

# *R* Municipal Court Recorder

Volume 11

JULY 2002

No. 5

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## Deferred Disposition: "Thinking Outside of the Box" versus "Abuse of Discretion"

by Ryan Kellus Turner  
Program Attorney & Deputy Counsel, TMCEC

During this year's "traditional" 12-hour seminar, municipal judges throughout the state have been challenged to consider how and when they utilize their discretionary authority under Article 45.051, Code of Criminal Procedure.<sup>1</sup> Of all the figurative tools in a municipal judge's toolbox, no other statute compares to deferred disposition in terms of its potential to assist the court in correcting the conduct of the defendant. Like any other tool, however, its utility is ultimately only restricted by

the scope of vision of those who employ it.

The purpose of this article is to increase judicial awareness of the potential use of deferred disposition.

### Brief History

Prior to 1982, municipal and justice courts were without statutory authority to impose any form of probation. In fact, in 1979 the Adult Misdemeanor and Probation Law expressly limited probation authority to courts of record. Thus, in effect, denying

probation authority to all justice of the peace courts and the vast majority of municipal courts.<sup>2</sup> Acknowledging the evolving role of municipal and justice courts in preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal behavior, the Legislature in 1982 created a specific probation statute for all local trial courts of limited jurisdiction.<sup>3</sup> Implicit in the deferred disposition statute is the notion of rehabilitation. While the

*Deferred continued on page 9*

## Mayors, Magistrates, and Judges

by Margaret Robbins  
Program Director, TMCEC

The Texas Municipal Courts Education Center fields many calls regarding the role of mayors, magistrates, and judges. Unfortunately, statutes do not have nice, neat lists that establish the roles and duties of each. Since a study of Texas legislative history shows that the role of mayor and magistrate were intertwined, to help present a clearer picture of the roles of each, some background information is presented here.

Mayors are the principal administrative officers of cities. The position of mayor varies from city to city with some mayors being the executive official of the city and in other cities, the mayor is just a ceremonial figure.

The first general law providing rules for the incorporation of Texas towns and cities was enacted in 1858. This law granted the mayor jurisdiction

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Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. Subscriptions are free to all municipal court judges, clerks, prosecutors, and office personnel employed by the municipal court.

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**AROUND THE STATE**

**Join the Crowd!**

According to Mike Griffith (Director, Judicial Committee on Information Technology), municipal courts have been the quickest to take advantage of the opportunity to file electronic monthly reports with the Texas Judicial Council/Office of Court Administration (OCA). According to OCA records, the following cities have requested user names so that they may begin filing electronically via the OCA web site:

- |                   |                |                  |                 |
|-------------------|----------------|------------------|-----------------|
| Abilene           | Deer Park      | La Joya          | Progreso        |
| Alpine            | Denton         | Lakeside         | Rhome           |
| Andrews           | DeSoto         | Lavon            | Richardson      |
| Balcones Heights  | Duncanville    | League City      | Robinson        |
| Bandera           | El Paso        | Lewisville       | Roman Forest    |
| Bastrop           | Fairfield      | Marble Falls     | San Angelo      |
| Baytown           | Farmers Branch | Mesquite         | Somerville      |
| Bellaire          | Fort Worth     | Midland          | Southside Place |
| Brownwood         | Garland        | Midlothian       | Sugarland       |
| Carrollton        | George West    | Mineola          | Sundown         |
| Cibolo            | Grapevine      | Missouri City    | Sunray          |
| Cisco             | Hamilton       | Moody            | Trophy City     |
| Clear Lake Shores | Haskell        | Nacogdoches      | Tye             |
| Clifton           | Hickory Creek  | Newark           | Webster         |
| Clint             | Hillsboro      | Panorama Village | W. University   |
| Coleman           | Huntsville     | Paris            | Place           |
| Corpus Christi    | Idalou         | Pearland         | Whitney         |
| Crystal City      | Karnes City    | Plano            | White Oak       |
| Dalhart           | Kerrville      | Port Arthur      |                 |

Participating courts can use the Internet to submit caseload and revenue information each month. Once entered by the court, the information is immediately accessible in single month or summary form. This new reporting capability is part of the Trial Court Data Management project and a first step in automating caseload reporting.

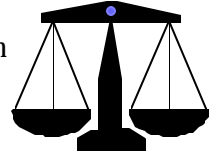
If you are authorized to report your court's information and wish to report to OCA online but do not have a User Name and Password, contact the Help Desk at 512/463-1642 or visit the web site: [www.info.courts.state.tx.us/mn/mn.exe/home](http://www.info.courts.state.tx.us/mn/mn.exe/home). You will then be ready to send reports directly through the Internet each month, with no mailing or faxing of paper reports. While you are logged on to your account, you can also instantly review your submitted reports, print current and previous reports, sum caseload statistics for selected time periods, and add or update reports from the previous quarter.

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# Texas Municipal Courts Association 2002 Judicial Awards for Excellence in the Administration of Justice

## PURPOSE

To recognize each year a municipal court judge and a court support staff member who have made an outstanding contribution to the fair and impartial administration of justice by meeting any one or more of the following standards: (1) setting up an exemplary court where procedures and staff are models for all municipal courts in Texas; (2) providing inspiring leadership among municipal judges and court support personnel such that networking and professionalism is encouraged and established; (3) providing community leadership to ensure the protection of the public's interest; (4) increasing communication and understanding between the public, the municipal courts, and other levels of the judiciary; (5) serving as an outstanding faculty member in judicial education programs, which strengthens the competence of the municipal judges and court support personnel.



## ELIGIBILITY

Any individual presently serving or having served in the 2002 calendar year as a municipal judge or as a member of a court's support staff (including but not limited to clerks, court administrators, bailiffs, and prosecutors) in the State of Texas may apply for one of these two awards. Members or materials prepared by members of the TMCA Judicial Recognition Committee are ineligible.

## JUDGING COMMITTEE

The judging committee will consist of members of the TMCA Judicial Recognition Committee, which is made up of board members and members of TMCA.

Among factors, applicants applying for the awards will be judged on the basis of one or more of the following criteria:

- Excellence in the administration of municipal court procedures
- Record of outstanding leadership in the community or profession
- Effective use of community resource persons in support of the work of the municipal courts
- Initiative in innovative and cost effective problem solving of issues facing the municipal courts

## ENTRY RULES

1. Nominations must be submitted in triplicate and presented in a plain manila folder or envelope
2. Cover letter should indicate nominee for "Judge" or "Court Support Personnel"
3. Nomination application should also include the following:
  - Résumé of the nominee (max. 2 pages)
  - Summary of contributions worthy of recognition in improving municipal courts (max. 2 pages)
  - Letters of recommendations or support (max. 5 pages)
  - Relative evidences like newspaper articles, resolutions, and publications

## DEADLINE

Entries must be received no later than July 15, 2002. Send applications to:

The Honorable Sharon Hatten  
406 E. Illinois  
Midland, TX 79701  
915/685-7300 or shatten@peoplepc.com for inquiries only

## PRESENTATION

The two award winners will be notified by August 1, 2002 and invited to attend the Awards Dinner tentatively scheduled to be held aboard the USS Lexington Friday, October 25<sup>th</sup> during the TMCA Annual Meeting in Corpus Christi.

**TMCA Annual Meeting**

The Texas Municipal Courts Association will hold its Annual Meeting October 24-26, 2002 in Corpus Christi at the Omni Marina (Reservations: 800/843-6664).

Five small, square, decorative icons arranged horizontally at the bottom of the box, each featuring a stylized green and black pattern.



# FROM THE GENERAL COUNSEL

## W. Clay Abbott

There were three recent actions by the Commission on Judicial Conduct that all had to do with a lack of decorum or improper conduct before the public by judges. The cases show that courts may need to review their etiquette and brush up their public image.

### Are Lady Justice's eyes closed behind the blindfold?

Every Sunday sometime during the sermon, I know that as I am reverently and sleepily bowing my head, I will catch the spouse's elbow in the ribs. I admit to occasionally catching up on my sleep in semi-quiet, warm places when I am not up and moving. We now know that the bench is not one of the places a judge may ethically doze off. On March 1, 2002, the Commission on Judicial Conduct gave a Public Admonition to Justice of the Peace John Robert Kleimann for sleeping during official court proceedings on numerous occasions. They found that the justice failed to maintain order and decorum in the courtroom and that judges being asleep on the bench eroded public confidence in the judiciary.

It is important to note that the Commission admonished the justice for sending the message that he did not care about the proceedings, not for actually failing to care. I have noticed a few nodding heads in the seminars I have taught in the last couple of years, and I take no offense. I have already confessed to the same gap in manners. What is most important to remember is that the conduct expected of a judge is higher than

normal. The diligence expected of the judge in court should also be higher than the judge requires of other court participants.

Perhaps we older gentlemen should take more breaks. Perhaps we should give the clerk rubberbands and paperclips and instruct them in how to use them as sleep deterrents. Perhaps we need only remind ourselves that just another boring case for us is an extremely important event for the folks who enter our courts.

### "That's a sword in Lady Justice's hand, not a paddle"

I have no wish to pick on Judge Kleimann but, on March 1, 2002, he also received a Public Reprimand for ordering a foster parent to spank a child in his court. Any judge, or parent for that matter, knows the frustration of dealing with children and juveniles. It often seems hard to get their attention, and sometimes criminal procedures seem to be very restrictive.

In a court hearing concerning a juvenile charged with disorderly conduct, a foster parent told the court he had problems controlling the child's behavior. The court remarked, "What he needs is a good butt-dusting." The foster parent then explained he was prohibited from spanking his 11-year-old foster son. The judge then declared that he granted permission for the spanking and ordered the constable to produce a two-foot paddle with air holes and a special grip. Having previously

been warned of contempt if he failed to spank his foster children, the foster parent gave the child three blows with the paddle in the courtroom. This was not the only spanking incident, and the judge defended the public spanking in the Houston paper.

The Commission found the judge had no legal authority to order the spanking. They also found violations of the Code of Judicial Conduct for failing to maintain decorum in the court and casting public discredit on the judiciary.

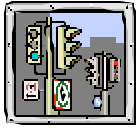
This is clearly an area that inspires strong opinions on both sides. The issue remains that our courts must be clothed in proper decorum and temperance. Public beatings in courts are best left in the past.

### What does that button on Lady Justice's toga say?

Finally, we have the answer to every ethics speaker's hypothetical: Can a judge have a political bumper sticker on his or her car?

The answer is no. A political bumper sticker affixed to a vehicle also bearing state judge's license plates given to a judge violates Canon 2B of the Code of Judicial Conduct. On February 15, 2002, the Commission issued a Public Admonition to Appellate Justice Nelda Rodriguez for allowing a Tony Sanchez bumper sticker to be affixed to the car bearing her specialized plates for an indefinite period of time.

Lending the prestige of judicial office must be carefully guarded against, in no small part, because it is so strongly sought.



# TRAFFIC UPDATE

## Vehicle Modifications

Vehicle modifications have been on the rise in recent years. With all the possibilities of new and improved products, it can be hard to know if they are actually “road legal.” There is a distinction from “legal to purchase” and “street legal” and even what is legal from the inspection perspective.

### Clear Taillight Lenses

For clear taillight lenses to be legal, they must consist of the following components.

#### Stop Lamp

- All motor vehicles are required to have at least two stop lamps, unless the vehicle was manufactured prior to 1960, in which case it is required to be equipped with one.
- A stop lamp must emit a red or amber light, or any shade of color between **red** and **amber**.
- A stop lamp must be visible from a distance of not less than 300 feet to the rear in normal sunlight.
- The stop lamp shall be actuated upon application of the service (foot) brake and may be incorporated with one or more other rear lamps.
- Stop lamp lenses must be of a type meeting Department of Public Safety standards.

#### Tail Lamp

Every motor vehicle shall be equipped with at least two tail lamps, unless the vehicle was manufactured prior to 1960, in which case your vehicle is required to be equipped with one.

Tail lamps mounted on the rear shall emit a **red** light plainly visible from a distance of 1,000 feet to the rear when illuminated.

#### Rear Reflector

Every motor vehicle shall carry on the rear, either as part of the tail lamps or separately, two or more red reflectors.

Rear reflectors on a vehicle shall reflect a **red** color.

Red reflectors required on the rear of a vehicle may be incorporated with the tail lamp assembly.

Every reflector upon any vehicle shall be of such size and characteristics and so mounted as to be visible at night from all distances within 600 feet to 100 feet from such vehicle when directly in front of the lawful lower beams of head lamps.

#### Turn Signal

Signal shall show white or amber to the front or show red or amber to the rear.

#### Lens Covers (Blackouts)

State law Section 547.3215 incorporates Federal Motor Vehicle Safety Standards, Subpart B, Federal Motor Vehicle Safety Standards, Section 571.108, Standard No. 108; Lamps, Reflective Devices, and Associated Equipment. This standard contains the following:

*Section 5.1.3 No additional lamp, reflective device or other motor vehicle equipment shall be installed that impairs the effectiveness of lighting equipment required by this standard.*

As a general comment, any device that impairs the required effectiveness of headlamps, tail lamps, or reflectors is **prohibited**. The lights, both front and rear, are made by the manufacturer to meet this safety standard. Putting something, particularly something dark, would impair its effectiveness.

In the inspection manual used by state certified inspection stations, the following is the inspection criteria:

*Tail lamp. Inspect and reject if lamp is obstructed by any part of the body.*

#### References:

Texas Transportation Code sections:  
547.321. Headlamps Required  
547.3215. Use of Federal Standard  
547.322. Tail lamps Required  
547.323. Stoplamps Required  
547.324. Turn Signal Lamps Required  
547.325. Reflectors Required  
49 C.F.R. Section 571.108  
NHTSA - Safety Standards

### Colored Light Bulbs

Ensure that the bulb has a “DOT”<sup>1</sup> or appropriate SAE<sup>2</sup> stamp on it. Currently, there are no DOT approved “red” bulbs.

Vehicle lighting equipment is covered in Chapter 547 of the Texas Transportation Code, Subchapter D.

*Section 547.3215. Use of Federal Standard. Unless specifically prohibited by this chapter, lighting, reflective devices, and associated equipment on a*



vehicle or motor vehicle must comply with:

(1) the current federal standards in 49 C.F.R. Section 571.108; or

(2) the federal standards in that section in effect, if any, at the time the vehicle or motor vehicle was manufactured.

The C.F.R. will refer you to Society of Automotive Engineers (SAE) #J578, which will refer to several other SAE standards. Everything that complies with those standards is "legal." All vehicle lighting equipment should meet 49 C.F.R., Section 571.108. Equipment manufacturer's have to self-certify that they meet these standards. DOT does not test equipment unless they act against those who don't meet standards. You should ensure that the equipment vendor is reputable and that all equipment has a DOT or appropriate SAE stamp on it (or if not marked, keep the box that it comes in that says it is "DOT approved") and under no circumstances use equipment that is for "off-road or show only."

### **Are Clear Tail Lamp Lenses (with red bulbs) Legal in Texas?**

No. Clear tail lamp lenses utilizing red bulbs that do not meet SAE standard J585e (September 1977) are not in compliance with federal standards (NHTSA, 49 C.F.R. 571.108). Under Section 547.3215, this standard has been adopted by Texas and therefore it is in violation of Texas law (Section 547.322, Section 547.325) and is punishable as a Class C misdemeanor under Section 547.004(a)(3).

### **Background**

There is a growing popular modification to replace the OEM<sup>3</sup> tail lamp lens with a clear lens that uses a red bulb. (However, this can apply to any other color of replacement bulb.)

### **Discussion**

The Texas Transportation Code Section 547.101 allows for the adoption of rules and standards regarding vehicle equipment to protect the public and enforce safety standards. Section 547.3215 requires Texas to use the federal standard contained in 49 C.F.R., Section 571.108 or the standards in effect at the time the vehicle was manufactured, unless prohibited by statute, for the lighting and reflective devices. Tail lamps are required by Section 547.322 and must emit a red light plainly visible at a distance of 1,000 feet from the rear of the vehicle. In addition to the lamps required in Chapter 547, reflectors are required by Section 547.325. These reflectors must be visible at night from 100 to 600 feet (100 to 350 feet for a pre-1972 vehicle) when directly in front of lawful lower beams of headlamps. Section 547.303 requires these reflectors on the rear of the vehicle and must be or reflect red. Section 547.004(a)(3) makes it a Class C misdemeanor to allow or operate a vehicle that is in violation of the requirement of Chapter 547. The National Highway Traffic Safety Administration (NHTSA) sets the federal standards for this equipment for both OEM and replacements in 49 C.F.R., Section 571.108. NHTSA has received complaints about these after-market clear lamp lenses. They have already acted against the equipment supplier with fines and are forcing recalls. The primary grounds used by NHTSA were:

1. Clear lamps lacked the necessary colored reflectors that were contained in the factory equipment as required by 49 C.F.R. 571.108.
2. No "red" bulb has been certified that emits light to the required standard contained in 49 C.F.R. 571.108 [SAE Standard J578 (3.1.1) Red].

For additional information, visit this "unofficial" web site: <http://fmvss108.tripod.com/>.

### **References**

Texas Transportation Code  
49 C.F.R. Section 571.108  
NHTSA - Safety Standard

## **Engine Swaps and Kit Cars**

### **Engine Swaps**

Rules regulating engine swapping are not make/model specific. The simple rule is that a vehicle must have all emissions components that were present when it was manufactured, which may include:

PCV - positive crankcase ventilation

ACL - air cleaner (thermostatic air cleaner)

AIS - secondary air injection

EGR - exhaust gas recirculation

EVAP - evaporative emission

CAT - catalytic convertor

SPK - spark control

FR - fillpipe restrictor

O2S - oxygen sensor

For additional information, visit <http://es.epa.gov/oeca/ore/aed/comp/jcomp/j12.html>.

### **Kit Cars**

Vehicles have to meet the emissions standards for the year the vehicle is assembled. Vehicle manufacturers have to certify that their vehicles meet Environmental Protection Agency (EPA) emissions standards. A lot of kit car manufacturers also comply with this requirement. If you purchase one of these kit cars and follow the instructions on assembly, including the emissions components, you should be able to pass an emissions test just like any other new car.

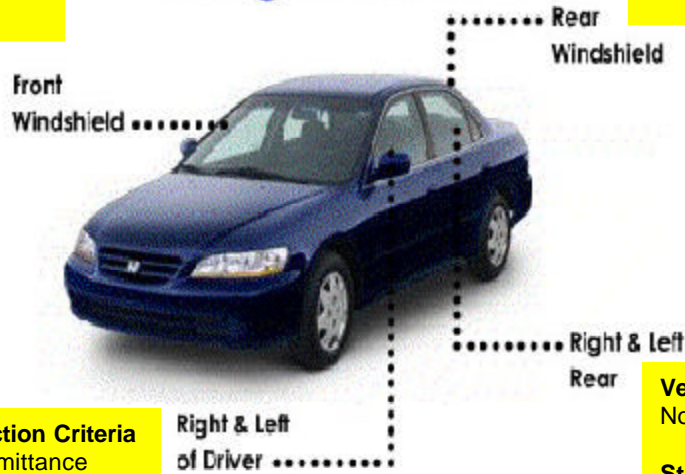
Just as the EPA does not allow an individual to reverse engineer a vehicle to defeat emission standards,

**Vehicle Inspection Criteria and State Law**  
 Cannot extend past the AS-1 Line or five inches from the top of the windshield

**Vehicle Inspection Criteria**  
 Not inspected

**State Law**  
 35% light transmittance if vehicle does not have left and right side view mirrors

## Tinting Restrictions



**Vehicle Inspection Criteria**  
 20% light transmittance

**State Law**  
 25% light transmittance

**Vehicle Inspection Criteria**  
 Not inspected

**State Law**  
 35% light transmittance

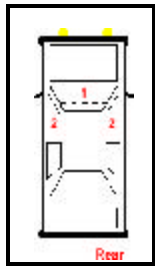
it does not allow an individual to build a brand new “old” vehicle to bypass emissions standards. It is possible, if you actually use old parts (like a 1965 engine, or complete 60s frame and powertrain) that the vehicle will be registered as that model year (replica), but this is a TXDOT issue. However it is registered is how DPS inspection stations will test it.

For additional information, visit [www.epa.gov/otaq/imports/kitcar.htm](http://www.epa.gov/otaq/imports/kitcar.htm).

## Window Tinting

### What’s Inspected

**#1.** Windshield tinting cannot extend downward beyond the AS-1 line or more than five inches from the top of windshield on vehicles without an AS-1 line.



**#2 .** Windows immediately to the right and left of the driver, which

open, cannot have less than **20%** light transmittance.

### What Can I Get a Ticket For?

Transportation Code, Section 547.613. Restrictions on Windows:

(a) Except as provided by Subsection (b), a person commits an offense that is a misdemeanor:

(1) if the person operates a motor vehicle that has an object or material that is placed on or attached to the windshield or side or rear window and that obstructs or reduces the operator’s clear view; or

(2) if a person, including an installer or manufacturer, places on or attaches to the windshield or side or rear window of a motor vehicle a transparent material that alters the color or reduces the light transmission.

(b) This section does not apply to:

(1) a windshield that has a sunscreening device that:

(A) has a light transmission of 33

percent or more;

(B) has a luminous reflectance of 35 percent or less;

(C) is not red or amber; and

(D) does not extend downward beyond the AS-1 line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield;

(2) a front side wing vent or window, a side window to the rear of the vehicle operator, or a rear window that has a suncreening device that has a light transmission of 35 percent or more and a luminous reflectance of 35 percent or less;

(3) a rear window, if the motor vehicle is equipped with an outside mirror on each side of the vehicle that reflects to the vehicle operator a view of the highway for a distance of at least 200 feet from the rear;

(4) a rearview mirror;

(5) an adjustable nontransparent sun visor that is mounted in front of a side

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window and not attached to the glass;

(6) a direction, destination, or termination sign on a passenger common carrier motor vehicle, if the sign does not interfere with the vehicle operator's view of approaching traffic;

(7) a rear window wiper motor;

(8) a rear trunk lid handle or hinge;

(9) a luggage rack attached to the rear trunk;

(10) a side window that is to the rear of the vehicle operator on a multipurpose vehicle;

(11) a window that has a United States, state, or local certificate placed on or attached to it as required by law;

(12) a motor vehicle that is not registered in this state;

(13) a motor vehicle with a manufacturer's model year before 1988;

(14) a vehicle that is:

(A) used regularly to transport passengers for a fee; and

(B) authorized to operate under license or permit by a local authority; or

(15) a vehicle that is maintained by a law enforcement agency and used for law enforcement purposes.

(c) A manufacturer shall certify to the department that the device made or assembled by the manufacturer complies with the light transmission and luminous reflectance specifications established by Subsection (b).

(d) The department may determine that a window that has a sunscreening device is exempt under Subsection (b)(2) if the light transmission or luminous reflectance varies by no more than three percent from the standard established in that subsection.

(e) It is a defense to prosecution under this section that the defendant or a passenger in the vehicle at the time of the violation is required for a medical reason to be shielded from direct rays of the sun.

(f) It is not an offense under this section for a person to offer for sale or sell a motor vehicle with a windshield or window that does not comply with this section.

(g) In this section:

(1) "Installer" means a person who fabricates, laminates, or tempers a safety glazing material to incorporate, during the installation process, the capacity to reflect light or reduce light transmission.

(2) "Manufacturer" means a person who:

(A) manufactures or assembles a sunscreening device; or

(B) fabricates, laminates, or tempers safety glazing material to incorporate, during the manufacturing process, the capacity to reflect light or reduce light transmission. ↗

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<sup>1</sup> DOT: Department of Transportation

<sup>2</sup> SAE: Society of Automotive Engineers

<sup>3</sup> OEM: Original Equipment Manufacturer

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## Houston Clerks



In the last year, a group of Houston municipal court clerks worked with Judge Daniel W. Simms to form a study group to work collaboratively on Level I of the Municipal Court Clerks Certification program. Working in the evenings, over weekends, and on breaks, around 25 clerks studied the ten units in preparation for the examination that was given on April 6, 2002 in Houston. Howard LaFleure served as the group's contact person with TMCEC. Howard commented, "It was great having the judge's help – he would encourage us and answer our questions." The group continues to grow as some work on Level II and new members join to study Level I.



deferred disposition statute already contained a lengthy list of optional remedial and rehabilitative conditions that could be ordered by the court, within years the Legislature further expanded the rehabilitative/remedial probation options available to the courts.<sup>4</sup>

### **Key Features**

Despite “being on the books” for nearly 20 years, feedback from this year’s TMCEC academic program suggests that many municipal judges have historically not fully appreciated the options at their disposal under Article 45.051.

### **Greater Sentencing Discretion**

At the conclusion of the deferral period, at dismissal, if the defendant presents satisfactory evidence that he or she has complied with the requirements imposed, the judge may impose and collect a special expense not to exceed the original amount of the fine assessed prior. Dependent upon the facts and circumstances at hand, the imposition of the lesser “special expense fee” may be deemed appropriate by the judge when the defendant was accused of an offense with a relatively high mandatory minimum fine (e.g., handicapped parking). Alternatively, in the event a defendant does not present satisfactory evidence of complying with the terms of the deferral, the court has the option of imposing the fine originally assessed (less any portion already paid) or reducing the fine assessed.

### **Informed Decision Making**

Often judges encounter defendants whose criminal behavior is a byproduct of an underlying physical, mental, or sociological condition. Analogous to a pre-sentencing investigation in district court, Article 45.051(b)(5) authorizes a judge to order defendants to submit to a

psychosocial assessment (see related article on page 11 in this newsletter). Psychosocial assessments and diagnostic testing are an opportunity for the court to obtain insight into the motives and behaviors of defendants. The information obtained from a psychosocial assessment not only enables a court to custom tailor a deferral order to the needs of the defendant, but the information obtained may prove critical in preventing future harm to the defendant and other members of the public. The law authorizes the court to order the defendant to pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs.<sup>5</sup>

### **Rehabilitation**

Once a judge is informed of information pertinent to the defendant, Article 45.051 authorizes the court to issue various rehabilitation and/or treatment orders that meet the specific needs of the defendant. Such court orders may require professional counseling, alcohol or drug testing, drug abuse treatment, and education programs.

### **Therapeutic Jurisprudence**

The authority of a judge to make decisions affecting the lives of defendants is an inherent part of the judicial process. Though the history of local judges influencing the lives of the citizenry dates back to the Bible, the legal system has long lacked a term describing such influence.

Therapeutic jurisprudence is the “study of the role of the law as a therapeutic agent.”<sup>6</sup> Since its inception, therapeutic jurisprudence has emerged in popularity amongst legal scholars and judges. If, as a judge, you balk at the appearance of the word “therapeutic” being anywhere in proximity with “jurisprudence,”

allow me to put you at ease. Neither therapeutic jurisprudence, nor its proponents, suggest or advocate that judges should act as therapists. Let me reiterate, judges are not being asked to give up their robes and benches for the therapy couch.

To the contrary, therapeutic jurisprudence is a perspective that simply acknowledges the potential curative (“therapeutic”) and injurious (“anti-therapeutic”) consequences of the law and legal procedures on the individuals involved (i.e., defendants, victims, lawyers, witnesses, and community). It does not suggest that such “therapeutic” concerns are more important than the rule of law or other guiding principles. Rather, therapeutic jurisprudence seeks to enrich the judicial decision making process by including factors that might otherwise go unnoticed.

While the term “therapeutic jurisprudence” may sound grandiose when spoken, it is a term that all municipal judges should know. Most municipal judges have unwittingly been practicing therapeutic jurisprudence for years. Now they have a formal name for the practice.

### **One More Important Provision; Two Very Important Questions**

In addition to the key features previously described, Article 45.051 contains one particular provision that deserves special attention. Specifically, Article 45.051(b)(8) provides that during the deferral period the defendant may be required to “comply with any other reasonable condition.” Undoubtedly, this provision provides the greatest opportunity for the judge to custom tailor a deferral order to the specific facts of the cases and the defendant before the court. Such a provision is where creative judges claim it pays to think “outside of the box.”

The provision, however, raises two

very important questions:

**What is a “reasonable condition?”**

While the Court of Criminal Appeals has yet to examine the question in the context of deferred disposition, it has considered what constitutes a “reasonable condition” under Article 42.12 (deferred adjudication). In such cases, the Court concluded that such conditions should:

1. *Relate to the goal of rehabilitating the offender while not violating the defendant’s rights* - Although the trial court has wide discretion in selecting terms and conditions of probation, permissible conditions should “have a reasonable relationship to the treatment of the accused and the protection of the public.” They should not however be so broad or sweeping as to infringe upon the probationer’s rights under the United States or State Constitution (*e.g.*, freedom from unreasonable searches, free exercise of religion).<sup>7</sup>

2. *Be drafted in an unambiguous manner* - Such conditions should “be fleshed out to avoid vice of vagueness” and “made explicit as an aid to the offender in increasing his understanding of what is expected of him.”<sup>8</sup>

3. *Be determined only by the judge* - Only the court having jurisdiction of a case shall determine and fix terms and conditions of probation, and such court may not delegate this authority to a probation officer or anyone else.<sup>9</sup>

4. *Should not require the defendant to contribute to a charity* - While there is no control in case law, the Office of the Attorney General suggests that charitable contributions are not permitted. “This language certainly empowers him to impose non-statutory conditions on the defendant during the deferral period, but it does not, in our opinion, authorize him to require defendant to contribute

**Article 45.051, Code of Criminal Procedure - Suspension of Sentence and Deferral of Final Disposition**

**(a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the justice may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days.**

**(b) During the deferral period, the justice may require the defendant to:**

**(1) post a bond in the amount of the fine assessed to secure payment of the fine;**

**(2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;**

**(3) submit to professional counseling;**

**(4) submit to diagnostic testing for alcohol or a controlled substance or drug;**

**(5) submit to a psychosocial assessment;**

**(6) participate in an alcohol or drug abuse treatment or education program;**

**(7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; and**

**(8) comply with any other reasonable condition.**

**(c) At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed, less any portion of the assessed fine that has been paid. If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.**

**(d) If at the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the justice 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.**

**(e) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.**

money to a charity. ... If the legislature had intended 'any other reasonable condition' to include a charitable contribution, we believe it would have imposed the same monetary limit."<sup>10</sup>

### **When does a condition constitute an "abuse of discretion?"**

Terms imposed as a reasonable condition are subject to appellate review under an abuse of discretion standard. To date, there is no Texas case law on point addressing such an abuse by either a municipal judge or justice of the peace. The question of such abuse by local trial court judges has, however, been considered by Texas legal scholars. "While broad, the court's discretion is not complete. A condition will be held invalid if it (1) has no relationship to the crime for which the defendant was con-

victed, (2) relates to conduct that itself is not criminal, or (3) requires or forbids conduct that is not reasonably related to future criminality. A condition of probation is undesirable if it is unrelated to rehabilitation and public protection, difficult to enforce, violates constitutional rights, or arbitrarily imposes punishment."<sup>11</sup>

<sup>1</sup> Unless otherwise noted, all statutory references are to the Texas Code of Criminal Procedure.

<sup>2</sup> Thomas E. Baker, Charles P. Bubany, "Probation for Class C Misdemeanors: To Fine or Not to Fine Is Now the Question" 22 *South Texas Law Journal* 2 at 249 (1982).

<sup>3</sup> Originally codified as Article 45.54, Code of Criminal Procedure, the statute was recodified in 1999 as Article 45.051.

<sup>4</sup> See Code of Criminal Procedure, Articles 45.052 (Dismissal of Misdemeanor Charge on Completion of Teen Court Program) and Article 45.053 (Dismissal of

Misdemeanor Charge on Commitment of Chemically Dependent Person).

<sup>5</sup> Article 45.051(b)(7), Code of Criminal Procedure.

<sup>6</sup> David B. Wexler & Bruce J. Winick, *Law in Therapeutic Key: Developments in Therapeutic Jurisprudence*, xvii (Carolina Academic Press 1996). Professors Wexler and Winick coined the term therapeutic jurisprudence in the late 1980s. For additional information and links pertaining to therapeutic jurisprudence go to [www.brucewinick.com](http://www.brucewinick.com).

<sup>7</sup> *Tames v. State*, 534 S.W.2d 686 (Tex.Crim.App. 1976).

<sup>8</sup> *Flores v. State*, 513 S.W.2d 66 (Tex.Crim.App.1974).

<sup>9</sup> *McDonald v. State*, 442 S.W.2d 386 (Tex.Crim.App.1969).

<sup>10</sup> Tex. Atty. Gen. Opp. JM-307 (1985)

<sup>11</sup> Baker & Bubany, *supra* 2 at 254 (Spring 1982).

# What Is a Psychosocial Assessment?

by **Stephanie B. Turner, LMSW**

**Violence Prevention Counselor – Austin Independent School District**

A psychosocial assessment is an in-depth study of an individual based on a therapeutic interview by a social worker, counselor, psychologist, or other mental health professional. The assessment examines and reports on the aspects of an individual's psychological and social descriptions that potentially give insight into a person's character and behavior.

Psychologically, a psychosocial assessment will describe a person's mental state. Is this person of sound mind? Is there evidence of depression, anxiety, or symptoms of mental illness? Have there been recent circumstances that might have affected this individual's mental state or behavior?

Socially, a psychosocial assessment

will describe an individual's social standing, occupation or ability to work (if an adult), chronological and developmental age, behavior, and family dynamic. A good psychosocial assessment will include a professional opinion of the individual's concerns and present condition and will explain how his or her psychosocial state relates to such issues.

Courts interested in obtaining such information should first inquire as to whether a defendant has recently submitted to a psychosocial assessment. Such evaluations are frequently conducted as part of a battery of diagnostic testing by local schools, local or county Texas Department of Mental Health and

*Assessment continued on page 12*

**Psychosocial Assessment:** A history meant to help determine the various factors that affect a person in his or her daily life. The factors include, but are not limited to the following personal issues:

1. Family history, present relationships, and support system
2. Significant life events/recent changes
3. Marital history and children
4. Living conditions and financial support
5. Legal issues
6. Current and employment history
7. Cultural (socio-economic) background
8. Religion
9. Medical
10. Mental health/substance abuse
11. Education
12. General strengths and weaknesses
13. Barriers
14. Prognosis
15. Plan

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***Mayors continued from page 1***

over both civil and criminal cases, the same as a justice of the peace. The mayor was also given authority to collect fines and to enforce collection by jail time or execution against property.<sup>1</sup>

In 1875, the Texas Legislature passed a second law governing the incorporation of cities. It declared the mayor to be the chief judicial magistrate of the city until the selection of a recorder. A recorder was a magistrate with criminal jurisdiction similar to a police judge or other committing magistrate. A police judge or justice was a magistrate with similar duties as a justice of the peace. The title "police" was used to distinguish these magistrates from justices of the peace whose authority included jurisdiction over civil cases. The 1875 law included express authority for mayor magistrates to order arrests.<sup>2</sup>

Today, Article 2.09 of the Code of Criminal Procedure (C.C.P.) lists who are magistrates and includes mayors, recorders, and judges of municipal courts of incorporated cities and towns. Section 29.004 of the Government Code (G.C.) provides that any reference to a "recorder" means a "judge of the municipal court." The general duties of a magistrate are provided for in Article 2.10, C.C.P. and include the preservation of the peace within his or her jurisdiction by the use of all lawful means and the issuance of all processes (warrants,

capiases, etc.) to help prevent and suppress crime. Neither Article 2.09 nor Article 2.10 provides for the jurisdiction of a magistrate. A 1973 case, however, does address the issue. *Gilbert v. State*, 493 S.W.2d 783 (Tex.Crim.App. 1973) held that a city magistrate's jurisdiction was similar to the jurisdiction of a justice of the peace who had already been held to have countywide jurisdiction as a magistrate in *Crouch v. State* 123 S.W.2d 904 (Tex.Crim.App. 1938). Municipal judges and mayors acting in the capacity of a magistrate, therefore, have magistrate power that extends countywide. If a city is situated in more than one county, the magistrate power would be countywide in each of the counties.

Now, exactly what is a magistrate? Black's Law Dictionary, Fifth Edition, defines a magistrate as a public officer invested with power granted by the legislative body that created the office. As noted earlier, Article 2.10, C.C.P. provides for general duties of a magistrate. The Texas Legislature also provides for specific duties in various statutes scattered throughout several codes. As can be seen by the Magistrate Duties chart on the following page, magistrate duties are very diverse. (The chart does not include an inclusive list.)

Currently, the Government Code provides that, in general-law cities, the mayor is the judge of the municipal

pal court unless the governing body authorizes the appointment or election of a judge. In which case, the mayor ceases to be judge on the enactment of the ordinance.<sup>3</sup> A city that is a home-rule city selects its judges according to the provisions in the city charter. (A general-law city is one that is under 5,000 in population. A home-rule city has at least 5,000 in population and has adopted a home-rule charter.)

Municipal judges preside over the municipal court to administer the laws over which they have jurisdiction. Municipal judges' jurisdiction is provided for in Article 4.14, C.C.P. and in Section 29.003, G.C. and includes jurisdiction over fine-only offenses that occur within the territorial limits of the municipality and property owned by the municipality in the municipality's extraterritorial jurisdiction.

Municipal judges make decisions on questions of law or fact. In other words, they sit in judgment of cases that come before them. The Judicial Duties chart on page 14, although not inclusive, does list many duties. As can be seen, these duties are scattered throughout various statutes in the Code of Criminal Procedure.

Municipal judges and mayors should review the list of magistrate and judicial duties presented here. While some appear to be similar, the duties are exercised in different situations.

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***Assessment continued from page 11***

Mental Retardation (MHMR) offices, private therapists, or local hospitals.

If no psychosocial assessment exists, courts may contact local or county offices of MHMR to arrange an assessment. If the defendant is a child or juvenile, the court may investigate the possibility of such an

evaluation being conducted by the school. When a student has behavioral problems at school, such an arrangement may be mutually beneficial to both the school and the court. Unfortunately, however, schools often lack the time and resources to assist the courts. Accordingly, courts may also consider consulting with county probation services. County probation offices

frequently contract with local mental health professionals who provide such services as part of their private practice.

Though the need for a psychosocial assessment may infrequently arise, all municipal courts should anticipate the possibility of needing such an assessment. Accordingly, all courts should assess their options and make preparatory arrangements in advance. ✍️

<b>Magistrate Duties</b>	<b>Cite</b>
Prevent family violence	Article 5.03, C.C.P.
Issue emergency protection orders for an offense involving family violence	Article 17.292, C.C.P.
Issue a warrant when any person informs the judge, under oath, of an offense about to be committed	Article 7.01, C.C.P.
Conduct peace bond hearings	Article 7.03, C.C.P.
Verbally order a peace officer to arrest without warrant when a felony or breach of the peace is committed in the presence or within the view of a magistrate	Article 14.02, C.C.P.
Accept complaints (probable cause affidavit) and issue arrest warrants and summonses for Class A and B misdemeanors and felony offenses	Article 15.17, C.C.P.
Give magistrate warning after arrest	Article 15.17, C.C.P.
Take a plea and set and collect a fine when a defendant is arrested on an out-of-county warrant for a fine-only offense	Article 15.18, C.C.P.
Conduct examining trials in felony cases (An examining trial is to determine probable cause in felony cases prior to indictment.)	Article 16.01, C.C.P.
Determine the sufficiency of sureties	Chapter 17, C.C.P.
Order a defendant to submit to an examination in a mental health facility determined by a local mental health authority on that authority's request	Article 16.22, C.C.P.
Set and accept bail, including personal bonds	Chapter 17, C.C.P.
Issue search warrants, except one for mere evidence unless the judge is a licensed attorney of a court of record	Chapter 18, C.C.P.
Move to dispose of the weapon if no prosecution or conviction will occur when a weapon has been seized	Article 18.19, C.C.P.
<p>Conduct license suspension hearings when the defendant has committed the following:</p> <ul style="list-style-type: none"> <li>• driving while license suspended;</li> <li>• has been responsible as a driver for any accident resulting in serious personal injury, property damage, or death;</li> <li>• habitual, reckless, or negligent driving;</li> <li>• incapable of safe driving;</li> <li>• has permitted an unlawful or fraudulent use of license;</li> <li>• committed an offense in another state that if committed in this state would be grounds for suspension or revocation;</li> <li>• has violated a restriction imposed on the use of the license;</li> <li>• is under 18 years of age and has been convicted of two or more moving violations committed within a period of 12 months;</li> <li>• has not complied with terms of a citation issued by a jurisdiction that is a member of the Nonresident Violator Compact of 1977 (now codified in Chapter 703, T.C.) for a violation to which the compact applies;</li> <li>• has a warrant of arrest outstanding for failure to appear or pay a fine on a complaint issued by a political subdivision that has contracted with the Department of Public Safety under Chapter 702, T.C.;</li> <li>• has committed the offense of fleeing or attempting to elude a police officer;</li> <li>• has failed to provide medical records or has failed to undergo medical examinations as required by a panel of the Medical Advisory Board;</li> <li>• has failed to take or failed to pass an examination required by the director under the Driver's License Act (now codified into Subtitle B, T.C.);</li> <li>• been convicted two times of not maintaining liability insurance;</li> <li>• is not financially responsible or lacks liability insurance in effect for injuries or property damage at the time of being involved in an accident; and</li> <li>• evidenced a substantial risk of serious harm to himself, herself, or others (commitment is to the nearest appropriate inpatient mental health facility).</li> </ul>	<p>Subtitle B, T.C.</p>



Judicial Duties	Cite
Set and take bail	Article 17.14, C.C.P.
Forfeit bail	Articles 4.14 and 45.044, C.C.P. and Section 29.003(e), G.C.
Take and accept pleas of guilty, nolo contendere, or not guilty	Articles 27.14, 27.16, 45.021, 45.0215, 45.022, and 45.024, C.C.P.; Attorney General Opinion H-386
Arraign defendants (Arraignment is a procedure in which a judge identifies the defendant and requests a plea.)	Article 26.02, C.C.P.
Enter a plea of not guilty for a defendant who refuses to plead	Article 45.024, C.C.P.
Conduct pre-trial hearings	Article 28.01, C.C.P.
Grant continuances	Chapter 29, C.C.P.
Conduct trials	Articles 45.025, 45.027, 45.030 C.C.P.
Rule on challenges to the array (membership) of the jury pool	Article 36.07, C.C.P.
Enter judgments	Article 45.041, C.C.P.
Grant jail-time credit	Articles 42.03, 45.041 and 45.048, C.C.P.
Determine how a defendant pays fine and costs (time payment, extensions, community service)	Articles 45.041, 45.049, C.C.P.
Determine indigence	Articles 43.091, 45.048; and 45.049, C.C.P.
Waive fine and court costs after a defendant defaults and the judge determines that the defendant is indigent and that performing community service would be an undue hardship	Article 43.091, C.C.P.
Rule on a motion for new trial	Article 45.037, C.C.P.
Approve appeal bonds	Article 45.0425, C.C.P.
Issue arrest warrants for defendants whose cases are filed in municipal court	Article 45.014, C.C.P.
Issue a <i>capias pro fine</i>	Article 45.045, C.C.P.
Issue a <i>capias</i>	Article 23.04, C.C.P.
Issue a summons for a defendant when requested by the prosecutor	Article 23.04, C.C.P.
Issue a summons for a parent of a person under the age of 17	Articles 45.0215 and 45.054, C.C.P.
Grant deferred disposition	Article 45.051, C.C.P.
Grant teen court	Article 45.052, C.C.P.
Grant driving safety courses	Article 45.0511, C.C.P.
Conduct stolen or seized property hearings	Chapter 47, C.C.P.
Dismiss cases when required by law or upon prosecutor motion	Article 32.02, C.C.P.

**Mayors continued from page 1**

For example, a magistrate may issue a warrant of arrest. These warrants are for Class A and B misdemeanors and felonies<sup>4</sup> that occur anywhere in the county or counties in which a

city is located. A municipal judge has authority to issue a warrant of arrest for a case that he or she has jurisdiction over to hear the case.<sup>5</sup> These are Class C misdemeanors filed in their municipal court.

Also, there are some differences in the power of an arrest warrant issued by a mayor magistrate and a municipal judge magistrate. If a mayor magistrate issues a warrant it can only be executed in the county or counties in which the city is situated unless it is endorsed by a judge of a court of record. In that case, the warrant may be executed anywhere in the state. It can also be endorsed by a magistrate in the county in which the warrant will be executed, which allows it to be served in that county.<sup>6</sup> The warrants issued by municipal judge magistrates who are not mayors may be served anywhere in the state without any type of endorsement.

Because municipal judge duties and magistrate duties are scattered throughout various codes, mayors and judges should closely examine the statutes to determine if they have authority as a magistrate to perform the duty or whether it must be performed by a municipal judge. Mayors who are magistrates only may not perform municipal judge duties.

Both the *TMCEC Bench Book* and the clerk's Level I study guide section *Authority and Duties* present more in-depth information on magistrate duties and judicial duties. The Texas Municipal Courts Education Center can be contacted for more information ([www.tmcec.com](http://www.tmcec.com); 800/252-3218 or 512/320-8274).

<sup>1</sup> *Texas Practice – Municipal Law and Practice*, Second Edition, by David B. Brooks of the Texas Bar, West Group 1999.

<sup>2</sup> *Texas Practice – Municipal Law and Practice*, Second Edition, by David B. Brooks of the Texas Bar, West Group 1999.

<sup>3</sup> Section 29.004(b), G.C.

<sup>4</sup> Chapter 15, C.C.P.

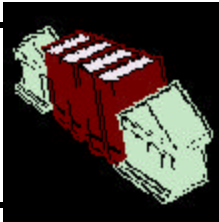
<sup>5</sup> Article 45.014, C.C.P.

<sup>6</sup> Article 15.07, C.C.P.

## WHOSE JOB IS IT?

ACTIVITY	JUDGE	CLERK	MAGISTRATE	PROSECUTOR	NON-JUDICIAL PERSONNEL
Accept complaints in municipal court	X	X			
Accept complaints - Class A & B misdemeanors & felonies			X		
Approve or dictate charges and language in complaints				X	
Administer oath to affiant swearing to complaint in municipal court	X	X		X	City secretary X
Administer oath to affiant swearing to complaint - Class A & B misdemeanors & felonies			X		District and county attorney X
Maintain docket	X	X			
Request pleas from defendants	X		Only on out-of-county warrants for fine-only offenses		
Accept pleas from defendants	X				
Accept fines	X				
Collect fines	X	X			X
Grant extension or time payment	X				
Plea bargain or negotiate dismissals	Approves on accepting plea			X	
Sign judgments	X				
Issue an arrest warrant	X		X		
Issue capias or capias pro fine	X				
Issue summons	X		X		
Execute warrant or capias					Peace officer X
Execute summons					Peace officer X
Review warrants or inventories	X	X			X
Set bail	X		X		Peace officer under very limited circumstances X
Forfeit bail	X				
Remit bail	X				
Hear evidence	X				
Rule on law or facts	X				

ACTIVITY	JUDGE	CLERK	MAGISTRATE	PROSECUTOR	NON-JUDICIAL PERSONNEL
Prepare trial calendar	X	X			
Control sequence of trial calendars	X	X			
Summon jurors		X			Peace officer X
Grant continuances	X			May agree or oppose before the court	
Grant or deny motions	X				
Determines witnesses to be subpoenaed or called				X	The defendant has the same rights
Issue subpoenas	X	X			
Serve subpoenas					Peace officer, person older than 18 yrs. & not party to proceeding X
Dismiss cases	Only in certain instances X			X	
Prepare state reports	X	X			X
Determine office policy	X	X			X
Explain procedures to defendants	X	X		X	
Prepare appeal for transcription to appellate court	X	X			
Train employees	X	X			X
Grant a driving safety course	X				
Grant deferred disposition	X				
Give legal advice					Attorney representing defendant X
Prepare court budget	X	X			X
Conduct inquests	Conducted by justice of the peace				
Issue peace bonds			X		
Conduct examining trials			X		
Determine probable cause	X		X		
Issue emergency mental commitments			X		
Give magistrate warnings to arrested persons			X		
Issue emergency protection orders			X		



# RESOURCES FOR YOUR COURT

## National Court Collections Symposium

On July 17-19, 2002 at the Embassy Suites-Love Field in Dallas, a conference on fine collections will be held for judges and court support personnel. The sponsors are the National Center for State Courts, the Institute for Court Management, and the Governmental Collectors Association of Texas. The program will emphasize new and innovative collection methods that achieve results, including technology tools. Registration is \$399. For additional information, contact GCAT at 6001 W. Palmer Lane, Suite 370 PMB-161, Austin, Texas 78728.)

## Courts in Disasters

The Fall 1998 issue of *The Judges' Journal*, a publication of the Judicial Division of the American Bar Association (ABA), contained a series of articles on courts and natural disasters, such as floods, earthquakes, and fires. The AJS has posted these articles on its web site [www.abanet.org/jd/home.html](http://www.abanet.org/jd/home.html). These are excellent reading materials to help judges and court support personnel prepare an emergency disaster relief plan.

*The Judges' Journal* is a quarterly publication that contains many interesting articles on issues related to judicial ethics, court procedures, and book reviews. An annual subscription for those individuals or institutions that are not eligible to be members of the Judicial Division of the ABA is \$25. To subscribe, contact the ABA at 750 N. Lake Shore Drive, Chicago, Illinois 60611 or call 312/988-6077.



### Texas Statutes Online

The Texas Legislative Council has placed the amended statutes from the 77<sup>th</sup> Session on its web site:  
[www.capitol.state.tx.us/statutes/statutes.html](http://www.capitol.state.tx.us/statutes/statutes.html).

## Survey Results on Who Prosecutes

In Fiscal Year 2001, TMCEC surveyed 1,171 judges as part of the seminar certification process. Following are the responses to two questions that dealt with the prosecution of defendants in their cities.

**Question: Do you have a municipal prosecutor?**

Yes	86.7%
No	8.1%
No Response	5.2%

**Question: If you answered "yes" to the above, which of the following best describes who prosecutes in your court?**

City attorney's office	48.2%
County attorney's office	2.6%
Private law firm/practitioner	33.5%
Attorney pro tem as needed	2.5%
No response	13.2%

# Toll-Free Internet Access

In cooperation with several other agencies, the Office of Court Administration and Judicial Committee on Information Technology have coordinated toll-free Internet access and mail services to rural courts through the FBI's Law Enforcement Online (LEO). Information about system requirements and how to sign up is shown below:

## Law Enforcement Online (LEO)

Cost: No connection fees

The Federal Bureau of Investigation provides a national focal point for electronic communication, education, and information sharing through the development and operation of Law Enforcement Online (LEO).

LEO is a national interactive computer communications system and information service. It is a user-friendly service that can be accessed by any approved employee of a duly constituted local, state, or federal law enforcement agency, or approved member of the Texas judiciary. LEO is intended to provide a state-of-the-art communication mechanism to link all levels of law enforcement and judiciary throughout the United States.

### Some of the Services LEO Offers:

- Topical Focus Area
- Law Enforcement Special Interest Groups
- Free Email
- Electronic Calendar
- Distance Learning

**If you are interested in any of these services, here are the procedures to obtain a User ID and Password:**

### Step 1 – Determine what type of access is needed (i.e., Virtual Private Network (VPN) or dial-up).

*Requirements for VVPN Connection:*

- A member of Texas Judiciary.
- A personal computer or laptop with a Pentium processor and at least 16 MB of RAM.
- Windows 95, 98, NT 4.0, 2000, or ME and Internet access through ISP or LAN connection.
- Internet Explorer version 4.x or higher or Netscape version 4.x or higher.

*Requirements for Dial-Up Connection:*

- A personal computer or laptop with a Pentium processor and at least 16 MB of RAM.
- Windows 95, 98, NT 4.0, 2000, or ME
- Internal or external modem at 28.8k or higher baud rate
- Internet Explorer version 4.x or higher or Netscape version 4.x or higher.

**Step 2 – Complete appropriate LEO User Application Form for the desired access – VPN or Dial-up.** (Call the Office of Court Administration for an application or download it at [www.courts.state.tx.us](http://www.courts.state.tx.us)).

- Please mark appropriate eligibility box and complete the first signature line.
- The Office of Court Administration will obtain signature from an Agency Head or a Designee.

**Step 3 – Submit a request for free dial-up service or any other LEO service to:**

Office of Court Administration  
Attn: Mike Griffith, JCIT Director  
205 W. 14th, Suite 600  
Austin, TX 78701

**Office of Court Administration (OCA) will need a completed, signed application and letter for services to continue with the process.**

**Step 4 – Office of Court Administration will verify that you are a member of the Texas judicial system and will contact you with information on your connectivity.**





# FROM THE CENTER

## Court Study Guides

In June, TMCEC sent a complimentary set of *Level I Clerk Certification Study Guides* to each court for use by clerks participating in the Municipal Court Clerks Certification Program. These were in a loose-leaf format and courts are encouraged to duplicate copies for local use. More copies may be ordered from the Center for \$25 each, or they may be downloaded from the TMCEC web site at [www.tmcec.com](http://www.tmcec.com).

Also, a *Municipal Court Guide Level I* was sent under separate cover to every court. This is a bound version of the study guides without the review questions. It was designed to be used by municipal judges as a resource guide. Courts with more than one judge may order additional copies of the *Municipal Court Guide Level I* at no charge by calling Roxi Salinas at TMCEC (800/252-3718).

In July, municipal courts will receive the Level II study guides in both formats.

## Code Books



Last Fall, TMCEC sent complimentary copies of the *Texas Criminal Law and Motor Vehicle Handbook* (a Gould publication) to every municipal court in Texas. A softbound version was sent to the court, and a version in a three-ring binder was sent to every municipal judge. TMCEC has developed a set of tabs for use with the binder version. Please call TMCEC at 800/252-3718 to order a set. There is no charge for the tabs.

## Summer Certification Testing

TMCEC will offer six regional examination sites for clerks and court administrators who participate in the Clerk Certification program, a project of TMCEC, TCCA, and TMCA. If testing for the first time, the \$50 exam fee must be submitted to TMCEC in advance (checks should be made payable to the Texas Court Clerks Association). If re-testing, the fee will be waived during the summer of 2002.

- Houston July 13, 2002
- Dallas July 20, 2002
- San Antonio July 27, 2002
- Midland August 3, 2002
- Waco August 17, 2002

For additional information contact Jo Dale Bearden at TMCEC (800/252-3718) or review the materials on the TMCEC web site under clerk certification: <http://www.tmcec.com/certprog.html>.



## Computer Basics Course

This summer, TMCEC will be offering free computer basics classes to municipal judges and clerks at the TMCEC offices in Austin. The sessions will offer basic instruction in word processing, spreadsheet software, and Internet and email usage. The Friday programs will begin at 10:00 a.m. and last until 3:30 p.m. For those traveling more than 30 miles from their court, a limited number of hotel rooms are available at no charge to the participant. The computer equipment is made available by the Judicial Committee on Information Technology and the Office of Court Administration. To register, call TMCEC at 800/252-3718.

- Austin July 19, 2002
- Austin July 26, 2002
- Austin August 16, 2002

## Congratulations!

Two more court administrators have become certified at Level III and are now entitled to bear the designation "CMCC", Certified Municipal Court Clerk.

In mid-June, Luevada Posey of the Copperas Cove Municipal Court and Janell Kucera of the Sugar Land Municipal Court successfully completed all of the Level III requirements. They are the third and fourth individuals to achieve this distinction.

For more information about the program, please contact Jo Dale Bearden at TMCEC (800/252-3718).

# TMCEC PROGRAM AUDIOTAPES



The following are audiotape recordings from TMCEC's 12-hour Judges and Clerks Programs held in El Paso in July 2002. Duplicates are available through the Center at no charge to municipal judges and court support personnel if ordered before August 31, 2002.

## **JUDGES PROGRAM:**

- \_\_\_ *Jail Credits* - W. Clay Abbott, General Counsel, TMCEC
- \_\_\_ *Child Safety and Seat Belt Laws* - Mitchell Solomon, Municipal Judge, Austin
- \_\_\_ *Alternative Sentencing & Deferred Disposition* - Martin Cirkiel, Municipal Judge, Hutto
- \_\_\_ *Case Law & A.G. Opinion Update* - Ryan K. Turner, Program Attorney & Deputy Counsel, TMCEC
- \_\_\_ *Insurance* - W. Clay Abbott, General Counsel, TMCEC
- \_\_\_ *Court Decorum* - Gary Ellsworth, Municipal Judge, Spearman
- \_\_\_ *Ordinance and Code Enforcement* - Julian Taylor, City Attorney, Freeport
- \_\_\_ *Ethics* - Thomas Redwine, Municipal Judge, Van Alstyne and Andrew Leonie, Municipal Judge, Lavon
- \_\_\_ *Changes in Texas School Attendance Laws* - Sharon Newman-Stanfield, Municipal Judge, Fort Worth
- \_\_\_ *Breach of the Peace Offenses* - Ryan K. Turner, Program Attorney & Deputy Counsel, TMCEC

## **CLERKS PROGRAM:**

- \_\_\_ *Clerks and Judges as a Team* - C. Victor Lander, Municipal Judge, Dallas
- \_\_\_ *New Legislation* - W. Clay Abbott, General Counsel, TMCEC
- \_\_\_ *Ethics* - Tom Broussard, Commission Counsel, Commission on Judicial Conduct, Austin
- \_\_\_ *Court Costs & Private Collections* - Rene Henry, Collections Projects Manager, Research & Court Services Section, Office of Court Administration, Austin
- \_\_\_ *Legislative Update: Child Safety & Seat Belts* - Margaret Robbins, Program Director, TMCEC
- \_\_\_ *Seat Belt Safety: The Importance of Enforcement* - Mitch Landry, Program Coordinator, Texas Municipal Police Association, Austin
- \_\_\_ *Insurance & Traffic Law Update* - W. Clay Abbott, General Counsel, TMCEC
- \_\_\_ *Overview of Processing Cases* - Margaret Robbins, Program Director, TMCEC
- \_\_\_ *Disaster Preparedness for Records/Information Management* - Colleen Munds, Government Records Analyst, Texas State Library and Archives Commission, Austin
- \_\_\_ *Juvenile Update* - Margaret Robbins, Program Director, TMCEC
- \_\_\_ *Court Technology* - Jo Dale Bearden, Program Coordinator, TMCEC
- \_\_\_ *Traffic Reporting Q&A* - Margaret Robbins, Program Director, TMCEC

Mail or fax order to TMCEC, 1609 Shoal Creek Blvd. #302, Austin, TX 78701 (512/435-6118 fax).

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Court: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
2001-2002 SUMMER REGISTRATION FORM**

**MUNICIPAL COURTS, ETHICS & THE MEDIA:**

- Tuesday, August 20, 2002 Tyler or Longview
- Wednesday, August 21, 2002 Dallas-Fort Worth
- Thursday, August 22, 2002 Lubbock or Abilene
- Tuesday, August 27, 2002 Houston
- Wednesday, August 28, 2002 San Antonio
- Thursday, August 29, 2002 McAllen or Harlingen

**LEARN COMPUTER BASICS:**

- Friday, July 19, 2002 Austin
- Friday, July 26, 2002 Austin
- Friday, August 16, 2002 Austin

**CLERK CERTIFICATION SUMMER TESTING:**

- Saturday, July 13, 2002 Radisson Astrodome Houston
- Saturday, July 20, 2002 AmeriSuites Grapevine
- Saturday, July 27, 2002 Omni Colonnade San Antonio
- Saturday, August 3, 2002 Holiday Inn & Suites Midland
- Saturday, August 17, 2002 Clarion Inn Waco

**NOTE: TMCEC does not provide overnight hotel stays for test participants.**

TMCEC computer data is updated from the information you provide. Please print legibly and fill out form completely.

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Date Appointed/Elected/Hired: \_\_\_\_\_ Years Experience: \_\_\_\_\_ Male/Female: \_\_\_\_\_

**HOUSING INFORMATION**

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for one night in a single occupancy room for the following seminars: *Ethics & the Media* and *Learn Computer Basics*. To share with another seminar participant, you must indicate that person's name on this form. (Note: TMCEC does not provide housing for Summer Testing participants.)

- I need a private, single-occupancy room.
- I need a room shared with a seminar participant. [Please indicate roommate by entering seminar participant's name: \_\_\_\_\_ (Room will have 2 double beds.)]
- I need a private double-occupancy room, but I'll be sharing with a guest. [I will pay additional cost, if any, per night]  
I will require:  1 king bed  2 double beds
- I do not need a room at the seminar.

Arrival date: \_\_\_\_\_ Mode of Transportation: \_\_\_\_\_  Smoker  Non-Smoker

**COURT MAILING ADDRESS**

It is TMCEC's policy to mail all correspondence directly to the court address.

Street: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ FAX #: \_\_\_\_\_

Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

Attorney  Non-Attorney  Full Time  Part Time

Status:  Presiding Judge  Associate/Alternate Judge  Justice of the Peace  Mayor  Bailiff  
 Court Clerk  Deputy Clerk  Court Administrator  Warrant Officer  
 Prosecutor (A registration fee of \$250/\$100 must accompany registration form for the TMCEC 12-hour Prosecutors Skills Seminars.)  
 Other: \_\_\_\_\_

I certify that I am currently serving as a municipal judge, city prosecutor, or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel ten (10) working days prior to the seminar. If I have requested a room, I certify that I live at least 30 miles from or must travel at least 30 minutes to the seminar site.

Participant Signature \_\_\_\_\_

Date \_\_\_\_\_

TMCEC • 1609 Shoal Creek Boulevard, Suite 302 • Austin, TX 78701 • FAX 512/435-6118



## Moving Toward Paperless Courts

Does your court have enough storage room for the documents it generates? When you need access to a file, is it always there? Well, Corpus Christi Municipal Court, San Angelo Municipal Court, and other municipal courts across Texas can answer YES to both questions because they are moving towards a paperless court. A paperless court is a court that stores its files electronically, in digital format, instead of storing paper files.

The management of paper is costly. Moving papers through the necessary steps of filing, docketing, judgment recording, and file creating takes time. The process is subject to error, including lost, misplaced, or misfiled documents. Storage of these documents creates storage costs, retrieval costs, and maintenance costs. Turning paper documents into electronic documents, or starting with electronic documents, allows for one file or document to be used simultaneously by users throughout the courthouse. Storage becomes easier because electronic documents are stored on the system server or on a removable media such as CD-ROM, digital tape, or removable hard drives, which take up less space than file boxes.

Prior to a discussion of the technology, two important issues need to be discussed--the idea of an official court record and records retention. The unspoken principle underlying the use of electronic court records is that the electronic document is the authoritative, official record of what is recorded on it. Municipal courts

are granted this right by Art. 45.012, Code of Criminal Procedure (C.C.P.), which states that a municipal court may issue or maintain documents by electronic means if the technique does not permit changes and there is no other provision of law against it. More specifically, Art. 45.012(e), C.C.P. states, "a record created by electronic means is an original record or a certification of the original record." In order to make the transition to paperless courts, courts must first make the transition from treating paper documents as the official record to treating electronic documents as the official record.

Issues surrounding records retention must be reviewed and implemented in all stages of going paperless. Kim Scofield, Analyst with the Texas State Library and Archives Commission, suggests that courts at all stages of planning for paperless courts read the *Electronic Records Standards and Procedures, Local Government Bulletin B, July 1998*. Visit the TSL website at [www.tsl.state.tx.us](http://www.tsl.state.tx.us) to locate this Bulletin and other records retention schedules. Also, if a court is unsure about its compliance, TSL can be reached at telephone number 512/452-9242 for help. Keep in mind that records retention schedules are not always about destroying documents too soon. A common problem with going to paperless courts is that courts scan and save documents they no longer need to retain.

The concept of paperless courts can be complex. Courts can use many different technologies in many

different ways to reach what they foresee as most functional for them. That being said, there are two common models being used by courts moving toward becoming paperless courts. The first includes scanning all documents, and the second includes creating electronic documents.

In the first model, a paperless court may continue the use of paper documents and then scanning those documents to create digitized images of legal documents for access on electronic screens. The scanning can either be done at the conclusion of the case or as new documents on new cases are filed. This is the first step towards becoming paperless because the court is still generating paper but, by creating electronic documents to be maintained as the court record, the paper documents can be destroyed.

The second model is the ultimate electronic model, allowing for paper to be generated only upon request. All documents are created electronically, signatures are applied electronically, and the documents are filed electronically. The only paperwork generated is for the defendant or an attorney to take. It is still necessary to use a scanning system because documents brought in by a defendant or attorney will need to be scanned and filed in the case file.

Many courts are following the true idea of being paperless courts and implementing electronic filing. Electronic filing allows attorneys, defendants, and other courts to file papers electronically with no scan

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ning. Using the Internet and extensible mark-up language, or XML, allows for filings to be sent electronically and the documents automatically filed within the court's case management software, including automatically taking the date and docketing it for trial. (For a look at proposed functional standards for electronic filing of court documents, visit [www.ncsc.dni.us/ncsc/ctp/htdocs/standards.htm](http://www.ncsc.dni.us/ncsc/ctp/htdocs/standards.htm).)

To implement either model, or a mixture of the two, various technologies are available. Core items include computers, servers, scanners, and multiple software packages. A scanning workstation with a scanner and a software package that allows for indexing, image verification, image storage, and retrieval for viewing are the minimum requirements for turning paper documents into electronic documents. Some type of case management software, whether based on network or mainframe technology, is important for maintaining the data that bind the electronic documents with case data. Various servers are needed to support the scanning software, the case management software, the network, and data storage. Examples of additional items that could be added include signature pads for capturing signatures (similar to those used in department stores for credit cards) and driver's license swipe machines for electronic data transfer of a defendant's information. Remember to protect the court's data by backing up the data. A backup is saving the components and data of a system to an external source, such as digital tape drives, CD-ROM drives, or removable hard drives. Several backup systems may be necessary if the court has several servers, software systems, or storage devices.

Prior to purchasing any technology, it is crucial for a court's management to set up a technology plan, imple-

ment the plan, and revise the plan as needed. In developing a plan, start with the present route of the paper documents, from the creation of the first document of a file to the file being stored after disposition, documenting the path. Using that document path as a guide, discuss with court personnel and vendors how to make each of those steps electronic. Ask, "How can we take advantage of the capabilities of electronic documents to make our work quicker and easier?" rather than, "What do we have to do to electronic documents to continue to do our work the way we have always done it?" In the beginning stages, it may be difficult to convince court personnel that the electronic file is the official court document. Addressing how different it is to work with electronic documents, rather than paper documents, can do this.

Technology issues to include in the plan prior to purchasing equipment include: experiment with the machines that might be purchased; visit other courts going paperless and ask questions about vendors they are using; and ask vendors about the type of images created when documents are scanned ensuring there is no potential for altering documents. It is essential for courts to be able to maintain a document in the exact format it was scanned because, for the electronic document to be the official court record, the court must be able to ensure that it will remain unchanged – in content or in format – from the document originally filed.

Corpus Christi Municipal Court is on its way to becoming a paperless court. With the support of its city council, the court used funds from the Court Technology Fund (Art. 102.0172, C.C.P.) to purchase computers, servers, scanners, software, *etc.*, for maintaining its documents electronically. Using two types of software – Court Specialist, Inc.

software for case management and VisiFlow for scanning – Corpus Christi scans all of its paperwork, indexing it for easy location. Any documents that require a judge's signature are digitally signed by using the scanning software to basically paste a signature onto the document (electronically captured signatures are allowed by Art. 45.012(h), C.C.P.). The signatures are secured by several passwords that only the judge knows. Interestingly, Corpus Christi has its own computer staff in the court building. The staff maintains the complex court computer system. The benefit of having its own staff is that down time is minimal and the computer department knows its system and the court's needs.

San Angelo Municipal Court has also recently made the leap towards becoming a paperless court. The court started by upgrading its mainframe system to a network system with PCSS software. Prior to implementing the new system throughout the court, the court set up a training room with four PCs running the software. Using old data from the court's database, everyone in the court spent a couple of hours training. For six weeks prior to going live, clerks entered tickets, took payments, processed time payments, and processed jail credits. Every process that would be done on the software was done in the training room. The court also set up a stand-alone imaging system that is not connected to the case management software at this time. But, court employees are scanning all paperwork as it comes through the court, preparing for the next step -- installing a scanning system that interacts with case management software. The court is also looking at adding signature pads and driver's license swipe tools.

Any size court can begin to move toward becoming a paperless court. The technology is available and



# Judicial Education Requirements

## Municipal Judges

Only the following persons are required to attend education programs yearly:

- municipal judges, and
- mayors who are also municipal judges

## Mayor Magistrates

When a city adopts an ordinance creating the office of municipal judge, the mayor ceases to be the municipal judge. The mayor, however, is still a magistrate. See Article 2.09, C.C.P. Mayors who are only magistrates and not the municipal judge of their cities are not required to obtain judicial education. Therefore, the Texas Municipal Courts Education Center does not have funds to train mayor magistrates. Likewise, there is no agency that provides training for mayor magistrates.

continues to improve, both through being user-friendlier and in its capabilities. Courts no longer have to rely on paper documents to move cases through the system. ✍

*Special thanks to:*

*Judge Rudy Tamez and the staff at the Corpus Christi Municipal Court*

*Linda Gossett, Court Administrator, San Angelo Municipal Court*

For more information on paperless courts and e-filing:

*Finding the Way to Electronic Court Records*, Roger Winters and Robert Cary, [www.edocmagazine.com/earchives\\_articles.asp?ID=20551](http://www.edocmagazine.com/earchives_articles.asp?ID=20551)

*The Road to a Paperless Court*, Paul L. Sherfey, [www.wsba.org/barnews/2000/05/sherfey.htm](http://www.wsba.org/barnews/2000/05/sherfey.htm)

*Standards for Electronic Filing Processes*, NCSC, [www.ncsc.dni.us/ncsc/ctp/htdocs/standards.htm](http://www.ncsc.dni.us/ncsc/ctp/htdocs/standards.htm)

E-Court 2002 Conference - December 9-11, 2002, sponsored by The National Center for State Institute for Court Management and Technology Division. For more information, visit <http://www.e-courts.org/>.

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EDUCATION CENTER  
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AUSTIN, TX 78701  
[www.tmcec.com](http://www.tmcec.com)**

### TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance, and the necessary resource material to assist municipal judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

## Change Service Requested