to know what the current policy is on information back-up and the policy on writing over the data stored on the media.

54. Types of information that an inventory should collect are:

    - Title of records series;
    - Purpose or description of the records series;
    - Time span covered by the series (inclusive dates);
    - Linear measurement of the series;
    - Physical description (media, size, and color);

- Description of storage equipment;
- Frequency of use;
- Rate of accumulation;
- Date of inventory;
- Source of the information used to create the records series;
- What records are created from the information contained in the records series;
- Original and secondary purposes of the records series; and
- Where duplicate sources are located.

55. The inventory worksheet should include a records series title, the record's function, a floor plan showing the physical location and the organization location of records for office space and storage locations.

56. On or before January 1, 1991.

57. Generally, the records management officer is responsible for coordinating the city's records management program and making certain that it complies with state regulations.

58. The Texas State Library and Archives Commission.

59. Retention period means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

60. Court clerks are required to cooperate with the records management officer in carrying out the policies and procedures established by the local government for the efficient and economical management of records, and in carrying out the requirements of state statutes regarding public records.

61. A local government record is any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of the physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the State, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

62. Documents that are not considered to be local government records are:

- Extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government;
- Notes, journals, diaries, and similar documents created by an officer or employee of the local government for officer's or employee's personal convenience;
- Blank forms;
- Stock of publications;
- Library and museum materials acquired solely for the purposes of reference or display; or

- Copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552 of the Government Code or other state law.

63. Retention periods are figured in calendar years from the date of the records' creation.

64. False (they apply only to official records unless otherwise noted).

65. True.

66. True.

67. True.

68. True.

69. False.

70. False (it must be retained for the retention period assigned to the record).

71. If email that is created or received meets the definition of a local government record, it is subject to the same rules that govern other local government records. Local government records include email created or received by a local government or any of its officers or employees pursuant to law or in the transaction of public business.

72. The Texas State Library and Archives Commission.

73. Microfilm means roll microfilm, microfiche, and all other formats produced by any method of microphotography or other means of miniaturization on film.

74. The Texas State Library and Archives Commission.

75. They may be destroyed when they have been so badly damaged by fire, water, or insect or rodent infestation that they are unreadable, or if portions of the information have been so thoroughly destroyed that the remaining portions are unintelligible.

76. These records may not be destroyed unless authorization to dispose of the records is obtained from the director and librarian of the Texas State Library and Archives Commission.

77. False.

78. True.

79. The person conducting the audit should:

    - Verify that an up-to-date records manual is available;
    - Check all the major records categories to ensure compliance with records schedules;
    - Spot check individual offices, computer terminals, and files for compliance; and
    - Verify compliance with records management criteria.

80. They should be reviewed once a year.

81. The Texas State Library and Archives Commission.

82. Copies of records generally are non-records and are maintained only as long as they are useful. Then they are destroyed.

83. The copy of the case papers of the appealed case maintained by the municipal court is now the official copy and maintained according to the records retention schedule. Other examples of copies of records in municipal court that are subject to records retention include the following state reports that are required to be submitted by municipal courts:

- Notice of final conviction reports submitted to the Department of Public Safety;
- Quarterly reports of court costs submitted to the State Comptroller's Office; and
- Monthly reports submitted to the Office of Court Administration.

84. An essential record is any record necessary to the resumption or continuation of government operations in an emergency or disaster, to the recreation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the State.

85. Some ways that municipal court records can be secured from disasters such as fire are:

- Secure, fire-resistant filing cabinets;
- Specially designed vaults;
- Computer passwords;
- Duplicate copies;
- Back-ups maintained at different locations; and
- Off-site storage.

86. By computer.

87. A decentralized filing system is one where the files are maintained in separate locations.

88. A centralized filing system is one where all active files—except those that are being created or used at that time—are maintained in a central file room.

89. Bar coding is a system of checking in and out files. The bar code is scanned into the system when it is checked out and rescanned when it is brought back.

90. A floating file, for example, occurs when a clerk checks out a file and then passes it on to the prosecutor without checking it back in and having the prosecutor check it out.

91. It is the filming of records.

92. Microfilm is a fine-grain, high-resolution film that can record images greatly reduced in size.

93. It is sheets of film containing a number of images in a grid format.

94. This refers to the technology of recording images on microfilm.

95. If a city decides to film records, the filming must be done in accordance with state statutes and rules adopted under those statutes and micrographics clauses should be added to the ordinance establishing a records management program.

96. Documents are scanned and digitized.

97. The digitized images can be stored on a hard drive, optical disk, or other computer-readable media.

98. A method to organize records is to assign box numbers that would also indicate where in the storage area the box is to be stored. This will assist in the retrieval process. The person in charge of archiving records should maintain an index of boxes and their contents. To assist in locating stored records, two numbers should be used. One number for the location in the storage area and the other number for identifying the contents of the box.

    For easy retrieval, the court might consider bar coding cartons and shelves instead of using numbers. When a box is shelved, both the box bar code, shelf bar code, and content bar code must be scanned.

99. Questions that should be considered when determining how to index stored records are:

- Do you want to index every file or document in the box?
- How do you want to index the records?
- How do you want to sequence the index and summarize the contents?
- How do you link the storage of the records to the retention schedules so that the destruction date of the records is easily tracked?
- How are control box numbers and location numbers assigned to the indexed records?
- How is the listing of the index records to be maintained?
- What type of system will be used to retrieve the records?

100. It should include who is responsible for verifying that the records belong in storage, boxing up the records, labeling the records, and transporting the records.

101. The type of documentation that a records management manual should include are:

- A records management policy;
- Instructions on the use of records retention schedules;
- Procedures for updating records retention schedules;
- Forms used to manage records;
- Procedures on implementing the program on an ongoing basis;
- Procedures on internal operation;
- Staff procedures;
- Disaster recovery procedures;
- Filing procedures;
- Procedures on transferring and storing records; and
- Procedures for updating the manual.

102. Questions that would help evaluate a court's maintenance program are:

- Does your court have a files handbook, manual, or other directive to provide uniform files maintenance procedures?

- Are file maintenance procedures correlated with approved records control schedules for the prompt removal of inactive records from office space?
- Is physical access to records controlled to prevent unauthorized disclosure or access?
- Is each records series arranged in its own internally consistent pattern, such as alphabetical, chronological, numerical, or subject order?
- Is each records series arranged based on the way people in the office usually ask for the records?
- Are cross references prepared when needed?
- Are periodic checks made for misfiles?
- Are records filed on a daily basis?
- Are out-cards or other charge-out controls used whenever documents or files are removed from the official file stations?
- Before filing, are documents examined to ensure that they are complete and that the following materials have been removed: envelopes, paper clips, routing slips, cover sheets, superseded drafts showing no substantive changes, and duplicate copies, other than those needed as cross reference.

103. A record that is currently in litigation or pending an open records request may not be destroyed.

104. A local government record may be destroyed if:

- it appears on the local government's records control schedule that has been accepted for filing by the TSL and its retention period has expired on the schedule;
- it appears on a list of obsolete records approved by the TSL;
- a request for authorization to dispose of unscheduled records is submitted to the TSL and approved;
- its destruction or obliteration is ordered by a court expunction order issued by a district court pursuant to state law;
- the record is listed as exempt from the destruction request requirement on a records retention schedule issued by the TSL;
- the retention period on a records retention schedule issued by the TSL has not yet expired, but the record is non-permanent and it has been microfilmed according to TSL standards (if the record is a permanent record on the state-issued schedule, a destruction notice must be submitted and approved);
- the retention period on a records retention schedule issued by the TSL has not yet expired, but the record has a retention period of less than 10 years and it has been converted to an electronic medium in accordance with Chapter 205 of the Local Government Code; or
- the retention period on a records retention schedule issued by the TSL has not yet expired and the record has a retention period of 10 years or more, and the local government has submitted to the TSL and has approved an electronic storage authorization request.

105. The records management officer.

106. It may be destroyed after a Destruction Authorization Request has been submitted to and approved by the Texas State Library and Archives Commission.

107. It is a notice to the Texas State Library and Archives Commission to destroy certain records.

108. The methods that a city may use to destroy records are:

- Burning;
- Shredding;
- Pulping;
- Burying in landfill; and
- Selling or donating for recycling.

109. Records that are confidential under the Texas Public Information Act or other state laws.

110. A city record may not be sold or donated except for the purpose of being recycled, loaned, transferred, or otherwise passed out of the custody of a local government to any private college or university, private museum or library, private organization of any type, or an individual, except with the consent of the Texas State Library director and librarian and after the expiration of its retention period under the city's records control schedule.

111. A clerk may temporarily transfer custody of records to a person for the purposes of microfilming, duplication, conversion to electronic media, restoration, or similar records management and preservation procedures.

112. A Class A misdemeanor.

PART 2

113. The PIA specifically excludes the judiciary to maintain the independence of the judicial branch. The PIA applies to governmental bodies and the law specifically states that a governmental body does not include the judiciary.

114. Courts have long recognized that the public has a common law right to inspect and copy court records under the Common Law Right of Inspection.

115. Only on a showing of good cause by a party to the case or a bona fide member of the media shall the court permit disclosure of the information.

116. The clerk should always pass requests for records to the judge to determine whether it should or can be released.

117. A Rule of Judicial Administration designed to define public access to judicial records. The definition of judicial records makes an exception to the adjudicative records filed in the courts.

118. False.

119. True (it must be as soon as practicable but not to exceed 14 days).

120. False (the appeal goes to the Administrative Director of the Office of Court Administration).

PART 3

121. Caseflow management is the process of managing time and events involved in the movement of a case through the court system.

122. The court must determine its phases, how it is maintained, and the disposition.

123. Because of the complexity of cases, not all cases will be subject to the same processing procedures and time frames. The court should create multiple tracks for case processing each with different procedures and time frames designed to reflect the range of management and preparation requirements of the cases filed.

124. The goals of caseflow management are:

- Make the sequence and time of events more predictable and timely;
- Provide equal treatment of all defendants;
- Have timely disposition consistent with the circumstances of the individual case;
- Enhance the quality of the court process; and
- Enhance public confidence in the court.

125. The resources that should be considered when developing a caseflow management system are:

- People (court employees and other city employees);
- Equipment (computers, software, printers, etc.);
- Forms (forms for assessing current system and forms used by current system);
- State agencies;
- Outside consultants; and
- Any other resources that the city can provide.

126. Project management is a dedicated effort with a distinct beginning and end, conducted by people to develop or produce a new project or service that meets defined specifications and quality standards within specific parameters of costs, schedules, and resources.

127. The conceptual phase, the planning phase, and the implementation phase.

128. Issues that should be considered as part of an action plan for project management are:

- Developing goals and objectives;
- Developing significant events for project;
- Determining information to be monitored;
- Determining what constitutes successful monitoring;
- Determining accountability procedures;
- Developing task list;
- Developing checkpoint events for the project;

- Determining time estimates;
- Developing a new system;
- Developing test pilot policy;
- Installing and testing new system;
- Determining implementation policy;
- Developing documentation; and
- Training users.

129. Documentation should include case processing procedures that include how files are created, used, and maintained; judicial activity; disposition; and archival and destruction procedures.

130. Time standards define the direction of the system. The time standards provide a basis for measuring the effectiveness of the court's caseflow management system and a basis for case progress decisions in the management of individual cases.

131. Generally, time standards fall into two categories: management (as in comparing each case against the time limit for completion for intermediate events and overall disposition) and statistics (for example, summary reports concerning the age of cases at disposition or the age of the pending case load).

132. The three general types of overall time standards are:

- A specified acceptable median age of cases at disposition;
- A maximum time interval between filing and disposition; and
- A specified percentage of cases concluded within a stated interval after filing.

133. A possible problem with any time standard is to measure compliance solely by computing the age of cases at disposition. This type of measurement fails to take into account cases that are still pending, some of which may be very old. To achieve a comprehensive caseflow management system, courts should measure and monitor all cases in the various stages in the system and not just the disposition.

134. Event standards are standards that measure cases in the various stages in the system and not just the disposition.

135. It should be monitored because information derived from monitoring supports the caseflow management system.

8

Legal Research

Table of Contents

INTRODUCTION

Legal research is the investigation of information necessary to support legal decision-making. The information that provides the basis for legal opinions and decisions is called *legal authority*. Although legal research is usually conducted by attorneys, judges, or parties to the case, it is helpful for clerks and court administrators to understand the principles behind legal research, the resources available, and the procedures to follow. A judge may request, for example, that a clerk research whether a waiver for jury trial must be in writing or who has the authority to dismiss a case. This chapter provides a summary of the necessary tools and approaches to legal research.

The clerk should always consult the city attorney or judge before adopting a policy or procedure. While court clerks may read and seek to understand the law, they must avoid the unauthorized practice of law for which they might be prosecuted or expose their courts to liability.

PART 1
TYPES OF LAW

There are three types of law at the federal, state, and local levels of government in the United States: statutory law, case law, and administrative law. The three branches of government—legislative, judicial, and executive—respectively create these three types of law.

The following sections discuss the three types of law and the entities that create the law. The chart below includes the branches of government, kinds of laws created, and types of law assembled from each branch of government.

Kind of Law	Government Entity	Type of Law Assembled
Statutory Law	Legislature	Session laws (chronological by date of enactment of statute) Statutory codes (by subject) *Example: Texas Code of Criminal Procedure*
Case Law	Judiciary	Case reporters (chronological by date of issuance of cases) Case digests (summaries arranged by subject) *Example: Published opinions of the Texas Court of Criminal Appeals*
Administrative Law	Executive	Administrative registers (chronological by date of issuance of rules) Administrative codes (by subject) *Example: Texas Administrative Code*

A. Statutory Law

Statutes are defined as laws passed by Congress and the various state legislatures. The legislatures pass statutes, which are signed into law by the executive branch and are later put

into the federal code or pertinent state code. Such statutes are statutory law. Statutory law also includes local ordinances, which are statutes passed by a county or city government on local issues not covered by federal or state laws. States cannot pass statutes contrary to federal law, and municipalities cannot pass ordinances contrary to state statutes or federal law.

B. Case Law

The United States has a legal system that is part of the common law tradition. Common law is the body of law that developed in England and spread to the colonies that England settled or controlled. Common law consists of oral traditions derived from general customs, principles, and rules handed down over the years and reflected in the decisions of the courts. Historically, common law was unwritten law as opposed to statutory law. During the formation of the United States, the colonists relied on common law to define what behaviors were criminal. As states began to take form, most states codified common law crimes through legislation.

Case law is the byproduct of written decisions of appellate courts. Case law is the basis for precedent, the idea that previously decided cases are seen as examples, or guiding authorities, for judges' decisions in later cases with similar questions of law. Stare decisis, a Latin phrase meaning to "stand on what has been decided," is the principle that the decision of a court is binding authority on the court that issued the decision and on lower courts in the same jurisdiction for the disposition of factually similar cases.

An appellate court's interpretation of a statute may also become precedent that lower courts must follow in issuing their decisions. Under the doctrine of precedent, it is the statute as interpreted by the court that is applied in future cases. If a legislature disagrees with the way a court has interpreted a statute, it may revise the statute or, if necessary, initiate a constitutional amendment.

In this manner, statutory law and common law become one because courts must interpret statutory law. So, while statutory law provides the framework by which our judicial system operates, it coexists in a way that allows interpretation even of these laws and forms the basis of common law. In the legal system, there are gray areas where there is need for interpretation. A statute may appear to stand alone and speak for itself, but there will always be someone who will attempt to contest it and make a convincing argument.

Precedent is believed to promote fairness in the judicial process because it encourages similar cases to be treated alike and leads to predictability and stability in the legal system. It also saves time and energy because it enables courts to use previous research and wisdom. The written opinions of courts are considered primary sources of authority and are usually the main object of legal research.

The American court system is hierarchical in organization, meaning that higher courts have precedential authority over lower courts. To fully understand jurisdiction and how precedent applies, it is necessary to first understand the hierarchy of courts.

Trial courts are courts of original jurisdiction that make determinations of law and of fact, often with juries. Documents are prepared by the parties involved and are called pleadings. In most municipal court cases, pleadings consist of motions filed by either the prosecution or defense. Motions are filed before and during trial. Exhibits may be submitted into evidence

during the trial and a record or transcript is made in trial courts of record. Trial courts issue judgments or decisions. On occasion, a trial court may release a written opinion that is rarely published or made generally available to the public. In Texas, the trial courts include the municipal, justice, constitutional county, probate, county courts at law, and state district courts. On the federal level, the trial courts are the U.S. district courts.

Intermediate appellate courts (courts of appeal) have authority over trial courts in a specified geographical area or jurisdiction. Appellate courts generally do not review factual determinations made by lower courts, hear testimony, or determine the weight of evidence, but do review claimed errors of law that are reflected in the record. Appellate courts accept written briefs (statements made by counsel arguing the case) and frequently hear oral arguments. In Texas, the intermediate courts of appeals may hear cases en banc (the entire court) or in a panel of judges. These courts hear cases originating in county and district court. Appeals from municipal and justice courts are first reviewed by county level courts.

The court of last resort, often called the "supreme court," is the highest appellate court in a jurisdiction. Texas is one of only two states that have a bifurcated court system where there are two courts of last resort: the Texas Court of Criminal Appeals and the Supreme Court of Texas. The Texas Court of Criminal Appeals hears criminal appeals on questions of state law; the Supreme Court of Texas hears appeals of civil matters involving state law. The U.S. Supreme Court is the court of last resort for cases involving federal law.

There are certain matters over which a state or federal court has exclusive jurisdiction and certain matters over which a state court has concurrent jurisdiction with federal courts.

C. Administrative Law

The executive branch of government dispenses administrative law. The President of the United States and the Governor of the State of Texas issue orders and create other documents with legal effect. Executive departments and offices and some state agencies, such as the Department of Public Safety (DPS), Health and Human Services Commission, Texas Parks and Wildlife Department, and the Texas Commission on Law Enforcement create administrative rules. Under the authority of a statute, administrative agencies often create and publish rules and regulations that further interpret statutes. These rules and regulations are published in the *Texas Register*, a publication of the Secretary of State's Office, and most often codified into the Texas Administrative Code.

For example, DPS has established a set of rules and procedures for the Failure to Appear Program (OmniBase) under Chapter 706 of the Transportation Code. This program allows cities to contract with DPS to deny the renewal of a driver's license to a person who fails to appear or fails to pay upon conviction of a fine-only offense. The proposed rules and procedures for this program were published in the *Texas Register*. In addition, these rules and procedures are codified in Title 37, Sections 15.113-15.119 of the Texas Administrative Code.

1. What is the general name that refers to laws created by the legislature: statutory law or administrative law? _____

2. What does common law consist of? _____

_____

3. Explain the principle of stare decisis. _____

_____

True or False

4. The American court system is hierarchical in organization and higher courts have authority over lower courts. ____

5. Appellate courts review the facts of a case, hear testimony, and determine the weight of the evidence. ____

6. Where are Texas agency rules and regulations typically published?_____

_____

PART 2
SOURCES OF LAW AND LEGAL AUTHORITY

A. Sources of Law

Sources of law in the United States emerged from a variety of places. In the context of legal research, the term "source of law" can refer to three different areas:

- **Concepts and Ideas:** Customs, traditions, principles of morality, and economic, political, philosophical, and religious thoughts may manifest themselves in law. Legal researchers may regard such sources of law when examining issues related to public policy.
- **Statutory Formulations:** Under federalism, the U.S. government consists of one national government, 50 autonomous state governments, and the local government of the District of Columbia. Each of these entities has an executive, legislative, and judicial branch that creates legal information that is subject to legal research. Every two years, Texas trial courts are presented with the challenge of construing and conforming to new statutes passed by the Texas Legislature. Albeit distinct, trial courts also regularly adjust their understanding of such statutes in light of case law.
- **Literature:** Books, online content, law reviews, journals, and periodicals.

B. Legal Authority

Legal authority is any published source of law setting forth rules, legal doctrine, or legal reasoning that can be used as a basis for legal decisions. The term legal authority refers to both types of legal information and to the degree of persuasiveness of that legal information.

When used to describe types of legal information, legal authority can be categorized as primary or secondary, binding or persuasive.

Primary authorities are authorized statements of law by governmental institutions, such as written opinions of the courts, constitutions, statutes, and rules of court. For example, citing a provision from the Transportation Code would be citing a primary authority.

Secondary authorities are statements about the law that are used to explain, interpret, develop, locate, or update primary authorities. An example would be citing an excerpt from *The Recorder* on how to apply a provision of the Transportation Code.

Only primary authority can be binding on the courts, but just because an authority is primary does not automatically make it mandatory to follow.

Binding authority must be followed by any court lower in the hierarchy. A Court of Criminal Appeals decision is binding on all trial and appellate courts in a case that is factually similar and with the same questions of law. A decision from an intermediate court of appeals is binding on all trial courts in the appellate court's district when the law and facts are similar. A decision from an intermediate court of appeals on a unique question of law that has never been interpreted by the Court of Criminal Appeals would not be binding on the higher court but could be persuasive.

A court can reject a decision of a higher court as not being binding by distinguishing the case on the facts or issues, and thus finding that the previous case is different in some significant way. A case is "on point" if it shares the same significant facts with the case at issue and does not differ in any significant facts from the instant case. Courts and researchers will often look to relevant decisions of other jurisdictions and states. Decisions that are not binding, either because they have different fact situations or because they are from another jurisdiction can still be persuasive because of the depth of analysis and quality of the reasoning in the opinion.

Secondary authorities can never be binding but can be highly persuasive.

7. Explain the three concepts under the term "source of law." _____

_____

_____

8. What is the difference between primary legal authority and secondary legal authority?_____

_____

_____

9. What is meant when it is said that a legal authority is binding or mandatory? _____

_____

_____

10. What is meant when it is said that a case is "on point"? _____

_____

11. When can a court reject a decision of a higher court? _____

_____

True or False

12. A secondary source can be binding authority. ____

PART 3
MATERIALS OF LEGAL RESEARCH

There are three broad categories of published legal resources: primary sources; secondary sources; and index, search, or finding tools.

Primary sources are authoritative statements of legal rules by governmental bodies. They include court opinions, constitutions, statutes, and rules of court. Refer to the chart below regarding sources of primary law.

Primary Sources of Law

Government Entity	Chronological Compilation	Topical Compilation (i.e., Subject Matter)
FEDERAL		
U.S. Supreme Court	*U.S. Reports* (U.S.) *Supreme Court Reporter* (S. Ct.) *U.S. Supreme Court Reports, Lawyers' Edition Second Series* (L. Ed. 2d) *U.S. Supreme Court Reports Lawyers' Edition* (L. Ed)	*U.S. Supreme Court Digest* *U.S. Supreme Court Digest, Lawyers' Edition* *West's Federal Practice Digest 3d* *West's Federal Practice Digest 2d* *Modern Federal Practice Digest* *Federal Digest* *Decennial Digests*
U.S. Courts of Appeals	*Federal Reporter, Third Series* (F.3d) *Federal Reporter, Second Series* (F.2d) *Federal Reporter* (F.) *Federal Cases* (F. Case)	*West's Federal Practice Digest 3d* *West's Federal Practice Digest 2d* *Modern Federal Practice Digest* *Federal Digest* *Decennial Digests*
U.S. District Courts	*Federal Supplement* (F. Supp.)* *Federal Reporter, Second Series* (F.2d)** *Federal Reporter* (F.) *Federal Cases* (F. Case) *Federal Rules Decisions* (F.R.D.)***	*West's Federal Practice Digest 3d* *West's Federal Practice Digest 2d* *Modern Federal Practice Digest* *Federal Digest* *Decennial Digests*
Agencies (independent and executive branch agencies)	*Federal Register* (Fed. Reg.)	*Code of Federal Regulations* (C.F.R.)
Congress	*Statutes at Large* (Stat.)	*United States Code* (U.S.C.)

* Until 1932 ** Since 1932 *** Decisions on procedural rules only

STATE		
Courts	State Reporters Regional Reporters – *South Western Reporter, Third Series* (S.W.3d)	State Digests – *Texas Digests* Regional Digests – *Decennial Digests*
Agencies (independent, executive branch, and constitutional agencies)	Administrative Registers – *Texas Register*	Administrative Codes
Legislatures	Session Laws	Statutory Codes – *Vernon's Texas Codes Annotated*

Primary source materials utilized most often in municipal courts include:

- Code of Criminal Procedure
- Transportation Code
- Penal Code
- Family Code (Title 3: Juvenile Justice Code)
- Government Code
- Local Government Code
- Alcoholic Beverage Code
- Education Code
- Health and Safety Code
- Texas Administrative Code
- Code of Judicial Conduct (State Commission on Judicial Conduct)
- Rules of Judicial Education (Texas Court of Criminal Appeals)
- Texas Disciplinary Rules of Professional Conduct (State Bar of Texas)

Secondary sources are materials about the law that are used to explain, interpret, develop, locate, or update primary sources. Examples include law reviews, legislative histories, journal articles, newsletter articles, bench books, and procedure guides. These secondary sources can be interpretative and may include analysis and critical commentary.

Secondary source materials used by municipal courts include:

- Selected Attorney General Opinions
- TMCEC *Forms Book*

- TMCEC *Bench Book*
- *The Municipal Judges Book*
- *Quick Reference Trial Handbook*
- *The Recorder: The Journal of Texas Municipal Courts*
- *Annual Report of the Commission on Judicial Conduct*
- Legal Ethics Opinions of the Judicial Section of the State Bar of Texas
- A legal dictionary, such as *Black's Law Dictionary* from West*

Indexes and search tools help locate and update primary and secondary sources. The major types are digests that locate cases discussing similar points of law, annotations in annotated statutes and codes, *Shepard's Citations*, and legal periodical indexes. These tools should not be cited as authorities.

Legal resources exist in multiple mediums. Many of the resources contain more than one type of information and serve multiple functions. For example, online legal research platforms (e.g., Lexis, Westlaw, LoisLaw/FastCase, Bloomberg Law, CaseMaker) are tools used to access legal information, but they contain verbatim text of primary source materials as well as secondary sources that can be persuasive.

Municipal court clerks and court administrators will often conduct legal research by using codebooks as primary source materials supported by secondary materials, such as TMCEC course materials, *The Recorder*, and Attorney General Opinions. Although an extensive law library is not necessary in the clerk's office, the clerk should have access to legal resources via the prosecutor's office, the county law library, or the internet.

A. Paper Resources

Traditionally, legal research was done in a law library or legal office that contained all paper forms of law. Although computer assisted legal research has become popular among researchers, some still prefer to have paper copies of the law. *Vernon's Texas Codes Annotated*, *Texas Cases*, *West Keynote Digest*, and *West Criminal Practice* are all bound copies of the law that are available from West.

Bound copies or paper resources are updated through inserts, often called "pocket parts" for statutes and slip opinions, or advance sheets for cases. They are usually updated once a year and are found in the back of each volume or code. When the pocket parts get too bulky, a new hard cover volume is published. When a researcher is using a paper resource, he or she should check for updates or changes to the law in the pocket parts or slip opinions.

Up-to-date case law can be located through computer assisted legal research sites, such as LexisNexis or Westlaw. If using paper sources, appellate cases are typically located in the *South Western Reporter Second* and *South Western Reporter Third*. U.S. Supreme Court decisions are reported in the *United States Reports*, *Supreme Court Reporter*, and *United*

* West (also known as West Publishing or the West Group) is now a business unit of Thomson Reuters. In this study guide, it will be referred to as "West."

States Supreme Court Reports. Lower federal court decisions are reported in the *Federal Reporter* and *Federal Supplement*.

Texas statutes can be found in several places. TMCEC, in conjunction with LexisNexis and Matthew Bender Publications, publishes the *Texas Criminal and Traffic Law Manual (Judicial Edition),* which is helpful to municipal courts in that it contains the codes or excerpts of the codes most frequently used in municipal courts.

Another excellent, albeit expensive, resource is a set of "Black Statutes" *(Vernon's Texas Codes Annotated)* available from West. "Black Statutes" are so called because of the black cover of the volumes. These are commonly found in private and public law libraries. This set includes the complete text of the law, case annotations that provide interpretations by courts, cross-reference sections, historical notes, and commentaries that give background interpretations of the law, a general index, some individual volume or code indexes, an annotation index, and law review article citations.

Example of "Black Statute" Entry: Section 542.501, Transportation Code

GENERAL PROVISIONS
542.501
Ch. 542
Note 1

§ 542.501. Obedience Required to Police Officers and to School Crossing Guards
A person may not willfully fail or refuse to comply with a lawful order or direction of:

(1) a police officer; or
(2) a school crossing guard who:
(A) is performing crossing guard duties in a school crosswalk to stop and yield to a pedestrian; or
(B) has been trained under Section 600.004 and is directing traffic in a school crossing zone.

Acts 1995, 74th Leg., Ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., Ch. 724, § 1, eff. Aug. 30, 1999.

HISTORICAL AND STATUTORY NOTES
Acts 1999, 76th Leg., Ch. 724, in subd. (2), designated par. (A) and added par. (B).

Prior Laws:
Acts 1947, 50th Leg., p. 967, Ch. 421.
Acts 1985, 69th Leg., Ch. 368, § 4.
Acts 1991, 72nd Leg., 1st C.S., Ch. 7, § 1.21(b).
Vernon's Ann.Civ.St. art. 6701d, § 23.

NOTES OF DECISIONS

In general 1
1. In general
Police officer who stopped motorist's vehicle for traffic violation while motorist was rushing to find his lost son had probable cause to arrest motorist under Texas law for failing to follow lawful order of police officer and was entitled to qualified immunity in motorist's subsequent action for unlawful arrest; motorist attempted to leave even before officer was able to get his name or address, write up a ticket, or understand motorist's situation regarding lost son. *Gassner v. City of Garland, Tex.*, C.A.5 (Tex.) 1989, 864 F.2d 394, rehearing denied.

B. Computer Assisted Resources

Generally, when referring to computer assisted legal research, two types of storage mediums exist: optical discs and online resources.

1. Optical Discs

Optical data storage uses lasers to read and input memory from devices such as CDs, DVDs, and Blu-rays, known as optical discs. As the demand for storage data increases, industries are finding faster and more efficient ways to meet the demand. While some optic technologies have been slowly replaced, new advancements continue.

2. Online Legal Research

Online services can search millions of words in a second to find a specific topic for a researcher. A researcher can easily narrow or broaden their search. The computer gives the researcher a list of results that can be printed or saved. Online services function by storing the legal information remotely on a large mainframe computer that the researcher accesses through an internet connection.

a. Computer Assisted Legal Research (CALR)

The two leading providers of online computer assisted legal research (CALR) are Lexis and Westlaw. Both offer complete libraries of primary source materials and several secondary authorities and offer a variety of pricing options depending on the number of persons using the system, the amount of time, and libraries accessed.

To access Lexis or Westlaw, a court needs a personal computer, an internet connection, and an access number or a password. These companies offer training on using their platforms efficiently, conducting searches, and using commands. CALR is especially helpful when researching new areas of the law or topics that have not received significant legal attention in the past. The searches can find obscure references often not included in the indexes and digests. Two types of searches are typically used. One is referred to as "Terms and Connectors," which use connectors between terms to specify the relationships that should exist in a particular query. The other is "Natural Language," where the query is stated as a question in plain English.

INTERNET AS A LEGAL RESEARCH TOOL	
Advantages	**Disadvantages**
• Increased access to resources • Low-cost or no-cost access • Real time information via social media	• Information overload, uncertain/outdated legal information • Imprecise and inconsistent search tools that may take more time than using fee-based resources • "Noise" and ability to stay on top of real-time developments in a time-efficient manner

b. Search Engines

News travels fast, and in no time during world history has it traveled faster than in the internet age. Increasingly, information originates on the internet. Information, however, is also migrating from tangible documents to the digital realm. Search engines like Google and

Yahoo provide access to information in a manner that has singularly usurped the meaning of a "database."

The exponential dissemination of legal information on the internet has not rendered the services of CALR service providers unnecessary; however, it has increased access to a lot of information for free. The well of information is full of "free water" but that does not mean the water is necessarily safe for consumption by the public, let alone the judiciary. Accordingly, it is essential to utilize criteria for evaluating internet legal resources. The Private Law Librarian Special Interest Section of the American Association of Law Libraries has published a guide that features such criteria: *The Internet as a Legal Research Tool* (Revised 2015), available at https://pllresourceguides.files.wordpress.com/2011/07/internet-pll-guide-v1-2.pdf.

Both Lexis and Westlaw host meta sites that offer free legal research: LexisWeb (www.lexisweb.com) and FindLaw (www.findlaw.com). Listed below are other excellent starting points for exploring the internet for legal information:

- www.hg.org (Hieros Gamos)
- www.lawsource.com (American Law Sources Online)
- www.plol.org (Public Library of Law)
- www.lawguru.com (LawGuru)
- www.ilrg.com (Internet Legal Research Group)
- www.law.cornell.edu (Legal Information Institute at Cornell Law School)
- tarlton.law.utexas.edu (University of Texas Law Library)
- www.sll.state.tx.us (Texas State Law Library)

c. State Resources

All three branches of Texas government and all state agencies are accessible online:

- Texas Governor: www.governor.state.tx.us (features news, initiatives, and organization)
- Texas Legislature: www.capitol.state.tx.us (features links to the Texas Senate, Texas House, Texas Constitution, and all statutes)
- Texas Courts: www.txcourts.gov (features links to Texas court-promulgated rules, information about trial and appellate courts, access to court opinions, and court-regulated agencies)

Texas statutes can be found at:

- Texas Statutes and Constitution: www.statutes.legis.state.tx.us
- Texas Administrative Code: www.sos.state.tx.us/tac
- Texas Rules of Evidence: www.txcourts.gov/rules-forms/rules-standards.aspx

Texas decisions and opinions can be found on several websites, including:

- www.cca.courts.state.tx.us

Most Texas state agencies have internet addresses. There is an information site with direct links at www.tsl.state.tx.us/apps/lrs/agencies/index.html (an alphabetical index to all State agencies).

Other sites of interest are shown below:

- www.tmcec.com (TMCEC Home Page)
- www.sos.state.tx.us (Secretary of State)
- www.tsl.state.tx.us (Texas State Library and Archives Commission)
- www.oag.state.tx.us (Texas Attorney General)

d. Federal Resources

Federal sites offer Supreme Court decisions, 5th Circuit Court of Appeals decisions, federal legislation, and the United States Code.

- www.llsdc.org/sourcebook (Law Librarians' Society of DC Legislative Sourcebook)
- www.gpoaccess.gov (U.S. Government Printing Office)
- thomas.loc.gov/home/thomas.php (Library of Congress)
- www.supremecourt.gov (Supreme Court of the United States)
- www.uscourts.gov (United States Courts)

e. City Ordinances

Find city ordinances from cities around the U.S. and Texas:

- www.municode.com/Library (Municode)

13. Name the three broad categories of published legal resources. _____

_____

_____

14. Explain the difference between primary and secondary sources and give an example of each.

_____

_____

15. What are pocket parts? _____

_____

16. Give examples of the type of information found in "Black Statutes" and the formal title of this publication. _____

_____

17. What two companies are the main sources for computer assisted legal research?_____

_____

True or False

18. Texas statutes are accessible on the internet. ____

PART 4
FINDING AND CITING SOURCES OF LAW

To have easy access to statutes and cases, a common system of reference has been adopted. This reference to a law or case is generally called the citation, not to be confused with the citations filed in municipal courts as quasi-charging instruments or the civil notices served in bond forfeiture cases. A citation, in the legal research sense, is a reference to a source of legal authority that allows a researcher to locate a cited source.

With experience, a researcher will find that there are several ways to abbreviate statutes and codes. Questions about the form or meaning of citations, as well as determining the proper way to reference and cite legal material may be answered by consulting any of the following reference guides.

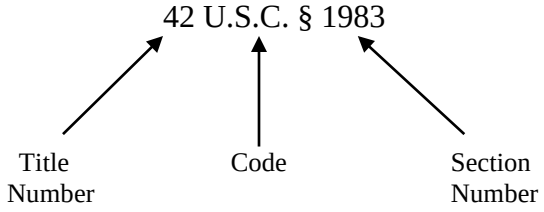
- *The Bluebook: A Uniform System of Citation*, Harvard Law Review Association.
- *Texas Rules of Form* (The Greenbook), intended as a supplement to the Bluebook, dealing exclusively with Texas case citation.
- *The Redbook: A Manual on Legal Style*, Bryan A. Garner, West Academic Publishing

A. Federal Statutes

Judges and clerks should be familiar with the following abbreviations for federal codes and statutes:

- § - Section
- U.S.C. - United States Code
- U.S.C.A. - United States Code Annotated

The citation below shows the form for a federal statute:

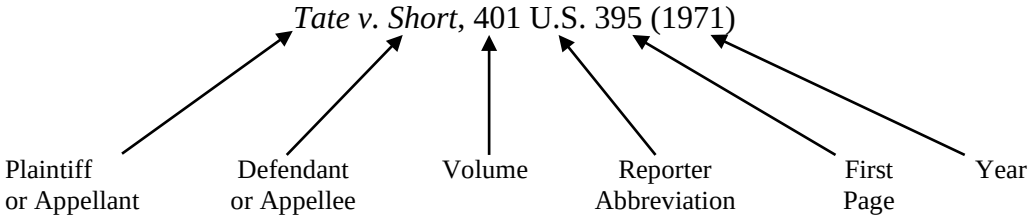


B. Federal Cases

Judges and clerks should also be familiar with the following abbreviations as they apply to cases:

- U.S. *U.S. Reports*
- S. Ct. *Supreme Court Reporter*
- L. Ed. *Lawyers' Edition, U.S. Supreme Court Reports*
- L. Ed. 2d *Lawyers' Edition, U.S. Supreme Court Reports, Second Series*
- F. *Federal Reporter (U.S.)*
- F.2d *Federal Reporter, Second Series*
- F.3d *Federal Reporter, Third Series*
- F. Supp. *Federal Supplement*
- F. Case *Federal Cases*
- Fed. Reg. *Federal Register*

The following citation shows the form for a federal case.



When the case starts in trial court, the first name is the plaintiff's or the State's and the name following the *v.* is the defendant's name. The *v.* stands for versus. Upon appeal, the name of the party who is appealing the case is usually listed first.

C. State Statutes and Codes

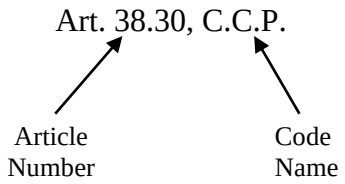
Judges and clerks should recognize the following abbreviations used by TMCEC for state codes and laws frequently used in municipal courts.

- A.B.C. Alcoholic Beverage Code
- C.C.P. Code of Criminal Procedure
- E.C. Education Code
- F.C. Family Code
- G.C. Government Code
- H.S.C. Health and Safety Code
- L.G.C. Local Government Code

- O.C. Occupations Code
- P.C. Penal Code
- P.W.C Parks and Wildlife Code
- T.A.C. Texas Administrative Code
- T.C. Transportation Code
- Art. Article
- Sec. Section

In general, Texas codes are organized by titles, chapters, and sections. Most Texas codes use "section" to refer to a specific statute, but not all codes. For example, the Code of Criminal Procedure uses "article", and the Texas Administrative Code uses "rule" when referring to a specific statute.

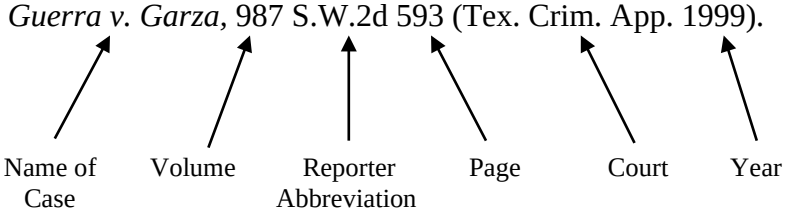
The citation below shows the form for a state statute:



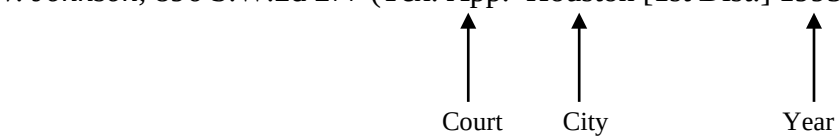
D. State Cases

Texas court cases are typically published in the *South Western Reporter* (frequently referred to as the *South West Reporter*). The compilation of case law has grown into three volumes: S.W., S.W.2d, and S.W.3d.

The citation below shows the form for a state case in which the opinion was issued by the Texas Court of Criminal Appeals.



The citation below shows the form for a state case in which the appellate court, the 1st District in Houston, issued the opinion. The last notation "no pet." means that it was not appealed to the Texas Court of Criminal Appeals.



19. What is a citation, in the legal research field? _____

_____

20. What are the Bluebook and Redbook, and what are they used for?_____

_____

21. Identify what the following abbreviations stand for.

U.S.C.: _____

S. Ct.: _____

F.2d: _____

S.W.2d:_____

v.: _____

22. Identify what codes the following abbreviations stand for.

A.B.C.: _____

C.C.P.:_____

E.C.: _____

F.C.: _____

G.C.: _____

H.S.C.: _____

P.C.:_____

PART 5
EVALUATING LEGAL RESOURCES

When inspecting and evaluating legal resources, the purpose of the resource must first be determined. The author or editor should be noted and the type of legal authority (primary or secondary and binding or persuasive) should be distinguished.

Some legal issues cannot be answered by a specific statute or precedent in case law. When this occurs, examining secondary source materials may be helpful.

PART 6
READING AND INTERPRETING STATUTES

A statute, often referred to as legislation, is a statement of a legal rule enacted by the Legislature and signed by the Governor or allowed to take effect without the Governor's signature.

A. Code Construction Act

The Code Construction Act, codified in Chapter 311 of the Government Code, applies to all laws passed from the time of the 60th Legislature, including amendments, repeals, revisions,

or reenactments of any provision of all Texas statutes. Sec. 311.002, G.C. It is, in essence, the law on how to read the law. The rules of construing statutes, contained in the Code Construction Act, are discussed at length in the *Code of Criminal Procedure and Penal Code* chapter of this study guide.

B. Monitoring, Locating, and Reading New Legislation

The Texas Legislature meets in regular session every two years in the odd-numbered years for 140 days. The regular session starts on the second Tuesday in January. The Texas Constitution allows the Governor to call special sessions when needed, but these sessions cannot exceed 30 days and may only consider legislative issues specified by the Governor. Like most other states, Texas has a bicameral system with a 31-member Senate and a 150-member House of Representatives. State senators and representatives are elected from single-member districts to serve four-year and two-year terms, respectively.

A proposed law is called a bill. It may be drafted by a legislator or by the Texas Legislative Council, a state agency that provides bill drafting services, research assistance, computer support, and other services for the House and Senate. Attorneys, lobbyists, and citizens may also draft bills that may only be introduced by a legislator or be substituted by a legislative committee.

The chart in *Appendix B* outlines the lengthy legislative process. In both houses, bills must be heard at three readings, be assigned to a committee, and go through a process of committee review and floor action. The bill may be amended at many steps throughout the process, but the final enrolled bill that is sent to the Governor for signature must be passed by both houses.

Most bills are amended frequently, thus, it is important that court personnel understand how to read proposed legislation. Underlining indicates new language that is to be added to a statute or law. "Strike-through" indicates language to be deleted or changed.

H.B. No. 1174
AN ACT
relating to the penalties for illegally passing a stopped school bus.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 545.066(c), Transportation Code, is amended to read as follows:
(c) An offense under this section is a misdemeanor punishable by a fine of not less than $500 [~~$200~~] or more than $1,250 [~~$1,000~~], except that the offense is:
(1) a misdemeanor punishable by a fine of not less than $1,000 or more than $2,000 if the person is convicted of a second or subsequent offense under this section committed within five years of the date on which the most recent preceding offense was committed;
(2) a Class A misdemeanor if the person causes serious bodily injury to another; or
(3) [~~(2)~~] a state jail felony if the person has been previously convicted under Subdivision (2) [~~(1)~~].
SECTION 2. (a) The change in law made by this Act applies only to an offense committed on or after September 1, 2013.
(b) An offense committed before September 1, 2013, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For

purposes of this subsection, an offense was committed before September 1, 2013, if any element of the offense was committed before that date.
SECTION 3. This Act takes effect September 1, 2013.

After the close of the session, all the laws passed during each session are published in volumes referred to as session laws. West prints each session's laws in paperback in chronological sequence. After the legislative session, the laws are then incorporated into *Vernon's Texas Codes Annotated*.

The Texas Municipal Courts Education Center offers a legislative issue of *The Recorder* following each session. This publication summarizes all the pertinent legislation affecting municipal courts. Summaries of new laws of general interest to cities are also found in the newsletter of the Texas Municipal League. Copies of enrolled bills passed by each session are available online at the Texas Legislative Council website at www.tlc.state.tx.us.

The Texas Legislature Online website (www.capitol.state.tx.us) allows for the viewing and downloading of Texas statutes, codes, and Constitution. Users can also research filed bills, read current and past legislation, and find out more about the legislative process.

In addition, there are commercial providers of recent legislation. The services offered by these providers vary from paper copies of bills, online services with full text of bills, legislative tracking, record votes, weekly bulletins, committee schedules and reports, floor calendars, clipping services, and more. These often require a fee and an internet account to access.

23. How often does the Texas Legislature meet? _____

_____

24. What are the two houses that compose the Texas Legislature called?_____

_____

True or False

25. A bill must be approved in identical form by both houses before being sent to the Governor.

____

26. Below is an excerpt from a recent piece of legislation. Which phrases were added? Which were deleted?

SECTION 1. Section 545.066(c), Transportation Code, is amended to read as follows:

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $500 [~~$200~~] or more than $1,250 [~~$1,000~~], except that the offense is:

(1) a misdemeanor punishable by a fine of not less than $1,000 or more than $2,000 if the person is convicted of a second or subsequent offense under this section committed within five years of the date on which the most recent preceding offense was committed;

(2) a Class A misdemeanor if the person causes serious bodily injury to another; or

(3) [~~(2)~~] a state jail felony if the person has been previously convicted under Subdivision (2) [~~(1)~~].

_____

_____

_____

27. What are session laws? _____

_____

28. Where can you get a copy of a bill?_____

_____

PART 7
READING AND INTERPRETING CASES

When researching a legal question, it is imperative that the researcher look for related case law. As discussed earlier, the term case law refers to the idea that the opinions from cases have precedent and therefore can be binding authority for judges deciding a matter of law. Judicial opinions also affect how a statute is applied; judicial opinions can declare a statute unconstitutional, giving guidance and direction for how that law should be applied. Under the principle of stare decisis, the decision of a court is binding authority on the court that issued the decision and on lower courts in the same jurisdiction for the disposition of factually similar cases.

A. Parts of a Case

Whether the case is read as a slip opinion (an individual court decision published separately as soon as it is rendered), on an advance sheet (a pamphlet of court decisions circulated prior to the bound volumes), or in a bound volume, the following elements of a case are usually there.

1. Name or Title of the Case

Cases generally are identified by the last names of the parties to the lawsuit, for example, the citation *Tate v. Short,* 401 U.S. 395 (1971) indicates that the parties involved are Tate and Short.

Some cases are shown as *In re Gault,* 87 S. Ct. 1428 (1967), which signifies that there were no adversarial parties in the proceeding. Such a designation usually indicates a habeas corpus case, a guardianship matter, a contempt case, disbarment, a bankruptcy, or a probate case. The *Gault* case, for instance, involved a juvenile. The words “In re” mean in the affair; in the matter of; concerning.

Cases may also be shown as *Ex parte Minjares*, 582 S.W.2d 105 (Tex. Crim. App. 1978). “Ex parte” means that a special proceeding was involved. Here ex parte means by or for one party; done for; on behalf of. This case involved an appeal from an order entered by a county court at law denying the petitioner’s application for habeas corpus.

2. Docket Number

A docket number is assigned by the clerk when the case is filed with the court.

3. Decision Date

The decision date refers to the date on which the court hearing the case posted an opinion.

4. Synopsis

The synopsis reviews the facts of the case, its disposition in the lower court, the name of the lower court, and the holding in the case in the appellate court (*affirmed, reversed, affirmed in part, reversed in part,* and so forth), the last name of the judge who authored the opinion, and the last names of the judges who authored or joined in a concurring or dissenting opinion.

5. Headnote

The legal editor writes a headnote, which is a summary of all the points discussed in the case. Each headnote represents a point of law extracted from the decision. If there are many headnotes, there are many points of law in the opinion. West, for example, assigns sequential numbers in brackets (i.e., [1], [2], or [3], etc.) before the headnote summary and places these in the opinion to help the reader locate the discussion on that point of law. West also assigns key numbers to names and phrases and codes the headnotes in this manner.

6. Names of Counsel

The names of counsel are the attorneys who took part in the case on the side of the State/plaintiff and the side of the defendant.

7. Statement of Facts

Prior to the opinion of the case, a statement of the facts is presented. This is a summary of the case, including both parties' basic arguments. The statement of facts is important to a researcher because the researcher gets a review of the case without reading the opinions of the lower courts or the original petitions sent to the court.

8. Opinion of the Court

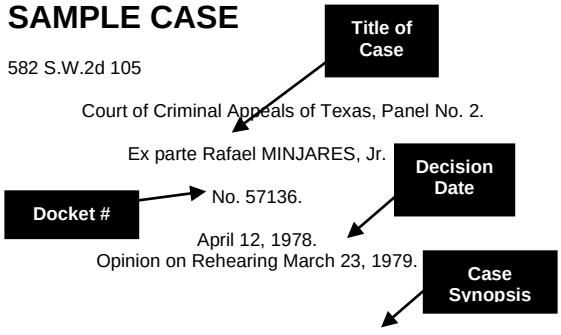
The opinion of the court is the explanation of the court's holding, or result, in the legal controversy before the court.

The various types of opinions are explained below.

- A majority opinion is usually written by one judge and represents the principles of law that the majority of the court deemed operative in a given decision. It has the greatest precedential value.
- A separate opinion may be written by one or more judges and indicates that he or she concurs in or dissents from the majority. A judge can also dissent or concur without writing a separate opinion.
- A concurring opinion agrees with the results reached by the majority but disagrees with the reasoning of the majority opinion.

- Dictum or dicta is language in an opinion that is not necessarily essential to the holding of the decision and does not embody the determination of the court; thus, it is not binding on the courts.
- A dissenting opinion disagrees with the result and the reasoning of the majority. Dissenting opinions are not law in a case; nor are they binding as precedent. They assume the characteristics of dictum and serve as persuasive or secondary authority. Occasionally, the controlling opinion may later be overruled and the reasoning for the dissenting opinion forms the basis of the new controlling opinion.
- A plurality opinion (called a judgment by the Supreme Court) is agreed to by less than a majority as to the reasoning of the decision, but it is agreed to by a majority as to the result. A plurality opinion is not binding. It has precedential value with regard to the ruling. However, the reasoning (or rationale) may be persuasive.
- A per curium opinion is by the court which expresses its decision in the case but whose author is not identified. They tend to be short and typically address non-controversial issues (though not always).
- A memorandum (mem.) opinion is a holding of the whole court in which the opinion is very concise. They can be binding or persuasive but are restricted to cases previously resolved under existing case law that do not create a new rule of law, involve constitutional issues, criticize existing law, or resolve a conflict of authority.

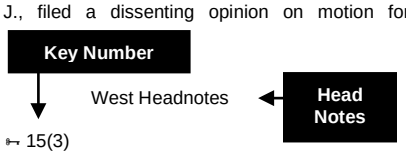
SAMPLE CASE



The County Court at Law, El Paso County, John L. Fashing, J., denied application for habeas corpus, and petitioner appealed. On motion for rehearing, the Court of Criminal Appeals, Odom, J., held that: (1) for fines and accumulated jail terms, good time credits cannot be earned concurrently against each fine or jail term, but to contrary, treating them as one, good time credits could be earned by petitioner only against aggregate punishment, and (2) petitioner was entitled to such good time credits as he had earned while inmate of county jail against his municipal court traffic fines and costs, and absence of formal sentence could not be used to deny him that credit.

Motion for rehearing granted, order denying release set aside, and cause remanded.

Douglas, J., filed a dissenting opinion on motion for rehearing.



[1] Prisons 🗝 15(3)
310k15(3)

Statute which provides that prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence did not transform petitioner's nine traffic fines into one but merely provided that, for commutation purposes, fines were to be treated as if they were one, and thus good time credits could not be earned concurrently against each fine or jail term, but to the contrary, treating them as one, good time credits could be earned by petitioner only against aggregate punishment. Vernon's Ann.Civ.St. art. 5118a.

[2] Prisons 🗝 15(3)
310k15(3)

Absence of formal sentence in municipal court prosecution does not render inapplicable statute which provides that prisoner under two or cumulative sentences shall be allowed commutation as if they were all one sentence, and thus petitioner was entitled to such good time credits as he had earned while inmate of county jail against his municipal court traffic fines and costs and absence of formal sentence could not be used to deny him that credit. Vernon's Ann.Civ.St. art. 5118a.

[3] Fines 🗝 11
174k11

Petitioner, who after hearing had been found to be indigent, could not be imprisoned because he was too poor to pay his accumulated traffic fines, and thus was entitled to immediate discharge from

custody.

***106** W. Stephen Hernsberger, El Paso, court appointed, for appellant.

Before ONION, P. J., and DOUGLAS and ODOM, JJ.

OPINION

DOUGLAS, Judge.

Rafael Minjares appeals from an order denying relief on his application for a writ of habeas corpus. On September 23, 1977, petitioner was convicted in the municipal court of El Paso upon his plea of guilty to seven traffic law violations. The court assessed the

9. Decision with Judgment or Decree

Appellate court decisions contain one of the following terms: affirmed, reversed, reversed and remanded, or modified. "Affirmed" denotes that the appellate court reached a decision that agrees with the result reached in the case by the lower court. "Reversed" denotes that the appellate court disagrees with the result reached by the lower court in the case. "Reversed and remanded" denotes that the appellate court disagrees with the lower court and that the case is to be returned to either a lower appellate court or trial court for further proceedings. "Modified" denotes that the appellate court is reforming part of the decision of the lower court.

B. Shepardization of a Case

The law is ever changing; therefore, researchers must have an avenue to check the case or statute to determine if it is still "good" law (a law that has not been overturned by case law or a change in the statute). Shepardizing is the easiest and quickest way to determine if a case can be relied upon and has not been reversed by a higher court or overruled by a subsequent decision of the same court. Shepardizing will also help the researcher to determine whether a case has been superseded (or made into "bad" law) by statute. This is done using *Shepard's Citations*, which are available on CD-ROM, on legal research websites, and in bound volumes in most law libraries.

The *Shepard's Citations* or *Citators* serve numerous purposes, including the following:

- to verify that the case still has precedential value and has not been overturned;
- to locate parallel citations;
- to identify other primary and secondary sources of legal information on the topic; and
- to review writ and petition history notations.

Judges and clerks should understand the reasons why a researcher would shepardize a case.

C. Guidelines for Reading Case Law

Presented below are general guidelines on how to analyze and apply case law.

- Determine whether the court deciding the case creates precedent for the trial or appellate court in an area being researched. For example, Texas is in the 5th Circuit Court of Appeals in the federal system; thus, all 5th Circuit Court decisions would apply to Texas municipal court proceedings.
- Understand the facts of the case being researched.
- Understand the legal reasoning employed by the court in deciding the case.

- Identify the court's actual decision on the issues and the legal principles that are necessary to arrive at the decision. These may be precedent or persuasive authority.
- Compare the facts of the situation to the facts of the case.
- Compare the issues in the situation with the issues in the case.
- Determine whether the case serves as direct precedent related to the facts and issues of the case.
- Determine whether the legal reasoning of the case provides any guidance as to whether the court would decide differently on the facts of the situation.
- If the issues are the same and the facts are the same or similar, then the case stands as precedent in the situation.
- If the issues are the same, but the facts are different, then the case will not have much effect on the situation.

29. How are cases named or identified? _____

_____

30. What is the significance of "In re" when shown in a cited case?_____

_____

_____

31. What is the significance of "Ex parte" when shown in a cited case?_____

_____

_____

32. Who usually writes the headnote to a case?_____

_____

33. What is the main difference between a majority and concurring opinion? _____

_____

_____

34. What is a plurality opinion?_____

_____

35. What does "affirmed" mean? _____

_____

36. What does it mean when a court reverses a case? _____

_____

37. Why should a researcher shepardize a case or statute? _____

_____

_____

_____

PART 8
READING AND INTERPRETING ATTORNEY GENERAL OPINIONS

Because many of the issues of interest to municipal courts have not been considered by an appellate court, attorney general opinions tend to take on more significance than they do in county and district courts.

The Attorney General is granted the power to issue opinions on questions of law in Sections 402.042 and 402.043 of the Government Code. These sections also set out which state and local officials can request opinions. Those authorized by statute to request opinions include:

- the governor;
- the head of a department of state government;
- the head or board of a penal institution;
- the head or the board of an eleemosynary institution;
- the head of a state board;
- a regent or trustee of a state educational institution;
- a committee of a house of the Texas Legislature;
- a county auditor authorized by law; and
- the chairman of the governing board of a river authority.

The Attorney General also advises district or county attorneys in certain instances.

The opinions are organized by the name of the Attorney General at the time the opinion was released and numbered chronologically. Shown below are the Attorneys General who have served Texas in the last 79 years and their approximate years of service.

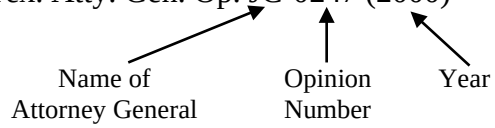
- KP: Ken Paxton – 2015 to present
- GA: Greg Abbott - 2002 to 2014
- JC: John Cornyn - 1999 to 2002
- DM: Dan Morales - 1991 to 1998
- JM: Jim Mattox - 1983 to 1990
- MW: Mark White - 1979 to 1982
- H: John Hill - 1973 to 1978
- M: Crawford Martin – 1967 to 1972
- C: Waggoner Carr - 1963 to 1966
- WW: Will Wilson - 1957 to 1962
- S: John Ben Sheppard - 1953 to 1956
- V: Price Daniel - 1947 to 1952
- O: Grover Sellers - 1944 to 1946
- O: Gerald Mann - 1939 to 1943

Attorney General (A.G.) opinions are cited in one of the three formats below.

JC-0247 (2000)

Op. Tex. Atty. Gen. No. JC-0247 (2000) or

Tex. Atty. Gen. Op. JC-0247 (2000)



Attorney general opinions are not binding on any segment of the Texas judiciary. The Attorney General acknowledged the limited authority of his own opinions in Attorney General Opinion No. O-7234-A (1946): "The opinions of the Attorney General have not the force of law and are legally binding on no one. They may be highly persuasive to the courts but apparently only in those cases where they coincide with the court's view of the law."

While attorney general opinions are entitled to careful consideration by the courts, and are regarded as highly persuasive, they are not binding on the judiciary. Because the Legislature has specifically delegated to the Attorney General the duty of interpreting and enforcing the Open Records Act, greater weight is given to attorney general opinions when they pertain to the Open Records Act.

Exercise caution in interpreting and applying attorney general opinions. Because of legislative amendments, previously issued opinions may no longer be valid; while more recent opinions may overrule part or all of previous opinions.

Copies of attorney general opinions can be obtained from the Attorney General's website at www.oag.state.tx.us/opin.

38. How are attorney general opinions organized? _____

_____

_____

39. Are attorney general opinions binding on the court? _____

PART 9
THE LEGAL RESEARCH PROCESS

There are many different acceptable approaches to legal research. Legal research guides are available for persons anywhere on the experience continuum. Shown below are the four steps most commonly applied.

A. Step 1: Gathering, Identifying, and Analyzing the Facts

To start, the facts must be gathered, identified, and analyzed. It is often helpful to ask: Who? What? When? Where? Why? and How? Recall that the rules stated by courts are tied to specific fact situations and must be considered in relation to those facts. Because the facts of a legal problem will control the direction of the research, the investigation and analysis of facts must be incorporated into the research process. Analyze what you want to accomplish

and what results you want. Again, the facts of any given situation will dictate the issues of law that need to be researched.

B. Step 2: Framing the Legal Issues to Be Researched

The goal is to classify or categorize the problem into general and increasingly specific subject areas and to begin to hypothesize legal issues. Consider the following questions:

- Which branch of government is involved: legislative, judicial, or executive?
- Is the matter civil or criminal?
- Does it involve federal law, state law, or local ordinance?
- Is it substantive or procedural?
- Who has jurisdiction?
- Are the sources consulted binding or persuasive?

Often, it is useful to consult secondary sources for an overview of the relevant areas. These might include past issues of *The Recorder*, a chapter in *The Municipal Judge's Book*, a handout from a TMCEC seminar, or a law review article. The search should start with the most general and progress toward the specific.

A clear, concise statement of each legal issue raised by the significant facts of the case should be written. Too many issues are better than too few. Insignificant issues can be eliminated later.

A systematic and methodical approach is essential to the research process. Keeping organized notes and records is critical. For each issue, it is important to decide which sources to use and the order in which to examine them. Keep notes regarding sources searched on each issue, even if the sources are repeated in earlier searches. As information is found, record where it was found and why it is relevant. Maintain a list of sources consulted, sources to be consulted, terms and topics checked, and steps to update. This will prevent inefficient use of time and overlooking information.

C. Step 3: Finding the Law

Once a list of questions has been developed, take from those questions a list of key terms. Key terms are words and phrases that may lead a researcher to a legal answer. Often, it helps to phrase each key word in as many different ways as possible to find more leads to useful information. While researching, continue to add key words to the list as they are realized.

In searching for applicable law, use the key terms and look in the table of contents and the index. If the particular provision is not found in the index or table of contents, look at the sequential organization of the code. For example, the Code of Criminal Procedure is generally organized according to the sequential steps in a trial. Determine whether the provision falls in the pre-trial, trial, or appeal process.. When researching a provision relating to witness subpoenas, searching the portion of the code that contains the appellate provisions would be unproductive, since witness subpoenas would issue before the trial.

If, after these steps have been followed, the statute has not been located, rephrase the question, develop new key terms, and repeat the entire process.

If a statute is found that appears to answer the question, the next step involves determining if the facts apply based on the plain meaning of the statute. To ascertain the plain meaning of the words in the statute, first look for a statutory definition then a dictionary definition if there is no statutory definition. If the meaning of the statute is ambiguous (there is more than one reasonable meaning), it may be helpful to determine the legislative intent behind the statute using the context of the statute (which meaning the collective Legislature intended). To do this, a researcher will need to review the legislative history of the statute—documents such as revised versions of bills, legislative debates, committee reports, and committee hearings.

Identify and read all relevant case law. The search should not be limited to cases that support the position taken. Instead, anticipate and identify both sides of an argument and contrary conclusions. Locate cases that offer both binding and persuasive authority. Cases that interpret statutes can be identified in several ways:

- Annotated statutes and codes that list interpretative cases after each statutory provision. An example of a codified statute in *Vernon's* is shown in Part 3 of this guide.
- *Shepard's Citations*, which provides a list of cases that cite a statute or other cases on a particular issue.
- Computer assisted legal research from Westlaw, Lexis, or some other CALR.

As each case is read and briefed, note its full citation, parallel citations, the judge and court issuing the opinion, the date of the decision, the relevant facts, the holding, a summary of the court's reasoning, key numbers assigned, and the sources cited by the court. Each of the sources cited should be read, briefed, and shepardized and new cases added to the list. Each case briefed should be incorporated into the outline. Cases that are "on point" should be registered, so that the opinion will guide the court.

After identifying, reading, and organizing the primary sources, investigate the secondary sources to refine the search and expand the argument.

D. Step 4: Updating

The law is modified or changed constantly. Assess pocket parts, supplements, and advance sheets for modifications or changes that may have occurred since initiating a search. CALRs, such as Lexis and Westlaw, are helpful to make certain that significant changes or cases are not overlooked.

At this point, the search is ready to be presented to a supervisor, city attorney, or presiding judge.

True or False

40. There is only one correct method in conducting a legal research project. ____

41. Name at least three questions that should be asked to help frame the legal issue. _____

_____

_____

_____

42. Why would a secondary authority be consulted in framing the legal issue to be researched?

_____

_____

True or False

43. Since case law interprets statutes, courts should research cases and statutes when determining how to administer statutes. ____

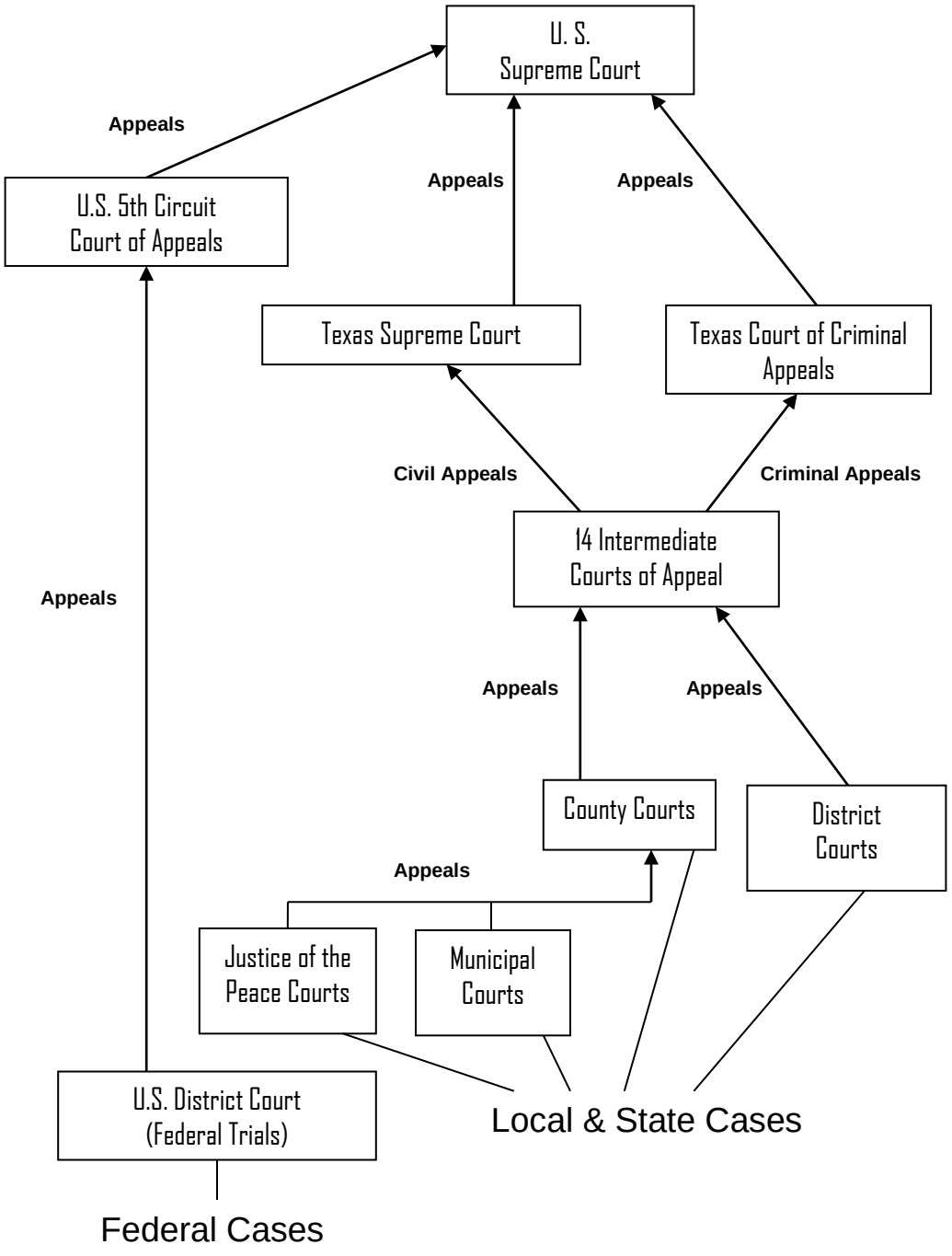
44. After completing research on the legal issue, why is it important to update the search one last time? _____

_____

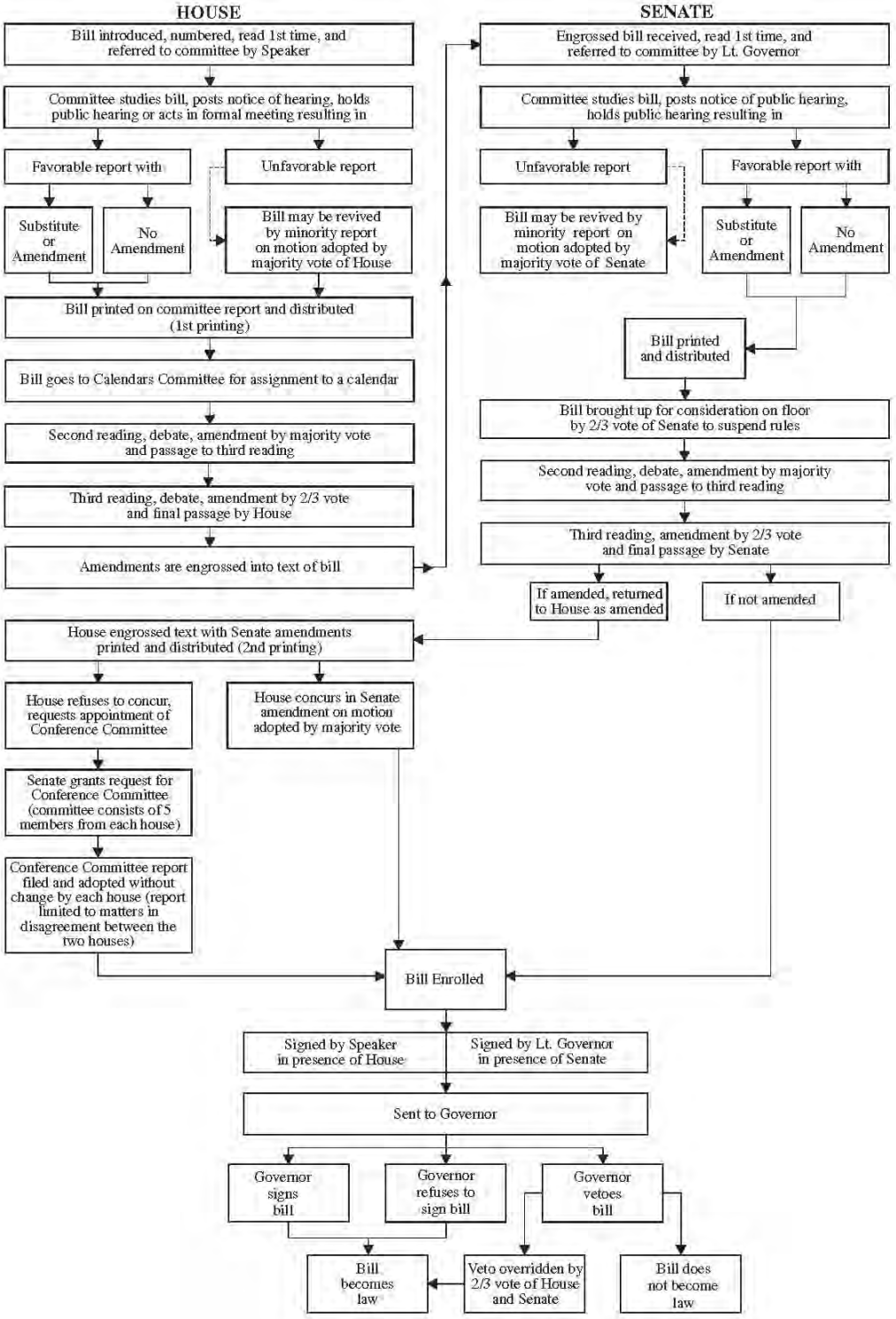
CONCLUSION

This chapter was written as an introduction to legal research and provides only a basic look at the broader topic of legal research and writing. All court personnel are advised to consult their city attorney or presiding judge before adopting policies and procedures. Court clerks should not substitute their own independent legal research for the advice of an attorney or the judges in their court. Nor should clerks ever place themselves in the position of giving legal advice to the public, friends, or any person appearing before the court. Additional training in legal research may be obtained from law schools and educational programs for paralegal and legal assistants. The State Bar of Texas (512.463.1463) and American Bar Association maintain lists of both.

APPENDIX A: HIERARCHY OF COURTS



APPENDIX B: THE LEGISLATIVE PROCESS



ANSWERS TO QUESTIONS

PART 1

1. Statutory law.
2. Common law consists of oral traditions derived from general customs, principles, and rules handed down over the years and reflected in the decisions of the courts.
3. Stare decisis, which means to "stand on what has been decided," is the principle that the decision of a court is binding authority on the court that issued the decision and on lower courts in the same jurisdiction for the disposition of factually similar cases.
4. True.
5. False (this is the role of trial courts).
6. In the *Texas Register*, published by the Secretary of State, or in the Texas Administrative Code.

PART 2

7. The term "source of law" can refer to three concepts:
   - concepts and ideas, such as customs, traditions, principles of morality, and economic, political, philosophical, and religious thoughts;
   - statutory formulations from the federal, state, and local governments; and
   - literature, such as books, online content, law reviews, journals, and periodicals.
8. Primary authorities are authorized statements of law by governmental institutions, such as written opinions of the court, constitutions, statutes, and rules of court. Secondary authorities are statements about the law that are used to explain, interpret, develop, locate, or update primary authorities.
9. Binding (or mandatory) authority must be followed by any court lower in the hierarchy. Binding authority is always primary authority, but not all primary authority is binding.
10. A case is "on point" if it shares the same significant facts with the case at issue and does not differ in any significant facts from the instant case.
11. A court can reject a decision of a higher court as not being binding by distinguishing the cases on their facts or issues, and thus finding that the previous case is different in some significant way.
12. False (secondary sources can only be persuasive authority).

PART 3

13. The three broad categories are primary sources; secondary sources; and index, search and finding tools.
14. Primary sources are authoritative statements of legal rules by governmental bodies. They include court opinions, constitutions, statutes, and rules of court. Secondary sources are materials about the law that are used to explain, interpret, develop, locate, or

update primary sources. Examples include law reviews, legislative histories, journal articles, newsletter articles, bench books, and procedure guides. These secondary sources can be interpretive and may include analysis and critical commentary.

15. Bound copies or paper resources are updated through inserts, often called pocket parts for statutes and slip opinions. They are usually updated once a year and are found in the back of each volume or code. When the pocket parts get too bulky, a new hard cover volume is published.

16. "Black Statutes" *(Vernon's Texas Codes Annotated)* is available from West and includes the complete text of the law, case annotations that provide interpretations by courts, cross-reference sections, historical notes and commentaries that give background interpretations of the law, a general index, some individual volume or code indices, an annotation index, and law review article citations.

17. Lexis and Westlaw.

18. True.

PART 4

19. A citation is a reference to a law or case, or a reference to a source of legal authority that allows a researcher to locate a cited source.

20. They are reference guides that explain the form and meaning of legal citations, as well as give the proper way to reference and cite legal material.

21. The following abbreviations stand for:

- U.S.C. *United States Code*
- S. Ct. *Supreme Court Reporter*
- F.2d *Federal Reporter, 2nd Series*
- S.W.2d *South Western Reporter, 2nd Series*
- *v.* *versus*

22. The following abbreviations stand for:

- A.B.C. Alcoholic Beverage Code
- C.C.P. Code of Criminal Procedure
- E.C. Education Code
- F.C. Family Code
- G.C. Government Code
- H.S.C. Health and Safety Code
- P.C. Penal Code

PART 6

23. Every two years (in odd-numbered years) for 140 days and when the Governor calls a special session.

24. The House of Representatives and the Senate.

25. True.

26. The following phrases were added:

    $500,

    $1,250, and

    a misdemeanor punishable by a fine of not less than $1,000 or more than $2,000 if the person is convicted of a second or subsequent offense under this section committed within five years of the date on which the most recent preceding offense was committed.

    The following was deleted:

    $200, and

    $1,000

    The underlined text is new language that is to be added to a statute or code. The "strike-thru" indicates language that is to be deleted.

27. All of the laws passed by a legislative session that are published in volumes in chronological sequence.

28. The Texas Legislative Council website or the Texas Legislature Online website.

PART 7

29. By the names of the parties to the lawsuit.

30. *In re* is used in a case citation to signify that there are no adversarial parties. It means in the affair; in the matter of; concerning.

31. *Ex parte* in a case citation means that a special proceeding was involved. It means by or for one party; done for; on behalf of.

32. The legal editors (rather than the court) write the headnotes.

33. A majority opinion is usually written by one judge and represents the principles of law that the majority of the court deemed operative in a given decision. It has the greatest precedential value. A concurring opinion agrees with the result reached by the majority, but disagrees with the precise reasoning of the majority.

34. A plurality opinion is agreed to by less than a majority as to the reasoning of the decision, but it is agreed to by a majority as to the result.

35. Affirmed denotes that the appellate court reached a decision that agrees with the result reached in the case by the lower court.

36. Reversed denotes that the appellate court disagrees with the result reached by the lower court in the case.

37. The law is ever changing; therefore researchers must have an avenue to check the case or statute to determine if it is still "good" law (a law that has not been overturned by case law or a change in the statute). Shepardizing is the easiest and quickest way to determine

if a case can be relied upon and has not been reversed by a higher court or overruled by a subsequent decision of the same court. Shepardizing will also help the researcher to determine whether a case has been superseded (or made into "bad" law) by statute.

Shepard's Citations serve numerous purposes:

- to verify that the case still has precedential value and has not been overturned;
- to locate parallel citations;
- to identify other primary and secondary sources of legal information on the topic; and
- to review writ and petition history notations.

PART 8

38. Attorney general opinions are organized by the name of the Attorney General at the time the opinion was released and then numbered chronologically. Example: DM-1 (1991) would refer to the first opinion released by Dan Morales when he took office as the Texas Attorney General.

39. No.

PART 9

40. False (there are several).

41. Some questions that should be asked to help frame the legal issue are:
    - Which branch of government is involved: legislative, judicial, or executive?
    - Is the matter civil or criminal?
    - Does it involve federal law, state law, or ordinance?
    - Is it substantive or procedural?
    - Who has jurisdiction?
    - Are the sources being consulted binding or persuasive?

42. Often it is useful to consult secondary sources for an overview of the relevant areas. The search should start with the most general and progress toward the specific.

43. True.

44. The law is modified or changed constantly. There may be, for example, a new attorney general opinion or case on the issue since the search was initiated.

9

Technology Fundamentals

Table of Contents

INTRODUCTION

Some equate working with modern technology to driving a car. It is not necessary to know how to build a car to drive it safely from place to place, but it is necessary to know how to operate it correctly. This chapter is meant to provide clerks with sufficient basic information to make informed decisions about technology that may be used in the court. These days, making informed decisions about the use of technology also requires an understanding of ethical and legal dilemmas that can arise using social media.

PART 1
MINIMAL REQUIREMENTS

If a court is large enough for the use of a server, it is suggested that an information technology (IT) specialist be contacted to assist with the purchase and implementation of the necessary equipment and software. The following section lists the minimal requirements to be familiar with when making decisions on technology.

A. Hardware

Hardware refers to the physical, electronic, and mechanical equipment that makes up a computer.

1. Type of Computer

Generally, computers running a Windows-based operating system (PCs), rather than those running MacOS (Macs) or any open-source operating system are used in court environments. Thus, only PCs are discussed here. In addition, mobile devices, such as the iPad and Android tablets, are briefly discussed.

2. Hard Drive

The hard drive refers to the fixed disk within the computer that stores information for permanent or long-term use. A new system purchased for a low volume court should have at least 500 gigabytes (GB) as the size of the hard drive. If a computer needs to store high volumes of data or digital files, a larger hard drive, external hard drive, or cloud storage may be needed.

3. Processor

The processor, or central processing unit (CPU), is often referred to as the “brain” of the computer because it reads and executes the commands that the user issues. Processors are defined by speed. The greater the processing speed, the more instructions or tasks the computer can perform per second. Speed is measured in terms of GHz (gigahertz).

4. Memory or Random Access Memory (RAM)

Not to be confused with disk storage space, random access memory (RAM) is a memory device in the form of a computer chip or inline memory module that stores information for processing. This high-speed memory holds a copy of the operating system, any current applications being used, and all information that is being processed while the system is in use. The file that is being modified and all changes that are made are kept in RAM until it is “saved.” Most new computers are loaded with several GBs (gigabytes) of RAM. Memory is generally an easy upgrade, so it may be a good practice to only purchase what the court can reasonably afford.

5. External Storage Devices

External storage devices allow for portable data storage. Choosing the right external storage device will require some research, as there are many different types, sizes, price ranges, and available connectors. Two common external storage devices are external hard drives and USB flash drives.

External hard drives are available. External hard drives are useful if the court needs to store massive amounts of data that the user may need to access occasionally or that may need to be portable. External hard drives store data in the same fashion as an internal one, but with an external hard drive, the drive is connected to the computer via a connection, generally a USB port, so that it may easily be removed and stored anywhere, including off-site. External hard drives are a good choice for doing computer/server back-ups. Storage is defined by gigabytes (GB) or terabytes (1000 GBs) and varying sizes of external hard drives are available.

If the court needs a storage device that is even more portable for frequent use, USB memory sticks−also called flash drives−are available. As indicated in the name, these devices connect to the computer through a USB port (most new computers have two or more USB ports and USB hubs are available for additional connections). Memory sticks are for storing data that needs to be transferred from one location or computer to another. Unlike external hard drives which require certain drivers to be present on a computer, memory sticks will work on any computer that is operating current versions of Windows. Memory sticks vary in price according to storage size and manufacturer.

6. Cloud Storage

The use of cloud storage is more and more prevalent with organizations. Cloud storage is a type of data storage that allows digital information to be stored off-site rather than on local hard drives or storage networks. Data stored on the cloud is typically accessed through the internet but is sometimes accessed through a private dedicated network. Cloud storage can be a good alternative for data storage, as it is cost-effective and scalable. Local hard drives have only so much space and when that space runs out, files must be transferred to another device. This transfer may necessitate purchasing more hardware. Cloud storage, on the other hand, is flexible, and its capacity can be increased or decreased as needed. With cloud storage, organizations typically pay for just the space that is used. This allows organizations to avoid the cycle of constantly purchasing more storage hardware to create more capacity or to upgrade aging and outdated equipment.

7. Monitor

For monitors, be aware of the optimal resolution (higher resolutions allow for more information on the screen) and scan refresh rates (higher refresh rates can help reduce the dimming that causes monitor flickering). In deciding what type of monitor best meets the needs of the court, consider the following: amount of time per day the monitor is used, the desk space available, and the data the monitor displays. Data entry clerks may need a higher quality monitor that will decrease eye strain and fatigue, whereas a clerk who works in the open common area may require a smaller flat panel monitor. It is not uncommon to have dual monitors to facilitate workload.

8. Mouse and Keyboard

To use a Windows program, a mouse or pointing device is typically needed. Pointing devices vary from the traditional mouse, to trackballs, touchpads, and pointing sticks. The use of ergonomic keyboards and mouse pads can help avoid hand and wrist strain.

9. Printer

A laser printer is essential in most courts for speed and clarity of printed characters. The print speed should be no less than 20 pages per minute for a black and white laser printer; many will print 60 pages per minute. If the court is networked, a networked printer will allow high-speed printing from any computer terminal in the court.

10. Internet Connection

Courts have many options for connecting to the internet. The most common connections for courts are DSL, cable, and fiber optic. Wireless broadband connections, such as satellite and cellular, are popular as well. Speed is the rate at which data is converted and transferred to a computer and is measured in megabits per second (mbps). The greater the mbps, the faster the data transfer.

Digital Subscriber Line, or DSL, is high-speed internet access over ordinary telephone lines.

Cable offers an always-on, high-speed internet connection. In order to use a cable connection, a cable modem is required. Cable modems use the high-bandwidth capabilities of cable TV lines. It is shared media, which means that as more people in the area are in the cable line, the speeds for each user will decrease.

T-1 lines are another high-speed, direct internet connection. T-1 lines are fast because the foundation is a dedicated telephone line that transfers data through 24 individual channels. Unlike cable, this connection is not shared, which can translate to more stable speeds. Most telephone companies allow users to buy only some of the channels at reduced rates; this is called fractional T-1 access.

Fiber optic is rapidly growing in popularity and prominence. The speeds available with fiber optic are much faster than with standard internet connections like cable or DSL.

Wireless broadband connections, including cellular, satellite, and WiMAX, are becoming increasingly popular as well. There are a variety of wireless signal spectrums, referred to as 3G, 4G, LTE, etc., which offer different speeds. The availability and speed of these signals varies wildly depending on your location, but as companies expand their infrastructure, their reliability and popularity will only continue to grow.

11. Network Server

If the court has more than one computer, it is recommended that the computers be connected via a LAN (local area network) so that software and data can be shared and an office e-mail communications system can be established. Users will be able to share files, as well as printers. A host computer, cables, and networking server software (Windows NT Server, for example) are also required. If the court is in an old building where it is not practical to run wires through the ceilings or walls, the court may want to look into wireless LANs or wireless Small Business Server networking.

B. Software

Software refers to the programs used by the computer. On mobile devices, software is often referred to as an “app.”

1. Operating System Software

Operating system software controls how the computer works and includes programs such as Windows and Linux. This software creates program and data files and controls the flow of

information between the processor, memory, and the devices. Most new computers are automatically loaded with an operating system that may be upgraded.

2. Word-Processing

Although there are alternatives, most courts and law firms use Microsoft Word or Corel WordPerfect. Some software programs may be purchased as packages. For example, Microsoft Office Professional offers Word, Excel, PowerPoint, Access, and Outlook. These packages include compatible word-processing, spreadsheet, and presentation software that can be installed at the same time. At a minimum, the word processing package should include a spell checker and have the capability to move text easily, merge functions, create footnotes, as well as the ability to create an index, an outline, and a table of contents.

3. Spreadsheet Program

These programs can be used to analyze case statistical records, dispositions, or sentencing patterns and to assist with accounting. A spreadsheet also allows you to present information graphically with pie charts, graphs, and other demonstrative aids. Microsoft Excel is now the industry standard.

4. Fax Software

A full-featured fax software program allows you to fax directly from your personal computer through a fax modem. An address book and a personal information manager are features made available with some software. To fax from a computer, either a modem and analog telephone line, a connection into a network with an Internet fax machine, or a centralized fax modem is needed. Many copiers now come equipped with fax components requiring a category 5 network connection to utilize the network.

5. Utility Software

Common utility software includes computer file management and data backup applications, lost data restorers, and file compressors. With the influx of viruses on computers that connect to the internet, it is vital that a computer have updated antivirus software. Most antivirus software can easily be updated by either visiting a website or allowing the software to automatically update. Many antivirus software packages also contain tools for fighting spam or junk e-mails.

Antivirus software packages also contain adware and spyware blockers and removers. Adware and spyware are small computer programs that are downloaded on a computer, without the user's knowledge, for the purpose of collecting data on the computer usage. Some adware goes as far as installing advertising software that creates pop-up windows each time a computer is connected to the Internet.

1. What is the name of the fixed piece of hardware that stores information permanently or for long term use? _____
2. What is the difference between the hard drive and the processor? _____
   _____
3. What does RAM stand for and what is it used for? _____
   _____
4. What is the difference between the hardware and software in computers? _____

_____

5. What is the "software" equivalent on a mobile device? _____

_____

6. What purpose does utility software serve? _____

_____

PART 2
COURT ONLINE

The internet can be a useful tool for a court if used appropriately. In years past, legal education was restricted to law libraries and court records were all kept in courthouses with restricted access. Today the internet allows anyone to access Attorney General Opinions from the Attorney General's website: www.oag.state.tx.us, tax forms on the State Comptroller's website: www.window.state.tx.us; or access numerous association, county, or agency websites. The following are examples of ways municipal court employees can use the internet:

- to locate defendants' addresses or telephone numbers on paid or free locator websites;
- to monitor legislation on the Texas Legislature Online website;
- to access Texas statutes also on the Texas Legislature Online website;
- to download defendants' driving records from the Department of Public Safety website;
- to search and read Attorney General opinions on the Texas Attorney General's website; and
- to participate in online educational programs offered by TMCEC and other judicial education providers.

A. Using the Internet

The internet unites the informational resources of educational institutions, public and private organizations, businesses, and individuals from around the world. The internet is basically a huge mass of documents located at various sites around the world. There are no political or geographic boundaries. Each webpage has a unique address, in the form of a Universal Resource Locator (URL). A specific home page can be located by entering its URL or clicking a hypertext link, indicated by a different color of text or some other obvious means such as underlining, to connect to that page. A URL looks like this: http://www.tmcec.com.

B. Mail Servers

Mail servers store and forward electronic mail (email). If email is accessed through an internet service provider, the service provider houses the mail server.

C. Listservs

Listservs work like a mailing list of people who are interested in the same topics. One person can correspond with many people at once. Every message posted to the list is sent to all of the list subscribers by email. Mailing lists are different from newsgroups in that all messages are received automatically instead of the user signing into a site to read and post messages. Most listservs are open, some are by invitation only, and some have moderators. TMCEC houses listservs for

prosecutors, judges, court interpreters, bailiffs and warrant officers, and court administrators as well as one on traffic safety. To join a listserv, visit the TMCEC website for details.

D. Chat Sites and Blogs

Chat sites allow a user to "talk" in real-time. In a chat session, a message is typed and other users in the virtual chat session can read it and respond to it immediately. Blogs generally refer to websites or webpages that contain a person's reflections, comments, or links to other information. Clerks must be mindful of the image of the court and not write comments that might negatively affect the public's perception of the court. This is also true on other interactive webpages commonly used by court personnel and attorneys, such as LinkedIn and Facebook.

PART 3
GOING ONLINE

A. Considerations

1. Equipment

To use the internet, one connects a home or office computer by one of the connection methods listed in the chart located in Part 1 of this chapter. Depending on the type of internet access available, extra equipment, such as a modem, may be needed.

2. Web Browsers

Web browsers used to access the internet are usually pre-loaded on computers or bundled with software packages, such as Microsoft Internet Explorer. There are several other browsers available for download, including Chrome and Firefox.

3. Internet Service Providers

A number of private companies offer internet connections at varying ranges of prices. The user must determine what his/her internet needs are and the amount of the monthly or yearly payments they are able to pay.

B. Understanding Internet Addresses

The domain name server (DNS) is the system that allows web address URLs−a set of letters or words that represent numbers that can digitally access websites−to be words instead of numbers. A web address is a series of numbers called an IP address, for example: 123.45.6.78. Instead of remembering those numbers, a user can type in words, like www.tmcec.com, commonly referred to as a domain name. The DNS system would match those words to the correct IP address and take the user to the website.

A domain name always has two or more parts separated by a period and typically consists of some form of an organization's name and a two-or-more-letter suffix. For example, the domain name for the National Center for State Courts is "ncsc.org." Where "ncsc" represents the organization and ".org" indicates the type of organization. The two or more-letter suffix is called a domain extension. Below are some examples of common domain extensions:

Common Domains	
Name	**Description**
.com	Commercial companies
.edu	Educational institutions
.gov	Government
.net	Network organizations
.org	Organizations
.mil	Military

The Judicial Committee on Information Technology (JCIT), which operates under the direction and supervision of the Chief Justice of the Texas Supreme Court, has issued a domain naming standard that suggests that municipal courts use the following format when defining their domain name: www.(courtname).ci.(cityname).tx.us. Although this is not required, it is preferred. However, many cities are moving to a .gov extension.

C. Linking to Web Pages

To link to a web page, a user can enter an internet address (URL) into a web browser. When the user clicks "Go" or hits either the enter or return button on the keyboard, the web browser locates that address and displays information on the screen. A website usually contains both regular text for reading and underlined, or specially colored, text called "hypertext" or a "hyperlink." Hypertext is the system used to cross-link or anchor documents by highlighted words or symbols. On a website, if a word is underlined or colored differently than the surrounding text, it often means that it has been linked to another page. By clicking on the hypertext, the computer finds the underlying anchor, which may be down the page or on another page in the same or a different website.

D. Locating Information on the Internet

The internet provides access to unlimited amounts of information. Finding the information needed is easy if one understands the essential search elements of the internet. To locate information on the internet, it is necessary to use a website with a search engine. A search engine is a program that searches web pages for specified keywords and returns a list of the web pages where the keywords are found. A search engine works by sending out a "spider" to locate all the documents on the web and indexes them for easy, quick access for users. Although the term "search engine" is a type of software, the term is often used to specifically describe websites that enable users to search the web.

To locate information on the internet, a user should go to one of the websites that contains a search engine. The key is to find one that is user friendly and produces specific results. In order to access the information a user needs quickly, it is important to be very specific. For example, if a user needed to find the website of the Office of Court Administration, just typing in "Office of Court Administration" would result in websites not relevant to Texas. Instead, typing "*Texas* Office of Court Administration" would yield results that are more specific. In addition, most search engines ignore common words like "the" or "of," so it is not usually necessary to type them. Nevertheless,

in the above OCA example “of” is part of the title. If the search engine should include the common word, put quotation marks around the phrase or title to be searched. This indicates that the results should include websites which include those words together in that order.

E. Using Email

Email is a very effective means of communication. Email allows a user to electronically send and receive text, files, pictures, videos, sounds, and more. In order to use email, a computer must have an internet connection. Many users prefer to access their email through a software package. Microsoft Office users, for example, can use Outlook to manage emails. Free email is offered through various websites on the internet (mail.yahoo.com and mail.google.com), but the user must have a way to connect to the internet to use these email servers.

Although email is an efficient means of communication, to manage it, additional software packages may be necessary. For sending and receiving files via email, a file compression utility such as Corel WinZip will reduce the file in size and will allow for faster transmission (visit www.winzip.com for a trial version). To keep the computer network secure, the installation of firewall security software is recommended. In addition, an antivirus protection program will help to protect the computer.

F. “Netiquette” & “Netspeak”

When communicating with others on the internet, it is important to give others the same respect that you would in face-to-face communication. Some guidelines for cyberspace etiquette (netiquette) are:

- Assume everything will be made public as emails and screenshots can be easily shared.
- “Flame wars” or verbal warfare and heated messages should be avoided.
- Others’ time and energy should be respected and internet use should be kept short.
- Keep in mind that things that may seem funny in person can seem rude or sarcastic in print.
- Chain letters should not be forwarded in the professional environment.
- Be careful when opening mail from unknown persons, as it may contain viruses or solicitations.

G. Privacy & Security Issues

Generally, there are no assurances of privacy on the internet. Privacy should not be expected in using email, chat rooms, newsgroups, or listservs. Remember that email can easily be forwarded or intercepted. Many government employees and legal practitioners include a confidentiality notice on outgoing email messages. An example of such a notice is:

> This email communication may contain private, confidential, or legally privileged information intended for the sole use of the designated and/or duly authorized recipients. If you are not the intended recipient or have received this email in error, please notify the sender immediately by email or contact (xxx) xxx-xxxx and permanently delete all copies of this email, including all attachments without reading them. If you are the intended recipient, secure the contents in a manner that conforms to all applicable state and /or federal requirements related to privacy and confidentiality of such information.

Keep in mind, however, that this is just a notice. It may serve as a deterrent, but the email is still out there. Also, emails may be subject to discovery or release pursuant to a records request.

Furthermore, due to the use of blind copy and forwarding, you may never know who is receiving your email or a version of your email message.

A complicated system of highly secure dedicated telephone lines with independent servers and encryption is needed for those seeking secure communications. A firewall is recommended to protect databases from intrusion. A firewall is a type of software program or a piece of hardware that prevents unauthorized access to a computer network via an outside connection.

A URL with “https” indicates a secured version with communication encrypted or hidden to protect online transactions, such as online banking and shopping.

If privacy is a concern, encryption software is available. Encryption is the process of encoding information so that it remains confidential from all except the intended recipient when sent on the internet. To encrypt a document, one applies an encryption algorithm (a mathematical formula used to transform a text string into an encoded message, or cipher text) and sends the encrypted message to the intended recipient. Someone who intercepts the encrypted text and does not have the key cannot, in theory, decode it.

It is common for purchases or payments to be made on the internet using credit cards or electronic checks. There is much discussion about whether to give credit card numbers to vendors on the internet considering the risk of credit card fraud. Some credit card companies offer insurance against credit card fraud, while others argue that there is no greater risk of credit card fraud on the internet than when using a credit card to buy dinner at a restaurant.

7. List one advantage and one disadvantage of using a large national internet service provider?

   _____

8. What is a URL? _____

9. Identify the following domains and indicate what they stand for:

   .com_____

   .edu _____

   .org _____

   .gov _____

10. What is hypertext? _____

    _____

11. List three guidelines for cyberspace etiquette. _____

    _____

    _____

12. How does a search engine work? _____

    _____

13. When should a URL with encryption be used? _____

    _____

True or False

14. Most e-mail systems can send messages as well as send and receive files. ____

Short Answer

15. What is a firewall? _____

_____

16. What is encryption? _____

_____

PART 4
COURT MANAGEMENT TECHNOLOGY

A. Advantages to Court Automation

Whether a personal computer system or a network is used, there are many advantages to automating court support systems.

1. Reduction of Repetitive Tasks

Multiple outputs can be obtained from a single input. For example, when a clerk enters the name of a party into an automated information system after a complaint is filed, that single entry can be used for many purposes, such as system-generated case lists, docket schedules, name indexing, and document generation. The single entry of a criminal case disposition can later produce weekly, monthly, and quarterly reports required by the DPS, OCA, and Comptroller.

2. Enhancement of Data Quality

Computers can track incomplete records. For instance, it is possible to generate a list of those who turn in driving safety course certificates before and after the deadline.

3. Increased Information Accessibility

Computers allow many persons to view the same information simultaneously. Information can be retrieved in seconds rather than waiting for a delivery from the file room.

4. Increased Organizational Integration

Computers allow information to be shared between divisions and departments. For example, cases can be shared between the clerk's office and the warrant officers for pursuing outstanding warrants.

5. Enhanced Statistics and Monitoring

Computers can quickly "number crunch" or count, sample, and analyze at many levels so that information is quickly generated for reports to the city manager or council, as well as for those reports required by the State.

6. Increased Effectiveness

Information stored in a computer can be used for many functions not practical in a manual environment. The court can generate reminder notices or monthly statements for installment accounts. The TMCEC *Forms Book,* for example, can be placed on the court's hard drive and adapted for court use without retyping every form. Also, messages can be emailed instantly to the judge on the bench to avoid interrupting court proceedings.

7. Electronic Reporting

Courts can expedite processes by electronically sending reports required by DPS, OCA, and the Comptroller. Visit the following websites for more information on electronic reporting.

- OCA – www.txcourts.gov/oca/
- Comptroller – comptroller.texas.gov

To contact DPS for electronic reporting, call 512.424.2031.

B. Types of Court Technology

1. Laptops

Considerable discussion has occurred at the state level concerning whether state funding should be used to provide a laptop or tablet for every judge. Each laptop would allow access through the internet to all state and federal laws to enable legal research. Additionally, every judge could have electronic access to *Bench Book* scripts, sample jury charges, court cost amounts, and information about specific cases before the bench. An imaging system would make possible a paperless process between the judge's bench and the clerk's records.

2. Mobile Devices

Mobile devices include smartphones, tablets, e-readers, PDAs, and a host of other devices, though over time the capabilities of these different devices have started to overlap. Generally, a mobile device can be defined as a handheld device weighing less than 2 pounds which allows the user to access information and data from wherever they are. For the purposes of using a Mobile Device in a courtroom setting, smartphones and tablets are the predominant devices as they offer the optimal combination of mobility, computing power, and ease of use.

3. Video or Electronic Proceedings

The concept of conducting hearings remotely has become a reality as COVID-19 curtailed in-person proceedings. Videoconferencing platforms such as Zoom and the prevalence smartphones, tablets, and laptops have allowed both courts and the public to successfully conduct remote video hearings with technology that nearly all courts (as well as the public) already possess. With special permission through emergency orders and a continuing state of disaster, virtual court hearings continue to be prevalent, and courts and court users have grown more and more comfortable with the process. It is important to note, however, that although the technology exists, virtual hearings may not be permitted under the law once the state of disaster related to COVID-19 ends and emergency orders expire. For virtual proceedings to continue, there must be some type of legal authority to authorize a proceeding that is held electronically or otherwise outside of open court. In Texas municipal courts, authority does not exist to hold trial or generally other hearings electronically. There is authority, though, in a few circumstances. These include magistration hearings under Article 15.17 and Reconsideration Hearings under Article 45.0445 of the Code of Criminal Procedure. In these circumstances, advantages of technology may include:

- the judge and court personnel do not have to travel to the jail facility nor prisoners travel to the court facility;
- reduced security risks;
- a record of the hearing preserved on video; and
- time saved for all parties.

Practice Note

Article 45.0201 of the Code of Criminal Procedure specifically authorizes appearance by telephone or videoconference for two kinds of municipal court hearings: the "Capias Pro Fine Show Cause Hearing" under Article 45.045 (hearing to determine if the judgment is an undue hardship prior to issuance of the writ) and the "Reconsideration of Fine and Costs Hearing" under Article 45.0445 (defendant's request for a hearing on alternatives to satisfy the judgment due to an undue hardship). There are several issues to be mindful of when conducting video hearings. These include the ability of the judge to question the defendant, ability for the defendant to provide documents, ability of the court to procure required acknowledgments or signatures, and maintaining an open courtroom, among others. That said, it is important to remember that Article 45.0201 also places discretion for the decision to conduct the above hearings electronically entirely with the trial judge.

4. Electronic Filings

Today, electronic delivery is often used for court filings and has replaced overnight delivery services to a great degree because it is faster and less expensive. Other means of electronic filing may include transmission of a document text from one computer to another via either the internet or a kiosk. Typically, this can occur only after a format is established by the court and access to the court's computer is authorized. It may greatly reduce the volume of paper handled, delays caused by document loss or mishandling, storage needs for court files, and data entry errors. Signature verification or some other form of authentication is essential with electronic filing. Currently, police departments may electronically file collision reports with DPS. Police can also forward an arrest warrant or probable cause affidavit by way of secure electronic device. Art. 15.08, C.C.P.

5. Imaging Systems

In imaging systems, a document is scanned and converted into a digitized format that can be read by computers and electronically stored and retrieved. Data attached to each image enables the computer to link it to a specific case, individual, or other documents. The stored image is a duplication of the original. The image can be written into the storage device only once, but it can be read many times without making any alterations.

Article 45.012(a) of the Code of Criminal Procedure provides that a document that is issued or maintained by a justice or municipal court or a notice or a citation issued by a law enforcement officer may be created by electronic means, including optical imaging, optical disk, digital imaging, or other electronic reproduction technique that does not permit changes, additions, or deletions to the originally created document. Imaging systems allow the court to copy files into an electronic medium for storage, freeing up office space occupied by ever increasing paper files. Forty thousand pages of documents can be stored on a single disk, largely reducing paper and storage costs. Many software programs allow the user to search a key word or phrase, saving considerable time in searching through multiple documents. Documents can also be transmitted electronically between the clerk's office and the judge's bench. A judge, for example, may quickly retrieve a previous court order or motion. Additionally, documents can be transferred over the internet to remote sites, such as the jail facility, a court satellite office, or even to the home of an employee who is telecommuting. If a public access terminal is integrated into the system,

individuals who need a copy of a court document can view it and print it on a printer. For additional information on imaging systems, search *Document Management* at www.ncsc.org.

6. Case Management

a. Case Management Software

A case management system consists of one or more software applications that allow the court to manage the information associated with individual cases and overall court activities. With it, a case can be tracked throughout the judicial process until its final disposition, and imaged exhibits and documents can be electronically captured and stored as part of the case record to be retrieved as the judge or clerk needs them.

Article 45.017(b) of the Code of Criminal Procedure expressly authorizes a court to keep an electronic docket. Furthermore, Article 45.012 of the Code of Criminal Procedure discusses the use of electronically created records and authorizes a court to use electronic means to (1) produce a document required by law to be written; (2) record an instrument, paper, or notice that is permitted or required by law to be recorded or filed; or (3) maintain a docket. Art. 45.012(b), C.C.P. An electronically recorded judgment has the same force and effect as a written signed judgment. Art. 45.012(d), C.C.P. A statutory requirement that a document contain the signature of any person, including a judge, clerk of the court, or defendant, is satisfied if the document contains that signature as captured on an electronic device. Art. 45.012(h), C.C.P.

The first case management systems were developed by computer consultants for large or mid-size cities, but now are widely used by all sizes of courts. Prices vary according to the number of functions the system provides, the caseload, the number of workstations required, the type of hardware selected, networking requirements, and other factors. In deciding whether to purchase a package system or a customer-developed system, consider the type and quality of technical support, future enhancements, and the company and court's respective roles in software development. A system should be purchased only from a reputable company that can provide a list of references. Ownership of the copyright and system design should be clarified. The proposal should call for annual updates and revisions, especially after each legislative session.

b. Recommended Capabilities of Case Management Software

Recommended capabilities that a case management software should contain include:

- Menu-driven software enabling the user to easily learn and operate the system.
- User-defined fields to establish codes for complaint wording for offenses. This information should automatically be entered and printed on a complaint form.
- The ability to monitor a case as it moves through the judicial system, automatically flagging the case for warrants when the defendant fails to appear. The system should be able to print warrants and report delinquent cases and allow updates to warrant status. It should monitor and track appeals.
- The ability to monitor and track bond forfeiture cases, including judgment nisi, scire facias dockets, citations, trials schedules, and final judgments.
- The ability to enter report convictions even when the fine/costs have not been fully paid.
- If the court contracts with a private vendor to collect delinquent accounts, the ability to send and receive reports to and from the vendor daily.

- Financial management capabilities that will produce financial reports; record receipts, tabulate and track records, payments, installments, and court costs, fees, bond amounts; track bonds that are refunded or forfeited; and print a bill of costs (a receipt showing the defendant an itemized list of all court costs/fees the defendant is ordered to pay).
- Archiving, indexing, and cross-referencing functions to access and retrieve records on microfiche, imaging, or paper.
- The ability to generate daily, weekly, and monthly reports of cases filed, cases disposed of, warrants issued, or any other transactions that occur daily, weekly, or monthly. The system should be able to generate state reports and statistical information needed in preparing budgets, notices of final conviction and out-of-state violator reports to DPS, quarterly court costs reports to the Comptroller, and monthly reports to the OCA.
- The ability to generate forms such as complaints, dockets, subpoenas, courtesy letters, summons, warrants, capiases, capiases pro fine, jury notices, parent notices, driving safety courses notices, and other user-defined forms.
- A master maintenance file with offense code listings, disposition code listings, officer listings, fines/court costs/fees, and other user-defined listings for updating and making changes mandated by the Legislature and case law.
- A file backup, password maintenance, and printer settings.
- A programmer's manual and user's manual that include the system specifications, program index, installation guide, and user instructions for the program.

17. List three benefits of automating your court. _____
_____
_____
_____

18. Explain how an imaging system may someday produce a paperless court. _____
_____

19. What statutes authorize the court to use electronically created records, signatures, and dockets? _____

20. Give three examples of financial management capabilities that a court software program should offer. _____
_____
_____

PART 5
METHODS TO ASSIST IN FINE COLLECTION

A. Photo Imaging

Some municipal courts use a Photo Imaging System when defendants are unable to immediately pay their fines or costs. After the judge assesses the individual's ability to pay and approves a payment plan, the defendant is digitally photographed and given payment coupons. If the defendant fails to make payments on his or her account, the defendant's picture is printed on the

capias pro fine to assist peace officers executing the writ. Clerks can also access the photo when the defendant appears back in court. Not only does this help identify the defendant, but there appears to be a psychological effect from photographing the defendant that encourages voluntary compliance. Many electronic ticket writers also give officers the ability to capture the defendant's photograph.

B. Payment by Credit Card by Telephone or Internet

Many Texas cities have formed a partnership with private companies to establish a credit card payment system. The fully automated system enables citizens to pay fine and costs for citations with a credit card over the telephone. The service verifies that the credit card is legitimate and that sufficient funds exist to pay the fine. There is typically no charge to the court for this system though the citizen usually pays a convenience fee that covers the credit card discount rate, all associated banking fees, and all 800-telephone line charges. Operator intervention is not required. To find a vendor that best suits your court's needs, contact court clerks and administrators in your area or join the TMCEC Court Administrators listserv to ask clerks across the State.

Section 132.007 of the Local Government Code allows a city to provide access to information or collect payments for taxes, fines, fees, court costs, or other charges through the internet. A fee to recover costs for providing access may be charged only if providing the access through the internet would not be feasible without the imposition of the charge. The amendment also provides authority to contract with a vendor to provide the service. The city or county must approve any fee charged by the vendor. Payments collected by the vendor are to be promptly submitted to the city or county.

C. Kiosks

Similar to an ATM in appearance and use, kiosks use computer software and multimedia technology to illustrate user-friendly graphics, video, or animation. They may be located in easy access public areas, such as public libraries and shopping malls, or public areas at the courthouse accessible outside Court operating hours. Kiosks provide information about specific cases, courtroom assignments, court hours, and court procedures. They also allow users to get copies of documents stored in a court's imaging system.

21. Explain the use of photo imaging in fine collection. _____

_____

_____

True or False

22. Courts may not collect payments by credit card. ____

23. Courts may collect fines and fees over the internet. ____

PART 6
TECHNOLOGY FOR PUBLIC INFORMATION

A. Court Website

1. Information to Include

Developing a website for the court offers an excellent opportunity to expand access to information about the court and provide information about the law. Below is a list of information that some courts have included on the court website:

Court Home Page

- Identify the court
- Site map or outline
- Link to city's home page
- Link to the city's code of ordinances
- Link to community resources
- Links to state and national law-related information
- What's new
- Mission statement of the court
- Jurisdiction of the court
- Explanation of the independence of the judiciary
- Contact information for judge(s) and clerks
- Hours/location (including a map and directions for visiting the court)
- Search function
- Date site was last updated

For the Defendant

- Fine and court costs (e.g., window fines)
- Court procedures
- Local rules on conduct and attire
- Special procedures for juveniles and parents
- Teen court information
- Consequences of failure to appear
- Options for making a pleas and appearance
- How to show proof for compliance dismissals or insurance cases
- Requesting a driving safety or motorcycle operators course
- What to do if unable to pay
- Policies on installment plans
- Available alcohol, tobacco, or drug awareness courses
- Community service options

For Jurors

- What to expect
- Jurors' rights
- Juror qualifications and exemptions
- Location and parking
- Updates on trial status

For Victims

- Victims' Bill of Rights
- Domestic violence resources

2. Website Development and Design

Websites should reflect the spirit of the organization. Issues involved in maintaining the dignity of the court should be carefully examined. The website should encourage the public's trust and confidence. While website developers recommend daily content (new postings, interesting articles) to lure visitors to the site and to encourage revisits, it is important not to overload the public with information on the website. Overloading the site with information from a variety of sources can confuse citizens and leave them unable to digest the information they actually need.

Practice Note

The canons of the *Code of Judicial Conduct* would apply to items placed on a website by a judge or a person working under his or her authority. The staff attorneys at the Commission on Judicial Conduct may be a resource for judges concerned about any possible improper or controversial items. A balanced approach is essential to preserve the dignity and image of the court. If an e-mail function is built into the site, it should also contain measures to protect the judge from ex parte communication.

B. Voice Responder Systems

Interactive Voice Responder Systems allow the public to obtain information about their case status by dialing a local telephone number. This enables a caller with a touch tone telephone to access specific information and allows the court to handle routine inquiries. The caller initially connects to an automated voice attendant that directs the caller to make selections on the telephone touch pad. Short, easily remembered information, such as court dates, locations, hours of operation, bond amounts, fine amounts, DSC due dates, and information on jury summons are easily accessed through voice-responder systems. Information may be available in Spanish and English. A system may simply be an answering machine with mailbox recordings, or it may include fine payment by credit card. To locate vendors, contact a vendor listed on the website for either the National Center for State Courts or the Department of Information Resources of the State of Texas or other clerks in Texas.

- www.ncsc.org
- dir.texas.gov

Some software providers have taken this concept further and can place calls to defendants automatically. For example, the system may place automated calls to all defendants who failed to appear for a docket or have a warrant issued for them in the evening hours as a courtesy.

24. True or False: The canons of the *Code of Judicial Conduct* would apply to items placed on a website by a judge or person working under his or her authority. ____

25. Outline both court and public information that might be included on a court's website. ____

_____

_____

PART 7
LEGAL AND ETHICAL CONSIDERATIONS

A. Legal Issues

Attorney General Letter Opinion No. 97-082 (1997) states that "a computer system may be used to prepare affidavits and arrest warrants and to transfer them among the public officers and employees who have responsibilities connected with these documents. A judge may 'sign' an arrest warrant by personally entering a computer graphic of his or her signature on the warrant in the computer system. A magistrate may issue a warrant based upon a computer facsimile of an affiant's signature, assuming that the affiant orally swears to the truth of the affidavit and signs it in the magistrate's presence."

The leading case discussing the use of signature stamps could also relate to the use of electronic signatures. In *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987), a justice of the peace delegated his authority to affix his rubber signature stamp to a mental health warrant outside his presence. He reviewed the warrant and adopted it the next business day. The court cited favorably Attorney General Opinion No. JM-373 (1985), which stated that a judge may not delegate authority to affix his or her signature unless the signature is affixed under the judge's personal supervision. By extension, the opinion is cited for the proposition that a judge may "sign" a document by allowing another to place a mark on a document that constitutes the judge's approval of a document only if the other person does so in the presence and under the direction of the judge. Although the opinion answered the question as to whether a clerk could affix a judge's signature stamp to a document, the same rationale could be applied to manipulating the court software to affix the judge's signature to the judgment, warrant, etc.

B. Ethical Issues

While the use of technology has brought many efficiencies and conveniences to municipal court operations, it also carries with it the potential for abuse or misuse.

1. Social Media Use

The participation in social media has exploded to such proportions that if Facebook were a country, it would be the most populous country in the world. The number of active Facebook users has grown from 250 million in July of 2009 to 2.936 billion users in April of 2022. Twitter, the online social networking and microblog site, was launched only in 2006 and has close to 400 million active users worldwide. There are many other sites (Instagram, LinkedIn, TikTok etc.), though Facebook is certainly one of the most prolific.

Municipal court personnel are held to the same standards as judges pursuant to the *Code of Judicial Conduct*. Thus, clerks need to be aware of their online activities and how it could reflect on their position and the court. Be aware that Facebook postings can become public. Becoming "friends" with defense attorneys, police officers, or the prosecutor, for example, could give the appearance of partiality or bias towards certain parties. Use of social networking sites during work hours by employees has become an area of concern to employers. Each court should address the use of the internet, social networking, and email in its policies and procedures manual. Keep in mind that Texas is an "at-will" employment state, meaning the employer is free to discharge individuals for good, bad, or no cause. According to opinions and memorandums posted by the National Labor Relations Board, the following posts are not protected under Section 7 of the National Labor Relations Act:

- personal venting or rants;
- disclosure of confidential information or trade secrets; and
- harassing, violent, abusive, or malicious statements.

Court personnel must be aware of the problems that can arise from the use of social media sites, but should also explore and be open to the advantages of this technology. Many courts have Facebook accounts, which can be more easily and readily updated than a website, to post updates and educational outreach information. TMCEC uses its Facebook and Twitter sites to keep those interested in municipal courts up to date on the latest news.

While this is a useful and cost-effective way to keep in touch with the public, there are advantages and disadvantages to the practice. The Center for Technology in Government conducted an exploratory study regarding this issue and proctored a round-table discussion with IT professionals working in the government sector. The following list of advantages and disadvantages to using social media sites in the court setting was discussed.

Advantages of a Court Social Media Site:

- Greater competitiveness in employee recruiting;
- Enhanced access for the disabled;
- Creation of virtual communities;
- Instantaneous information sharing;
- Information dissemination and exchange, such as improving public awareness of government services;
- Enhanced collaboration between agencies;
- Enhanced public safety by allowing increased dissemination of agency information in a time of emergency;
- Coolness factor;
- Providing consistent information that is automatically logged and documented; and
- Cost saving for courts, cities, and citizens.

Disadvantages of a Court Social Media Site:

- Lack of resources for:
    - bandwidth needed to support streaming videos and higher online traffic
    - labor and personnel needs for maintaining social media sites; and

  - additional training costs;
- Legal and regulatory ramifications for information that is not properly monitored, checked for accuracy, and that does not adhere to existing federal and state laws;
- Governance (who can post on courts' behalf, leakage of sensitive information, and perceived endorsements or advertisements);
- Showing preference for one site over another;
- Security of confidential data, court infrastructure, and security of citizens;
- Accessibility and the issue of placing too much reliance on the internet further perpetuates the disadvantages of those who do not have access to the internet;
- Perception of social media being too cool or fun for government purposes; and
- Information overload.

2. E-Mail Use

Now that technology is prevalent in most aspects of court management, the court should adopt policies regarding the use of email and the internet. The Judicial Committee on Information Technology (JCIT) has provided guidelines for e-mail use. The following are excerpts from their guidelines.

1. Purpose:

This policy provides guidelines for the use of agency electronic mail (email). It applies to both internal email and external email sent or received via the internet. These guidelines do not supersede any state or federal laws, nor any other agency policies regarding confidentiality, information dissemination, or standards or conduct.

2. Guidelines:

a. Business Use.

The agency email system is state property (in the case of the municipal court, it is the city's property). Use of the email system, except in the limited circumstances listed below, is for official state business only.

b. Confidentiality.

Employees should have no expectation of privacy regarding their use of the e-mail system and e-mail content. All email is subject to inspection and audit by agency management or its representatives at any time, with or without notice. Use of the agency's email system by an employee indicates that the employee understands that the agency has a right to inspect and audit all email communications and consents to any inspections.

c. Personal Use.

Generally, email should be used only for official state business; however, brief and occasional email messages of a personal nature may be sent and received. Personal email should not impede the conduct of state business; only incidental amounts of employee time, time periods comparable to reasonable coffee breaks during the day, should be used to attend to personal matters. Personal email should not cause the state to incur a direct cost in addition to the general overhead of email. Consequently, employees, upon

receiving personal email, should read it and delete it. Employees shall not store or print their personal email.

d. Restrictions

1. Racist, sexist, threatening, or otherwise objectionable language is strictly prohibited.
2. Email should not be used for personal monetary interest or gain.
3. Email should not be used for any political purposes.
4. Email should not subscribe to mailing lists or mail services strictly for personal use.

The JCIT commentary following the policies discusses the ethical considerations in using email.

Canon 3(B)(6) of the *Code of Judicial Conduct* prohibits the judge from knowingly permitting staff, court officials, and others to manifest bias or prejudice by conduct or words. Using email to spread racist or sexist jokes or to talk about defendants in a derogatory or objectionable manner violates Canon 3(B)(6). Email is public.

This type of communication also violates Canon 2(A), which provides that the judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Clerks must always consider that they are in a position of public trust and that their conduct including what they put in writing must always follow the ethical principles in the *Code of Judicial Conduct*.

Canon 5 provides that the judge must refrain from inappropriate political activity. This rule includes the use of court computers' email. Any suggestion in an email that a court employee or the judge endorses a candidate or makes derogatory remarks about a candidate is a violation of Canon 5.

3. Internet Use

The JCIT has also provided guidelines for internet use by employees. The following are excerpts from their guidelines.

1. Purpose:

This policy provides guidelines for the use of the internet. It does not supersede or limit any state or federal laws, nor any other agency policies regarding confidentiality, information dissemination, or standards of conduct.

2. Guidelines:

a. Business Use.

The agency internet system is state property (in the case of the municipal court, it is city property). Access to the internet, except in the limited circumstances listed below, is allowed for official state business use only.

b. Confidentiality.

Employees should have no expectation of privacy regarding their use of the internet. All records created by internet use, including path records, are subject to inspection and audit by agency management or its representatives at any time, with or without notice. Use of the agency internet system by an

employee indicates that the employee understands that the agency has a right to inspect and audit all internet use.

c. Personal Use.

Generally, the internet should be used only for official city business; however, brief and occasional surfing or browsing for personal reasons is acceptable.

Personal use of the internet should not impede the conduct of city business; only incidental amounts of employee time, time periods comparable to reasonable coffee breaks during the day, should be used to attend to personal matters. Personal use of the internet should not cause the city to incur a direct cost in addition to the general overhead of the internet system. Consequently, employees should not store or print personal Internet material.

d. Restrictions.

1. Accessing, posting, or sharing any racist, sexist, threatening, obscene, or otherwise objectionable material (visual, textual, or auditory) is strictly prohibited.
2. The internet should not be used for any personal monetary interests or gain.
3. The internet should not be used for political purposes.
4. Employees should not subscribe to mailing lists or mail services strictly for personal use and should not participate in electronic discussion groups (list server, news groups, chat rooms) for personal purposes.

e. Employees must not intentionally use the Internet facilities to disable, impair, or overload the performance of any computer system or network, or to circumvent any system intended to protect the privacy or security of another user.

The JCIT commentary again discusses the ethical concerns about employees' internet usage. The commentary reads:

> The canons discussed in the email commentary above apply to general internet use as well.
>
> Additionally, Canon 3(B)(2) of the *Code of Judicial Conduct* requires judges to be faithful to the law and to maintain professional competence in it. Hence, courts that have websites must be careful to not give legal advice and to make sure that any information regarding court procedures provided on the website is legally correct.

True or False

26. The Attorney General has opined that computerized signatures are permissible on affidavits for arrest warrants as long as the affiant swears to the truth of the affidavit and signs it in the presence of the person administering the oath. ____

27. A clerk should only affix a judge's signature stamp or cause the judge's electronic signature to be placed on a document if it is done at the judge's direction and in the judge's presence. ____

28. It is okay for clerks to email derogatory or sexist jokes to a friend using the court's computer since the public will not see the joke. ____

29. The court's email is confidential. ____

30. Clerks can use the court's email to support a candidate for mayor. ____

31. Accessing a racist internet site on a court computer may violate the *Code of Judicial Conduct*. ____

32. Name three advantages and three disadvantages to using social media in the court setting.

_____

_____

_____

_____

_____

_____

PART 8
COMPUTER SECURITY CONTROLS

Municipal courts continue to rely more and more on computers in daily operations and in storing important data and information. As a result, computer security and controls continue to grow in importance. Computer malfunctions, viruses, intentional and/or unintentional problems caused by current or ex-employees, or even problems that could be caused by outside hackers present a real challenge to courts in today's electronic workplace.

Each official should take the responsibility of computer security and controls seriously. Unfortunately, it is an area that is often overlooked because of the other demanding daily responsibilities that have to be fulfilled. However, basic security is not as complicated or time-consuming as most people think. Complying with the following minimum basics should be a goal for each court. Additional controls and security measures unique to a particular city, office, computer system, and software should be added as needed. Officials should consult with the city auditor and information technology department in developing good security and controls.

A. Written Policies and Procedures

The court should have written policies and procedures that cover just about everything when it comes to computer security and controls. The policies and procedures should be required reading for all officials and employees. Some offices require employees to sign a document indicating that they have read the policies and procedures, they understand them, and agree to abide by them. Procedures should cover and include:

- who is responsible for what and how;
- who has access to what (both physical access and computer access);
- how that access is controlled;

- software policies, such as the use of personal software;
- an email use policy;
- an internet use policy; and
- how passwords are to be used.

Keep in mind that emails sent via your work email address constitute "public information" under the Texas Public Information Act and are subject to disclosure.

B. Restrict Access

Both hardware and software access should be restricted to authorized personnel. Users should be required to log off their computer whenever they leave their work area. This would also include an appropriate segregation of duties to prevent one person from having too much control over transactions.

C. Appropriately Use Passwords

This is probably the easiest way to improve computer security, but it is also an area that is often not taken very seriously. Passwords should not be shared, and they should be changed often. In addition, passwords should not be written down and left close to the computer where someone else can find and use them.

D. Use Anti-virus Programs

An anti-virus software should be loaded on each computer connected to the internet. The software should be updated regularly, at the minimum, weekly.

E. Back-up Data and Information

All information that is stored digitally should be backed up regularly. To back-up computer files, a court should utilize cloud storage or needs a transportable external media (CD-R, floppy disk, tape drives, etc.) on which to save files. Cloud storage or transportable media is needed because back-ups should be stored off-site.

Servers that store court files should be backed up daily, but personal computers that store less vital information may be backed up weekly.

PART 9
COMPUTER CARE

Computers are built out of hundreds of thousands of microscopic electrical circuits etched on a little sliver of silicon. Working together, these circuits open and close millions of times per second. The following factors are important for maintenance of the computer.

A. Electricity

A steady flow of electrical power is required for the computer to run. A surge protector protects the machine from electrical spikes and surges that can severely damage the hardware and/or cause data loss. The three most common causes of surges and spikes are lightning, fluctuation in power from the electric company, and fluctuation in power from the use of other appliances. Depending on the size of the system, a battery powered back-up system may be beneficial. A grounded electrical outlet is definitely required for a surge protector to function. If the court does not have a

grounded outlet, one must be installed by an electrician. A backup power supply is important if power goes out. Be sure to have batteries available to backup data.

B. Magnetism

Magnets can affect both hardware and software. Even small, decorative kitchen magnets can damage electronic components.

C. Temperature

Heat can damage microcircuits. It is important to make certain that the fan in the computer is functioning and that the vent is unobstructed. A computer should not be placed in direct sunlight or in a hot room.

D. Stability

A computer should be placed on a table where it will not be jarred and it should never be moved while it is running. Vibrations should be avoided.

E. Dust, Dirt, and Smoke

Smoking while sitting at the computer should be prohibited. A small vacuum should be purchased to clean the keyboard and printers regularly. Compressed air should be used to flush out dust from fans and vents.

F. Liquids

Liquids can short-circuit electronic equipment. Beverage cups and potted plants should be kept away from the computer.

G. Monitors and Printers

These should be turned off when not in use.

H. Viruses

It is important to have some type of antivirus protection program or utility software on court computers. Only software that is certified virus free and data that is not downloaded from outside sources should be accepted, unless first checked for viruses. A note of caution: It is very important to scan all files that are downloaded from the internet for viruses. Months or years' worth of data can be irretrievably lost through infections caused by a computer virus.

PART 10
ERGONOMICS AT THE KEYBOARD

Computers allow employees to perform many tasks faster and more efficiently than ever before. There are, however, health hazards associated with extended computer use. These hazards may include headaches and backaches, vision damage, and other more serious injuries. Ergonomics, the study of the way the body moves and works most efficiently and safely, provides helpful suggestions to avoid these hazards. Every computer user should apply the principles of ergonomics to his or her work environment to avoid computer use related injuries.

A. Neck and Back

It is important to understand the ergonomic features and adjustments of your equipment to set up your work environment properly. Proper positioning of equipment combined with frequent breaks can reduce the pain and loss of productivity associated with spinal and muscular injuries.

- To lessen strain on neck muscles, the computer screen should be kept no higher than eye level. A document holder kept at the same height as the screen will lessen strain. Avoid moving head from side to side or up and down, as this movement can cause neck and back spasms.
- Adjust the chair so that eyes and hands are at the proper height for optimum comfort and safety. If necessary, a footrest allows the feet to touch flat while maintaining a 90 degree angle between the thighs and lower legs. The chair should not put pressure on the upper legs.
- Adjust the lumbar (lower back) support of the chair so that the part that curves outward (towards the front of the chair) corresponds to the part of the lower back that curves inward.
- Balancing the telephone receiver between the head and shoulder can lead to long-term neck problems. A headset or speaker phone can help avoid this.
- Equipment used most often should be within easy reach from the chair (about 16 inches).
- Taking a few deep breaths can help to relax and focus.
- Shifting positions occasionally will help relieve stress to the muscles and joints.
- Short breaks can be very energizing. Neck stretches and shoulder shrugs can help relieve tension. For most people, stretches that bring the shoulder blades together while clasping the hands behind the head and pulling the elbows back, for example, can provide significant tension relief.

B. Eye Protection

Glare from monitor screens can be hazardous to eyes. While effects may not be immediate, long-term focusing on a near point can have the effect of injuring the tiny muscles that help the eyes focus.

- To reduce glare, position the monitor so that neither it nor the user faces a window. If necessary, use hoods or screens.
- Dimming the lighting around the monitor also reduces glare and makes the screen easier to read. The screen's brightness and contrast should be adjusted to suit lighting conditions.
- If the screen has a choice of colors, those easiest on the eyes are preferable.
- Take frequent breaks. Just looking away from the screen once every 20 minutes helps ease eye fatigue. Cupping the eyes with palms, or rolling the eyes around a few times, also helps.

C. Preventing RMIs

Repetitive motion injuries (RMIs) result when the tendons and nerves in the hand, wrist, and arm become irritated from overuse causing numbness, tingling, or pain. Without sufficient recovery

time, even activities involving very little force, such as typing on a computer keyboard, can cause an RMI. Several things can be done to reduce the risk of developing these types of injuries.

- While sitting, elbows should be slightly higher than the keyboard. This helps keep the wrists straight while typing. If the chair or the desk do not allow for an adjustment of the angle of the keyboard, using the keyboard kickstand helps maintain the neutral line of hands and wrists.
- Bending wrists up or down or side to side while typing should be avoided. In moving from the alpha part of the keyboard to the numeric keypad, the wrist should be kept straight by moving the whole hand and forearm. A wrist brace helps immobilize the wrist to prevent injury.
- A lighter touch (less force) on the keyboard is preferable.
- Resting wrists on a sharp edge while typing should be avoided. A foam wrist rest is an inexpensive and simple solution to adapt most workspaces.
- Pace yourself. Short breaks once every hour while using the keyboard are suggested. Gently stretch, rotate, and massage the hands and arms. Shorter, more frequent breaks are more effective than longer, less frequent breaks.
- If any weakness, numbness, or pain is felt in the hands or arms, a supervisor should be notified immediately. The earlier an RMI is identified, the easier it will be to prevent a serious disability.
- Use of a track ball or a touchpad keyboard helps prevent RMIs associated with extensive use of a mouse.

The time invested in preparing a safe and comfortable workspace, including breaks that allow for rest and gentle stretching, is considerably less than the time lost to decreased productivity caused by physical discomfort or injury.

33. What are RMIs and how can they be prevented?_____
_____

34. What are two steps that can reduce neck strain? _____
_____

35. What are two steps that can reduce eye strain? _____

PART 11
MUNICIPAL COURT TECHNOLOGY FUND

The Municipal Court Technology Fund, found in Article 102.0172 of the Code of Criminal Procedure, is one way to fund court technology. Article 102.0172 provides that the fund consists of money allocated to it under the Local Consolidated Fee (Sec. 134.103, L.G.C.). For offenses on or after January 1, 2020, that amount is $4.00, or roughly 28 percent of the Local Consolidated Fee.

As discussed in Chapter 7, State Reporting and Court Costs, court costs generally have specific allowable uses once collected. The uses for this fund are outlined in the statute as:

> Money in the Municipal Court Technology Fund may be used only to finance the purchase of or to maintain technological enhancements for a municipal court or municipal court of record, including:
>
> (1) computer systems;
>
> (2) computer networks;
>
> (3) computer hardware;
>
> (4) computer software;
>
> (5) imaging systems;
>
> (6) electronic kiosks;
>
> (7) electronic ticket writers; and
>
> (8) docket management systems.

The Code Construction Act, in Section 311.005(13), provides that the term "including" is a term of enlargement and not of limitation or exclusive enumeration, and that use of the term does not create a presumption that components not expressed are excluded. Thus, the fund can be used not only for those things described in Subsections (d)(1)-(8), but also to fund the purchase of or maintenance of technological enhancements for the municipal court. It is important for cities to remember that the fund is to benefit the court.

ANSWERS TO QUESTIONS

PART 1

1. The hard drive.
2. The hard drive stores files for permanent or long-term use, and the processor reads and executes commands.
3. RAM stands for random access memory. It is a memory device in the form of a computer chip or inline memory module that stores information for processing by the computer. This high-speed memory holds a copy of the operating system, any current applications being used, and all information that is being processed while the system is in use. The file that is being modified and all changes that are made are kept in RAM until it is "saved."
4. Hardware is the actual physical equipment while software refers to the programs that are used on the computer.
5. Apps.
6. This software allows for file management, file compression, and data backup.

PART 2 & 3

7. Answers will vary. An advantage is that they have free software and technical assistance. A disadvantage is that the telephone lines used to access the internet may frequently be busy during peak hours.
8. It is a set of letters or words that represent numbers (an address) that can digitally access websites.
9. .com – company

   .edu - educational institution

   .org – organization

   .gov - government
10. The system used to cross-link or anchor documents by highlighted words or symbols. On the web, if a word is underlined or colored differently than the surrounding text, it usually means that it has been linked to another page. To access more information about that word, click on it.
11. Guidelines for cyberspace etiquette are:
    - Assume publicity as email is easily forwarded.
    - "Flame wars" or verbal warfare and heated messages should be avoided.
    - Others' time and energy should be respected and internet use should be kept short.
    - Keep in mind that things that may seem funny in person can seem rude or sarcastic in print.
    - Chain letters should not be forwarded in the professional environment.
    - Be careful when opening mail from unknown persons, as it may contain viruses or solicitations.
12. A search engine works by sending out a spider to locate all the documents on the web and indexes those websites for easy, quick access for users.

13. An encrypted URL, such as one beginning with “https” should be used to protect confidential information such as online financial transactions.
14. True.
15. A software product or piece of hardware that prevents unauthorized access to a networked computer via an outside connection.
16. A process of encoding information so that it remains confidential from all when sent on the internet except to the intended recipient.

PART 4

17. The benefits of automating your court are:
    - Reduction of repetitive tasks;
    - Enhancement of data quality;
    - Increased information accessibility;
    - Increased organizational integration;
    - Enhanced statistics and monitoring;
    - Increased effectiveness; and
    - Electronic reporting.
18. Through imaging, all court paper documents are digitized and the images stored on a disk, CD-ROM, or the hard drive. These exact reproductions are retrieved whenever the case is processed or heard. The documents move electronically from court to clerk to prosecutor and finally, to storage.
19. Articles 45.012 and 45.017 of the Code of Criminal Procedure.
20. Answers will vary but may include the ability to generate financial reports, record receipts, tabulate and track fine payments and court costs, post payments and fines to the general ledger, and track bond payments, refunds, and forfeitures.

PART 5

21. The court staff or officer takes a digital photograph of the defendant that is attached to the file in case he or she later defaults on a payment. The file and photograph can be sent with a capias pro fine to the warrant division for service.
22. False.
23. True.

PART 6

24. True.
25. Answers will vary. See the list in Part 6(A)(1).

PART 7

26. True.
27. True.
28. False.
29. False.

30. False.

31. True.

32. Advantages include:

- Greater competitiveness in employee recruiting;
- Enhanced access for the disabled;
- Creation of virtual communities;
- Instantaneous information sharing;
- Information dissemination and exchange, such as improving public awareness of government services;
- Enhanced collaboration between agencies;
- Enhanced public safety by allowing increased dissemination of agency information in a time of emergency;
- Coolness factor;
- Providing consistent information that is automatically logged and documented; and
- Cost saving for courts, cities, and citizens.

Disadvantages include:

- Lack of resources for:
  - bandwidth needed to support streaming videos and higher online traffic
  - labor and personnel needs for maintaining social media sites; and
  - additional training costs;
- Legal and regulatory ramifications for information that is not properly monitored, checked for accuracy, and that does not adhere to existing federal and state laws;
- Governance (who can post on courts' behalf, leakage of sensitive information, and perceived endorsements or advertisements);
- Showing preference for one site over another;
- Security of confidential data, court infrastructure, and security of citizens;
- Accessibility and the issue of placing too much reliance on the internet further perpetuates the disadvantages of those who do not have access to the internet;
- Perception of social media being too cool or fun for government purposes; and
- Information overload.

PART 10

33. Repetitive motion injuries occur when the tendons and nerves in the hand, wrist, and arm become irritated from overuse causing numbness, tingling, or pain. These injuries can be prevented in several ways:

- keep the elbows slightly higher than the keyboard while typing;
- avoid bending the wrists up or down or side to side while typing;
- be aware of how much force is used on the keys;
- avoid resting your wrists on sharp edges while typing;

- pace yourself;
- identify immediately any weakness, numbness, or pain that is felt in the hands or arms and notify a supervisor; and
- use a track ball or keyboard instead of a mouse.

34. Keep the screen no higher than eye level and avoid moving the head from side to side or looking down.

35. Minimize the glare from the monitor screen and take frequent breaks to reduce fatigue.

Quick Legal Reference: Court Terminology

Latin Court Terms

Term	What does it mean?	Legal Reference
Ad Litem: For the suit	An individual appointed by the court in a specific case. For example, an attorney may be appointed as guardian ad litem in a case to protect the interests of the child.	65.061, Family Code
Capias: That you take	A writ ordering an officer to take a person into custody.	23.01, Code of Criminal Procedure 43.015(1), Code of Criminal Procedure
Capias Pro Fine: That you take for the fine	A writ ordering an officer to take a person into custody and bring that person before the court after judgment and sentence for unpaid fines and costs.	45.045, Code of Criminal Procedure 43.015(2), Code of Criminal Procedure
De Novo: From the new	When a court hears a case de novo, it is deciding the issues without reference to any legal conclusion or finding of fact made by the previous court to hear the case.	44.17, Code of Criminal Procedure
Nunc Pro Tunc: Now for then	A method to correct a clerical discrepancy between what was ordered or entered and what appears in the record. For example, a nunc pro tunc order to correct the omission of the defendant's name from the judgment.	Rule 23, Texas Rules of Appellate Procedure See *Shaw v. State, 539 S.W.2d 887 (Tex. Crim. App. 1976)*
Scire Facias: You are to make known	The term used to describe a separate civil docket for bond forfeiture proceedings. A case will be set on this docket when a forfeiture has been declared and a judgment nisi entered. Cases set on the scire facias are docketed as State of Texas (plaintiff) v Defendant and/or Surety (defendant).	22.10, Code of Criminal Procedure Rule 26, Texas Rules of Civil Procedure

Quick Legal Reference: Court Terminology

Number Phrases

Term	What does the reference typically mean?	Legal Reference
12.45	On agreement with the prosecutor, a defendant may admit to other offenses during a plea to another case. Prosecution is then barred on the other offenses without adjudication.	Penal Code
27.14	Specifically 27.14(b). A request for the court to notify defendant of the amount of appeal bond that the court will approve. Often precedes a "leap frog" appeal in non-record courts.	Code of Criminal Procedure
15.17	Specifically the warnings in 15.17(a). Requirement that a magistrate inform an arrested person of the accusation and specific rights, referred to as warnings. Must be reported on the monthly OCA report.	Code of Criminal Procedure
32.02	Authority for the prosecutor, by permission of the court, to move for dismissal	Code of Criminal Procedure
404(b)	A required notice that a prosecutor must provide defendant prior to trial. Only applicable when the prosecutor intends to introduce evidence of other crimes at trial and defendant requests the notice.	Texas Rules of Evidence

Quick Legal Reference: Court Terminology

Multiple Meanings

Term	What does it mean?	Legal Reference
Citation (criminal)	Written notice to appear issued only by a peace officer in a criminal case.	543.003, TC 14.06(b), CCP 27.14(d), CCP
Citation (civil)	Formal notification to appear and show cause why a judgment of forfeiture should not be made final. Attachments include a copy of the judgment of forfeiture, copy of the bond, and copy of any power of attorney.	22.04, CCP
Complaint (Class C)	Sworn allegation charging a Class C or fine-only misdemeanor. Must substantially satisfy seven requisites.	45.018, CCP 45.019, CCP
Complaint (Class C Non-traffic, School Offense)	Sworn allegation charging the commission of a school offense. Required to substantially conform to 45.019 and be sworn to by a person with personal knowledge, include a statement whether accused is eligible for special services, and whether graduated sanctions were imposed (if required).	37.141, EC 37.146, EC
Complaint (Class A or B)	Sworn allegation that a Class A or Class B misdemeanor has been committed. Signed and sworn to by the complainant. Forms the basis for an information to be filed.	2.04, PC 2.05, PC 15.04, CCP 15.05, CCP
Petition (criminal)	Method by which a person who is entitled to expunction under Chapter 55, CCP may file for this expunction in municipal court.	55.02, CCP
Petition (civil)	Initiates an action by the state against a child who has allegedly engaged in truant conduct. Based on information and belief.	65.054, FC

APPENDIX B: TERMS

Acquittal: The legal and formal certification of the innocence of a person charged with a crime; a finding of not guilty.

Act: An alternative name for statutory law. When introduced into the Legislature, a piece of proposed legislation is known as a bill. When passed by the first house and sent to the other, it may be referred to as an act. After enactment, the terms law and act may be used interchangeably.

Adjudication: The determination and formal pronouncement of the judgment.

Adjudicative Proceeding: A proceeding where a person is entitled to due process of law, that is, the person is entitled to notice and an opportunity to be heard.

Administrative Records: Records that are created to help the court accomplish its current administrative functions.

Advance Sheets: Current publications that contain the most recently reported opinions of the courts. These copies of court decisions are sent in advance of the bound volumes.

Adversarial System: In common law countries such as the United States, this is a system in which opposing sides each represent their own interest before an impartial judge. In a criminal case, the two opposing sides are the prosecution and the defense.

Affidavit: A sworn statement.

Affinity: The relation that one spouse has to the other spouse's blood relatives because of their marriage.

Affirm: On an appeal from a court of record, a decision by the appeals court that the trial court is correct.

Agreed Judgment: In a civil case, a judgment entered on the agreement of the parties, which receives the sanction of the court.

Allocation: The process of distributing in equal or proportionate parts.

Alphabetic Filing: A filing arrangement of names, subjects, or geographic locations in alphabetical order.

Alphanumeric Filing: Arrangement of files using a combination of alphabetic and numeric characters.

Annotations: 1) Statutory: brief summaries of the law and facts of cases interpreting statutes passed by Congress or state legislatures which are included in codes; 2) Textual: expository essays of varying length on significant legal topics chosen from selected cases published in essays.

Answer: A pleading filed in response to a motion or complaint. In civil cases such as a bond forfeiture, a formal pleading filed by the defendant in response to the plaintiff's complaint.

Appeal: The process of having a higher court conduct a new trial or review the facts and law or just questions of law from a proceeding held in a lower court. In municipal court of record, the appellate court reviews the transcript of the trial. In municipal courts of non-record there is a new trial in the appellate

court. An appeal is perfected when the appeal bond has been filed with the court. All defendants have the right to appeal their cases.

Appeal Bond: The bond presented to the court by a defendant who desires to appeal the case to a higher court. The bond may be surety cash, or the court may allow a personal bond.

Appearance: The formal proceeding in which a defendant submits himself or herself to the jurisdiction of the court. Other than the defendant, only an attorney hired to represent the defendant may appear for the defendant.

Appellant: The party who requests that a higher court review the actions of a lower court.

Appellate Court: A court having jurisdiction to hear appeals and review a trial court's procedure.

Appellee: The party against whom an appeal is taken. Sometimes called a respondent.

Arbiter: A person chosen to decide a controversy.

Archiving: For data processing usage, archiving generally means creating backup computer files - especially for long-term storage. It can also be used to mean transfer of records to an archive for permanent preservation.

Arraignment: The process in which the court identifies the defendant and asks for a plea. There is no formal term for this in municipal court. In the higher courts, there are statutory requirements for arraignment.

Array: The group of prospective jurors summoned to attend a court for jury duty as they are arranged on the panel. Also refers to the membership of the jury panel.

Attest: To certify as being true or genuine.

Attorney General Opinions: Opinions issued by the Texas Attorney General interpreting the law for the requestor in the same manner as a private attorney would for his or her client. The opinions are not binding on the courts, but they are usually considered persuasive.

Audit: A formal or official examination and verification of funds collected and disbursed.

Authority: That which can bind or influence a court. Examples: case law, legislation, and constitutions.

Bail: The security given by the accused that he or she will appear and answer before the proper court.

Bail Bond: A written agreement entered into by the defendant and sureties that assures the appearance of the defendant before the court to answer a criminal charge. If the defendant fails to appear when required, the court can forfeit the bond and use the proceeds to defray the cost of returning the defendant to court to answer the charges.

Bail Bond Surety: A person who executes a bail bond as a surety or co-surety for another person for compensation.

Bench Trial: A trial before the judge in which there is no jury and the judge makes the decision of guilty or not guilty.

Beyond a Reasonable Doubt: The standard used in a criminal trial to determine whether the defendant is guilty of the offense charged.

Bias: An inclination or pre-conceived opinion.

Bicameral: Having two chambers or houses in the Legislature.

Bifurcated Appellate System: A court structure in which two separate courts are considered to be the highest appellate court. Texas and Oklahoma have bifurcated appellate systems. In Texas, the two courts are the Texas Court of Criminal Appeals for criminal cases and the Texas Supreme Court for civil cases.

Bill: A legislative proposal introduced in the Legislature.

Bill of Review: A proceeding brought for the purpose of reversing or correcting a prior judgment.

Bill of Rights: The first 10 amendments to the U.S. Constitution.

Bluebook: A popular name for *A Uniform System of Citation*, which is published and distributed by Harvard Law Review Association and bound with a blue cover.

Bond: A type of bail required to ensure the presence of a defendant in a criminal case.

Brief: A written statement prepared by the counsel arguing a case in court. It contains a summary of the facts of the case, the pertinent laws, and an argument of how the law applies to the facts supporting the counsel's position.

Budget: A plan for the coordination of resources and expenditures in a given time period.

Canon: Standards of ethical conduct for members of the judiciary.

Capias: A writ (order) issued by a court with jurisdiction over a defendant when a defendant is not in custody ordering a peace officer to bring the defendant before the court. Required to be issued when a forfeiture is declared.

Capias Pro Fine: A written order issued by a judge when a defendant is absent at a time judgment is rendered or when a defendant defaults in payment of fine. It is a written order from a court directed to a peace officer commanding the officer to arrest a person and to bring the person before the court, or place that person in jail until he or she can be brought before the court. See 43.015(2), C.C.P.

Case Law: The law of reported judicial opinions as distinguished from statutes or administrative law.

Caseflow Management: The process of evaluating, monitoring, and accounting for case files in municipal court.

Caption: Also see *style of case*. The heading on a legal document listing the parties, the court, the case number, and related information.

Cause of Action: The facts that give rise to a lawsuit or a legal claim.

Central Files: The files of several offices or organizational units physically and/or functionally centralized and supervised in one location.

Certified Court Interpreter: An individual who is a qualified interpreter as defined in Article 38.31, C.C.P., or Section 21.003, Civil Practice Remedies Code or certified under Subchapter B by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual. Sec. 57.001(1), G.C.

Challenge for Cause: An objection to a particular juror during jury selection that requires a legal reason to be shown. There may be an unlimited number of strikes for cause.

Charging Instrument: The formal accusation that a person committed a criminal offense. In municipal courts, it may be a sworn complaint filed with the court charging a criminal offense;

Charter: Governing document of a home rule city. The charter outlines a home rule city's structure and powers.

Citation: In a criminal case, written notice to appear issued only by a peace officer. Under certain procedural circumstances, it may be used as the charging instrument in municipal court.

Citators: A set of books that provide, through letter-form abbreviations or words, the subsequent judicial history and interpretation of reported decisions and lists of cases and legislative enactments constructing, applying, or affecting statutes. Example: *Shepard's Citations*.

Civil Law: 1) Roman law embodied in the Code of Justinian or the Napoleonic Code, which prevails in most European countries other than England; 2) the law concerning non-criminal matters in a common law jurisdiction, for example, a personal injury lawsuit or a divorce.

Code: A compilation of statutes.

Codify: Organize as a written code or statute.

Coding: The act of applying file designations on records for the purpose of classifying or condensing.

Color of Office: Pretense of an official right to do an act made by one who has no such right. An act under color of office is an act of an officer who claims authority to do the act by reason of his or her office when the office does not confer on him or her any such authority.

Commercial Driver's License: A type of driver's license that can be identified by the words "Commercial Driver's License" on the top of the license. Allows a person to drive a commercial motor vehicle.

Common Law: The body of law derived from judicial decisions and based on precedent. A common law court will generally look to case law for its decisions in similar cases. It is the basis for legal systems in both the United States and England.

Complainant: A person who brings a legal complaint against another.

Complaint: In municipal court, a sworn allegation charging the accused with commission of an offense.

Concurrent Jurisdiction: Indicates that cases may be filed in any of the courts that have authority of the offense.

Conduct in Need of Supervision/Conduct Indicating a Need for Supervision: Juvenile conduct that is a lower grade of penal offense, such as running away. These offenses are filed in juvenile court.

Conflict of Interest: A relationship that suggests disqualification of a public official from performing his or her sworn duty; a clash between public interest and the private pecuniary interest or other interest of the individual concerned.

Consanguinity: Blood relationship; the connection of persons descended from the same stock or common ancestor.

Constitution: A written document that establishes the fundamental rights and principles by which a nation or state governs itself.

Constitutional Courts: Courts established by the Texas Constitution, including the Supreme Court, Court of Criminal Appeals, courts of appeals, district courts, county courts, and justice of the peace courts.

Contempt: Any act calculated to embarrass, hinder, or obstruct a court in the administration of justice or calculated to lessen its authority or dignity. There are two kinds of contempt: direct and indirect. Direct contempt is committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful court order.

Continuance: The adjournment or postponement of a case pending in court to a later date and time.

Controlling Authority: A case decided by the highest appropriate court in Texas or the Fifth Circuit Court of Appeals, a federal district court within the Fifth Circuit, or the U.S. Supreme Court.

Corporation Court: An old name for municipal courts. A reference in state law to a corporation court means a municipal court. The Corporation Court Law of 1899 created corporation courts in each municipality in Texas and was later codified in Chapter 29 of the Texas Government Code.

Cost-First Allocation Rule: Defined by the Texas Attorney General as when a defendant pays only part of the required fines and costs, the money collected should go first to the payment of the costs and the balance, if any, to the amount of the fine.

Count: An allegation of a separate offense. A criminal indictment or complaint in higher courts may contain several counts.

County Courts: Courts having exclusive original jurisdiction over misdemeanors punishable by incarceration in jail up to one year and fines up to $4000. These courts also have appellate jurisdiction over cases appealed from municipal and justice court.

Court of Criminal Appeals: Court of last resort that has jurisdiction over criminal case appeals. The Court of Criminal Appeals is also authorized by the state legislature to promulgate rules of evidence and appellate procedure in criminal cases.

Cross-Examination: The examination of a witness upon a trial or hearing by the party who did not produce the witness.

Cross Reference: A notation in a file or on a list showing that a record has been stored elsewhere.

Cubic Foot: The volume of paper records that fills a space one foot high by one foot wide by one foot long. The basic measurement for records volume.

Culpable Mental State: The defendant's state of mind at the time a crime is committed. A culpable mental state is required for most criminal offenses. The different mental states are defined in the Texas Penal Code.

Custodian of the Records: Anyone who has charge or custody of property or records. Municipal court clerks are responsible for the care, control, maintenance, and archival of municipal court records.

Database: An electronically stored collection of related records containing frequently used information.

Decentralized Files: Files stored throughout an organization; not centralized in one office or area.

Decree: A determination by a court of the rights and duties of the parties before it.

Default Judgment: In civil cases, a judgment rendered when a defendant fails to appear or answer.

Defendant: The person against whom a civil or criminal action is brought.

Deferred Disposition: A process where the judge may defer the proceedings in a case without entering an adjudication of guilt and place the defendant on probation not to exceed 180 days.

Delinquent Conduct: Juvenile conduct that generally involves violations of the penal laws punishable by imprisonment or jail. These types of offenses are filed in juvenile court.

Denial: In a civil case, the pleading of an allegation of fact or defense. In a bond forfeiture, for example, the answer is the pleading denying the allegation of the facts which caused the forfeiture.

DIC-81: Form submitted by the court to the Department of Public Safety giving notice of the municipal court's order to DPS to either suspend the driver's license or keep a minor from obtaining a driver's license for failing to appear or failing to pay a fine.

Dicta: Language in an opinion that is not necessarily essential to the holding of the decision, usually written in a dissenting opinion and does not embody the determination of the court; thus, it is not binding on the courts.

Digest: An index to reported cases that provides brief, unconnected statements of court holdings on points of law, arranged by subject and subdivided by jurisdiction and courts.

Diligence: The attention and care legally expected or required of a person.

Direct Access Filing: A method of filing in which no code is needed to reference a file.

Directed Verdict: When the state rests and has failed to present evidence of an element of the offense, the defense may ask the court for a directed verdict. If granted, the court orders a verdict of "not guilty." See 45.032, C.C.P. This is different from a Judgment Notwithstanding the Verdict (JNOV), which does not exist in criminal cases.

Disbarment: A form of discipline of a lawyer, resulting in the loss (often permanently) of that lawyer's right to practice law.

Disbursement: The act of paying out funds.

Discovery: A pre-trial device that can be used to obtain certain information about the case. In criminal cases, discovery procedures are outlined in Chapter 39 of the Code of Criminal Procedure. Prosecutors are also under a pre-existing duty to disclose exculpatory evidence, known as *Brady Material*, to the defendant.

District Courts: Courts having original jurisdiction over issues including felony offenses, misdemeanors involving official misconduct, and all civil matters where the amount in controversy is $200 or more.

DL-115: Form submitted by the court to the Department of Public Safety for certain offenses under Chapter 106 of the Texas Alcoholic Beverage Code, including (1) giving notice of the municipal court's order to suspend or deny issuance of a minor's driver's license upon conviction; (2) giving notice of an order of deferred disposition; (3) upon a defendant's failure to take an alcohol awareness program. Formerly known as the DIC-15.

Docket: A formal record required to be kept on cases filed in the court. Maintaining the docket is a ministerial duty that the judge may delegate to the clerk.

Docket Number: A number sequentially assigned to the case by the clerk.

Double Jeopardy: A prohibition against a second prosecution after an original trial for the same offense.

Due Process of Law: Broad legal concept embodied in the 5th and 14th Amendments to the U.S. Constitution. Due Process requires states to use fair procedures when depriving a person of life, liberty, or property and requires the state to have adequate justification for such deprivation.

Duplex-Numeric Filing: Arrangement of files using two or more sets of code numbers, with the sets separated by dashes, commas, periods, or spaces.

Electronic Filing: Transmission and filing of court documents via electronic means. Also known as "paperless filing."

En Banc: A session in which the entire bench of the court will participate in the decision rather than the regular quorum. The federal circuit courts of appeal usually sit in groups of three judges, except for important cases when they sit as a full court of nine members. When all nine members are present, they are said to be sitting en banc.

Endorse: To sign one's name on a document.

Entrapment: An act of law enforcement officers to induce a person to commit a crime not contemplated by the person and for the sole purpose of instituting a criminal prosecution against the person.

Equal Protection of the Law: The legal concept that no person or class of person shall be denied the same protection of the laws, pursuant to the 5th and 14th Amendments to the U.S. Constitution.

Essential Record: Any record necessary for the resumption or continuation of government operations in an emergency or disaster, for the recreation of the legal and financial status of the government, or for the protection and fulfillment of obligations to the people of the State.

Ethics: Relates to moral action, conduct, motive or character; conforming to professional standards of conduct; the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles or values.

Evidence: Any type of proof legally admitted at a trial, including witnesses, records, documents, or objects, for the purpose of proving or disproving elements of a criminal case. The Texas Rules of Evidence govern the admission of evidence at trial.

Ex Officio: Literally "from the office." Powers resulting from the holding of a particular office. These powers are not specifically conferred upon an officer, but the officer may exercise them by right of holding the office.

Ex Parte: Literally "from one party." Communication with a judge by one party without the other present. Ex parte communications between the judge and opposing parties are generally prohibited.

Exclusive Original Jurisdiction: A court having sole jurisdiction over a case because no other court has jurisdiction to hear and decide the case.

Execution: The process of enforcing a judgment, usually by seizing and selling property of the debtor.

Exonerate: To free from obligation.

Expunction: The process by which the record of a criminal conviction or arrest is destroyed or sealed.

Felony: A classification of criminal offense in the Texas Penal Code generally punishable by incarceration in prison. District courts have jurisdiction over felony offenses.

Finding: A legal determination made in a case based on certain facts. On conviction for certain Penal Code offenses, the court is required to enter an affirmative finding after considering the evidence. In municipal court, this typically involves a Finding of Family Violence in Title 5 offenses or a Finding of Motor Fuel Theft.

Fine: The penalty assessed by a judge or a jury upon the conviction of a defendant in a criminal case.

Forfeiture: A civil process that occurs when a defendant posts bond and then fails to appear. Failure to perform a condition of the bond causes the forfeiture of the bail to be declared or forfeited for the fine and costs.

General Jurisdiction: Authority to hear unlimited criminal and civil cases, although judgments remain subject to appellate review.

General Law City: A city that is subject to the general laws of the state. A general law city looks to the state legislature and state statutes for its authority and may not act unless state law authorizes the action.

Guilty: A plea by which a defendant confesses to the crime with which the defendant is charged, or the verdict by which a defendant is convicted.

Headnote: A brief summary of the legal rule or significant fact in a case that often precedes the printed opinion of the case.

Holding: The main legal principle in the case; the declaration of the conclusion of law reached by the court as to the legal effect of the facts of the case.

Home-Rule City: A city that is governed by a charter that gives the city a measure of self-government. A home-rule city generally looks to its charter for its authority and may act unless state or federal law prohibits the action.

Hornbook: Refers to a series of treatises published by West that reviews various fields of law in a summarized, textual form as opposed to a casebook, which contains reprints of court opinions.

Inactive Records: Records that have a reference rate of less than one search per month. Records that are not needed to be readily available, but which must be kept for administrative, fiscal, legal, historical, or governmental purposes.

Index: An organized aid to find the contents of a document, database, or filing system that is arranged in a logical order, giving document or data location in storage. Usually a list or file that is arranged alphabetically or numerically for the purpose of facilitating references to topics, names, numbers, or captions within a body of information.

Indexing: The action of specifying or determining the pre-designed topic, name, number, or caption under which a document is to be filed.

Indictment: A formal accusation of a crime made by a grand jury at the request of a prosecuting attorney. In Texas, indictments are required in felony cases.

Indigent: One who does not have sufficient financial ability to hire legal counsel or pay a fine and court costs. Texas law defines indigency as not earning more than 125 percent of the income standard established by federal poverty guidelines.

Indirect Access Filing: A system in which reference to the code under which material is filed must be made before the file can be located.

Information: Written statement based on a complaint charging the defendant with a Class A or B misdemeanor. Filed and presented by a county or district attorney.

Jail-Time Credit: Credit on a defendant's fine required to be given when a defendant has been confined in jail before or after being convicted of a crime by the court or jury.

Judgment: In a criminal case, the written declaration of the court signed by the trial judge and entered in the record showing the conviction or acquittal of a defendant. In a civil case, the final decision of the court resolving the dispute and determining the rights and obligations of the parties.

Judgment Nisi: A temporary order that will become final unless the defendant or surety shows good cause as to why the judgment should be set aside.

Judicial Council Monthly Court Activity Report: The monthly report that all Texas courts must submit to the Office of Court Administration (OCA). Commonly known as "The OCA Report."

Judicial Discretion: The exercise of judgment by a judge based on both what is fair under the circumstances and what is within the established principles of the law.

Judicial Duties: Duties that require an exercise of judgment or decision on a question of law or fact or choice of alternatives. Only judges may perform judicial duties.

Jurisdiction: The power given to the court by a constitution or legislative body to hear and decide cases.

Jury Charge: An instrument which contains the law that applies to a case and is read to jurors before argument commences in a trial.

Jury Shuffle: On motion by the defense or prosecutor, a shuffle of the order in which jurors are seated. No practical method is prescribed in the code to accomplish this, but a common method is to mix up juror names and individually draw them to reseat the jury order.

Jury Summons: A notice sent to prospective jurors notifying them to appear for jury duty. Usually, this act is performed by the court clerk.

Justice of the Peace Court: Courts with original jurisdiction in criminal cases where punishment upon conviction may be by fine only. Justice courts generally have concurrent jurisdiction with municipal courts.

Juvenile: Generally, a person who is at least 10 years of age and under the age of 17.

Key Number: A building block of the West indexing system. The key number is a permanent number given to a specific point of law.

Law Review or Law Journal: A legal periodical that usually describes a scholarly publication edited by law students.

Legal Advice: A statement that interprets some aspect of the law, recommends some course of conduct, or applies the law to specific facts.

Legislative History: The information embodied in legislative documents that provides the meanings and interpretations (intent) of statutes.

LexisNexis: A corporation that provides a computerized legal research system used by attorneys and court personnel. Its database provides the full text of court decisions, statutes, administrative materials, annotations, law review articles, reporter services, Supreme Court briefs, and other items.

Licensed Court Interpreter: An individual licensed under Chapter 157 of the Government Code by the commission to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English**.** Sec. 157.001(2), G.C.

Life Cycle of Records: The management concept that records pass through four stages: creation, maintenance, use, and disposition.

Limited Jurisdiction: Authority to hear only certain types of matters. Municipal courts are courts of limited jurisdiction.

Linear Foot: A unit of measurement used to determine the quantity of records in terms of length of space occupied without regard to height and width.

Litigant: Broad term describing a party to a lawsuit.

Loose-Leaf Services and Reporters: Contain federal and state administrative regulations and decisions or subject treatment of a legal topic. They consist of separate leaves to be placed in a binder that allows for frequent substitutions and updates.

Magistrate: A judicial officer whose duty it is to preserve the peace within a certain territorial jurisdiction through all lawful means; to issue all process intended to aid in preventing and suppressing crime; and to cause the arrest of all offenders in order that they may be brought to trial or, after trial, to punishment.

Magistration: The process where a magistrate explains to a defendant his or her rights under the law and constitution.

Mandatory Authority: Authority that a court is to follow and includes constitutional provisions, legislation, and court decisions.

May: Denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

Microfilm: A film containing photographic records or images considerably reduced in size from the original material filmed.

Microfilming: The process of photographic reproduction of a document, usually on 16mm or 35mm film. The original may be reduced from one-eighth to one-fiftieth of its original size, with such clarity that it can be enlarged to its original size without loss of detail.

Microform: Roll microfilm, microfiche, computer output microfilm, and all other formats produced by any method of microphotography or other means of miniaturization on film.

Ministerial Duties: A duty in which there is nothing left to discretion, or a duty imposed by law.

Minor: In the Transportation Code, a person who is younger than 17 years of age. In the Alcoholic Beverage Code, a person who is under 21 years of age.

Misdemeanors: A classification of criminal offense in the Texas Penal Code punishable by incarceration in jail or a fine. County courts, justice courts, and municipal courts generally have jurisdiction over misdemeanors. Municipal courts and justice courts, however, only have jurisdiction over fine-only, Class C misdemeanors.

Mitigating Circumstances: Circumstances that do not constitute a justification or excuse of the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.

Motion: A formal request made to a judge pertaining to any issue arising in a case.

Municipal Court of Non-Record: A municipal court that does not keep a record of its proceedings. The appeal is de novo to the county court.

Municipal Court of Record: A municipal court that is required to keep a record of its proceedings. Established either by state legislation or city election.

Must: Creates or recognizes a condition precedent.

No Contest/Nolo Contendere: A plea in which the defendant does not contest the charge. Nolo contendere has the same legal effect as a guilty plea; however, it may not be used against the defendant as an admission of guilt in a civil suit based upon or growing out of the act upon which the criminal prosecution is based.

Nonessential Record: A record that is not vital to the continued operation of the court.

Nonsecure Custody: An unlocked multipurpose area where juveniles may be detained for up to six hours. While the juvenile is in the custodial area, they cannot be handcuffed to a chair, railing, or any object, and they must be under continuous visual observation by a law enforcement officer or a member of the facility staff.

Not Guilty Plea: A plea in which the defendant denies guilt in a criminal case and contests the charge. Defendants are presumed innocent, and guilt must be proved by the prosecution. Consequently, if a defendant refuses to enter any plea, a plea of not guilty may be entered by the judge.

Numeric Filing: Arrangement of numeric characters in various combinations.

Opinion: An expression of the reasons a certain decision was reached in a case and includes the following:

- A **majority opinion** is usually written by one judge and represents the principles of law that the majority of the court deemed operative in a given decision. It has the greatest precedential value.
- A **separate opinion** may be written by one or more judges in which he or she concurs with or dissents from the majority.
- A **concurring opinion** agrees with the results reached by the majority, but it disagrees with the precise reasoning of the majority opinion.
- A **dissenting opinion** disagrees with the result and the reasoning of the majority.
- A **plurality opinion** (called a judgment by the Supreme Court) is agreed to by less than a majority as to the reasoning of the decision, but it is agreed to by a majority as to the result.
- A **per curiam opinion** is an opinion by the court which expresses its decision in the case but whose author is not identified.
- A **memorandum opinion** is a holding of the whole court in which the opinion is very concise.

Oral Argument: An opportunity for lawyers to summarize their position before the court and to answer the judges' questions.

Ordinance: The equivalent of a municipal statute, passed by the city council and governing matters not covered by state or federal law.

Out-Card: A card filled out showing the date, description of the record, agency, person requesting the record, and other pertinent information. This card replaces the record that is pulled and is removed when the record is refiled.

Party: A person, business, or government agency actively involved in a legal proceeding.

Payee: A person to whom a check, money, etc., is payable.

Payor: A person who pays. A person named in a bill who has to pay the holder.

Peremptory Challenge: An objection made to a particular juror during jury selection that does not require cause be shown. The stricken juror is removed from consideration for the jury in that case. In municipal court, the prosecution and defense are each permitted three peremptory strikes.

Perfect: To take all legal steps needed to complete or secure. In court, often used in reference to whether appeal bond requirements have been completed.

Permanent Record: A record considered to be so valuable or unique that it is to be permanently preserved.

Personal Bond: A bond that is granted in the court's discretion that releases the defendant on his or her word or promise to appear, without sureties or other security, to appear in court to answer criminal charges.

Persuasive Authority: Reasoning which a given court may, but is not bound to, follow. For example, decisions from one jurisdiction may be persuasive authority in the courts of another jurisdiction, although they are not binding.

Plaintiff: In a civil case, the person who complains or brings the lawsuit and seeks relief for an injury.

Plea: In criminal cases, there are four possible pleas: guilty, not guilty, nolo contendere (no contest), or the special plea of double jeopardy.

Pleadings: The written statements of fact and law filed by the parties. In municipal and justice court, pleadings may be oral or in writing as the court may direct.

Pocket Part: A paperback supplement inserted in a book through a slit in its back cover. Usually includes textual, case, or statutory references keyed to the original publication.

Precedent: A previously decided case that guides the decision of future cases.

Preponderance of the Evidence: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Presumption of Innocence: A principle of criminal law that the government has the burden of proving every element of a crime beyond a reasonable doubt, and the defendant has no burden to prove his or her innocence.

Pre-Trial Hearing: A court setting to address preliminary matters, including plea discussions, prior to the trial of an offense. The court may set any criminal case for a pre-trial hearing under Section 28.01 of the Code of Criminal Procedure.

Primary Authority: Statutes, constitutions, and administrative regulations issued pursuant to enabling legislation and case law. Primary authority may be either mandatory or persuasive. All other legal writings are secondary and are never binding on the courts.

Privileged Information: Information that is protected from disclosure.

Procedural Law: The law that governs the operation of the legal system, including court rules and procedures, as distinguished from substantive law.

Process: Written orders such as a warrant, capias, capias pro fine, and summons issued by the municipal judge.

Public Information: Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for the governmental body and the governmental body owns the information or has a right of access to it, pursuant to the Public Information Act (PIA).

Ratio Decidendi: The point in a case that determines the result; the basis of the decision. This is more commonly referred to as the holding of the case.

Reasonable Doubt: All persons are presumed innocent, and no person may be convicted of an offense unless each element of the offense is proven beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his or her trial. The law does not require a defendant to prove his or her innocence or to produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

Reconciliation: The act of harmonizing records.

Record: A document containing data or information of any kind and in any form generated or received by an organization and containing information necessary for the operation of that organization's business.

Record Copy: A record that is designated to be kept for the full retention period; not a reference, working, or convenience copy.

Records Control: The management of documents generated or received by an organization.

Records Creation: The process of production or reproduction of records.

Records Disposition: The final processing of records for destruction, permanent retention, or archival preservation.

Records Inventory: The physical listing of all records series created and maintained by an agency conducted prior to the development of retention schedules. Includes data such as records series titles, inclusive date, use, location, quantity, arrangement, duplication, and other pertinent information.

Records Management: (1) The systematic control of recorded information required in the operation of an organization's business from creation and active maintenance and use, through inactive storage, to final disposition; (2) The application of management techniques for the purpose of reducing the cost and improving the efficiency of recordkeeping. Statutorily defined in the Local Government Records Act (Sec. 201.003, L.G.C.).

Records Preservation: The maintenance of documents in usable form.

Records Protection: Safeguarding documents against unintentional destruction.

Records Retention Schedule: A document that identifies the length of time a records series must be retained in active and inactive storage before its final disposition to permanent storage, archival preservation, or destruction.

Records Series: A group of identical or related records that is normally used and filed as a unit and that permits evaluation as a unit for retention scheduling purposes.

Records Storage: The systematic assembling of documents in containers or depositories for possible future use.

Recusal: The process by which a judge is disqualified from hearing a charge filed in his or her court.

Reference Copy: A copy of an official record that serves as a substitute for reference purposes. Also called convenience or working copy.

Remand: To send back; the sending by the appellate court of the case back to the same court out of which it came for the purpose of having some further action taken on it there.

Remit: To pay back money.

Remittitur: To put back into the previous position and may include the return of all or part of the amount of the bond.

Rendering Judgment: The judicial act of pronouncing the decision (judgment) of the court.

Retention Period: The period of time during which a record must be kept before final disposition.

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.

Rules of Evidence: Rules that govern the admissibility of evidence at trials and hearings.

Rules of the Road: Subtitle C of Title 7, Transportation Code. This includes Chapters 541 to 600. These are important for determining certain court costs and also an adult's right to take a driving safety course.

Rule of Law: The principle that laws should govern a nation state, and every person should be subject to those laws.

Scire Facias: A special docket required by law to handle all cases and proceedings involved in the forfeiture of bail bonds. The process of issuing a citation (notice) to the parties of a temporary judgment (judgment nisi) that they need to come to court or lose the bond money to the State.

Sealing of Records: The process whereby a juvenile's court records are closed, and the matter is treated for all purposes as if it never occurred. The records will not be opened except by order of the juvenile court brought about by a petition of the person whose records were sealed. After September 1, 2001, municipal courts are no longer required to seal juvenile records. Juvenile cases filed with municipal courts before September 1, 2001, are subject to the sealing provisions.

Sentence: Punishment imposed on a defendant who has been found guilty. In municipal court, the amount of the fine and costs ordered to be paid to the State.

Server: A computer that shares its resources, such a printers and files, with other computers on the network. An example of this is a Network Files System (NFS) Server which shares its disk space with a workstation that does not have a disk drive of its own.

Session Laws: Laws of a state enacted that are published in bound or pamphlet volumes after the adjournment of each regular or special session.

Shall and Shall Not: Imposes a duty to either act or refrain from acting.

Shepardizing: To check whether a certain case is still good law. Specifically refers to the use of *Shepard's Citations* to accomplish this.

Should or Should Not: Relates to aspirational goals and is a statement of what is or is not appropriate conduct but is not a binding rule under which a judge may be disciplined.

Slip Opinion: An individual court decision published separately soon after it is rendered.

Stare Decisis: Latin term meaning "to stand by things decided." The doctrine that courts will follow precedent, or previous judicial decisions, with similar issues or facts.

Statute: An act of a legislature. Depending upon its context in usage, a statute that may mean a single act of a legislature or a body of acts that are collected and arranged according to a scheme or for a session of a legislature.

Statute of Limitations: The time within which a legal process must be taken. There are different statutes of limitations for different kinds of lawsuits or crimes. In criminal cases, the time within which a prosecutor must formally present charges and file a complaint against a defendant. The statute of limitations for misdemeanor cases heard in municipal courts is two years.

Statutory Construction: A process by which a court seeks to interpret the meaning and scope of legislation.

Statutory Courts: Courts created by the State Legislature under authority granted by the Texas Constitution. These include municipal courts, county courts at law, and special courts such as probate courts.

Statutory Law: Law enacted by the legislative branch of government as distinguished from case law or common law.

Strike: A common name for a challenge that seeks to remove a particular juror from consideration during the jury selection portion of trial.

Style of Case: The parties to a lawsuit as they are written in the heading at the beginning of the case. Also known as the caption of the case.

Subject Matter Jurisdiction: Refers to the types of cases over which a court has jurisdiction.

Subpoena: A command from a court to appear at a certain time and place to give testimony upon a certain matter.

Subpoena Duces Tecum: Latin term meaning "under penalty you will bring with you." A command from the court for a witness to appear and bring books, papers, or other tangible items as evidence.

Subsidiary Dockets: Listings of cases set for a particular date for trial and are also called trial dockets.

Substantive Law: That law which establishes rights and obligations, as distinguished from procedural law, which is concerned with rules for establishing their judicial enforcement.

Summary Judgment: In a civil case, a judgment made when there is no genuine issue of material fact, and the party is entitled to prevail as a matter of law.

Summons: A writ of the court directing that a person appear at a stated time and place. In municipal court, the judge can issue a summons for a defendant or for the parents of a juvenile.

Suppress: To keep evidence from being presented during a trial. A motion to suppress evidence is typically heard prior to trial and outside the presence of the jury.

Surcharge: Surcharges were fees assessed against an individual following certain convictions under the Texas Driver Responsibility Program. The program was repealed, effective September 1, 2019.

Surety: One who 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.

Table of Cases: A list of cases arranged alphabetically by case names with citations and references to the body of the publication where the cases are treated.

Table of Statutes: A list of statutes with references to the body of the publication where the statutes are treated or construed.

Terminal-Digit Filing: The arrangement of files using the last digit or set of digits as the primary filing unit.

TexasSure: An automated vehicle insurance verification database created by state agencies including the Texas Department of Insurance, Texas Department of Motor Vehicles, and Texas Department of Public Safety.

The Rule: Rule 614 of the Texas Rules of Evidence, requiring witnesses to remain outside the courtroom while testimony is being heard, except when testifying or until discharged.

Time Payment Fee: A $25 fee that is required to be collected on conviction if the person pays any part of the fine or costs more than 30 days after the judgment imposing the fine or costs.

Transcript: A written, word-for-word record of what was said while in a proceeding such as a trial or during some other conversation, as in a transcript of a hearing or oral disposition.

Transferring: Moving inactive records to a records center or storage area on a regular schedule.

Treatise: An exposition, which may be critical, evaluative, interpretative, or informative on case law or legislation and is usually quite detailed and often critical.

Trial Courts: Those courts in which trials are held, witnesses are heard, testimony is received, and exhibits are offered into evidence.

Trial De Novo: A new trial on a case, where both questions of fact and issues of law are determined as if no decision had been previously rendered.

Trial Dockets: Listings of cases set for a particular trial date and are commonly called subsidiary dockets.

Truancy: The unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from a school without the consent of the child's parents. Prior to September 1, 2015, the act of truancy, or failing to attend school, was a crime in Texas punishable by a fine up to $500. The 84th Texas Legislature overhauled the process of juvenile justice for municipal and justice courts, eliminating this criminal offense.

Truancy Courts: Specialized couts which exercise jurisdiction over cases involving allegations of truant conduct. Municipal and justice courts are designated as truancy courts and may hear civil truancy cases. This is distinct from their authority and jurisdiction as a municipal court.

Venire: Latin term meaning "to come." The panel summoned by the court from among whom jurors in a particular case are chosen.

Venue: The particular geographical area in which a court with jurisdiction may hear and determine a case.

Verdict: The final decision on the trial of a criminal case: either guilty or not guilty.

Voir Dire: Literally, "to speak the truth." (1) Trial process by which the defense and prosecution question and select jurors; (2) The preliminary examination that the court, prosecution, or defense may make of a person presented as a witness where the person's qualifications to testify as an expert may be examined. Opposing counsel may ask the court to "take the witness on voir dire" out of the jury's presence.

Waiver: In municipal court, the process in which the court removes the obligation of the defendant to pay a fine or costs within parameters specifically outlined in the law. Waiver is possible if the defendant is a child or if the judge determines that the defendant is either indigent or does not have sufficient resources or income to pay the fines or costs.

Warrant of Arrest: A written order issued by a magistrate or judge directed to a peace officer commanding him or her take the body of the person accused of an offense, to be dealt with according to the law.

Westlaw: The computerized legal research system of The West Group / Thomson Reuters corporation used by attorneys and court personnel. It is a database providing full text of court decisions, statutes, administrative materials, law review articles, reporter services, and other items.

Witness: One who personally sees, observes, or is an expert concerning something and later testifies to what was seen, perceived, or known; a person whose declaration under oath or affirmation is received as evidence.

Writ: A written order of which there are many types, issued by a court and directed to an official or party, commanding the performance of some act.

Writ of Execution: A written order commanding an officer to take the property of the defendant in satisfaction of the debt (judgment of forfeiture on the bail bond) containing evidence of the debt of the defendant (surety) to the plaintiff (city prosecutor).

Writ of Habeas Corpus: A written order commanding that a person is brought before a court to determine if the person is lawfully imprisoned. Literally, "you have the body."

Writ of Procedendo: A written order by which the county court declares its lack of jurisdiction over an appeal and returns the case to municipal court, which may then proceed to collect judgment.

Writ of Venire: A written order from the judge commanding the proper officer (usually the court clerk) to summon immediately a list of prospective jurors to serve for a particular term of the court.

APPENDIX C: CODE ABBREVIATIONS

Agriculture Code	AG
Alcoholic Beverage Code	ABC
Business and Commerce Code	BCC
Code of Criminal Procedure	CCP
Education Code	EC
Election Code	Elec
Family Code	FC
Finance Code	Fin
Government Code	GC
Health and Safety Code	HSC
Human Resources Code	HRC
Insurance Code	IC
Labor Code	LC
Local Government Code	LGC
Natural Resources Code	NRC
Occupations Code	OC
Parks and Wildlife Code	PWC
Penal Code	PC
Probate Code	PBC
Property Code	PRC
Tax Code	Tax
Texas Administrative Code	TAC
Transportation Code	TC
Utilities Code	UC
Water Code	WC
Vernon's Civil Statutes	VTCS

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