

THE RECORDER

THE JOURNAL OF TEXAS MUNICIPAL COURTS

April 2020

© 2020 Texas Municipal Courts Education Center. Funded by a grant from the Texas Court of Criminal Appeals.

THE CONSOLIDATION OF COURT COSTS AND REIMAGINING OF FINES IN TEXAS: FIVE IMPORTANT CONSIDERATIONS

Robby Chapman, Program Attorney & Deputy Counsel, TMCEC

“The prudent...give a faithful accounting to those whom he owes an obligation of trust.” -John F. Kennedy

Rocket Science?

Some only know it as a line from a movie: “Houston, we have a problem.”¹ However, in *Peraza v. State* (2015),² Judge Bert Richardson, in a unanimous opinion from the Texas Court of Criminal Appeals, used the famous exclamation from the snake-bit Apollo 13 mission to describe the state of court costs in Texas. *Peraza* was eye-opening for many court professionals, attorneys, and judges. For years, court costs (including fees) have been used in Texas to cover expenses having arguably little to do with courts. Critics claimed that such court costs, neither necessary nor incidental to a criminal case, were actually taxes that unconstitutionally violated separation of powers. The Court in *Peraza* held that as long as a statute authorizing the collection of court costs provides for an allocation of the costs related to “legitimate criminal justice purposes,” it is not a tax in violation of separate of powers.³ Furthermore, a statutory analysis whether a particular court cost is necessary or incidental to each particular criminal case in which it is assessed is not a proper standard.⁴

Peraza provided rocket fuel for defendants wanting to appeal. What is a legitimate criminal justice purpose? The Court indicated that it must relate to the administration of the criminal justice system.⁵ And what does

Court Costs continued on pg. 7

Inside This Issue

MTSI Awards	6	IDEA Requiremens in the 2019-2020 Academic Year	22
Court Costs Charts	13	The 2020 Level III Assessment Clinic . . .	23
OCA Time Payment Fee Letter	15	SBOT Annual Conference	24
Regional Roundtables	17	Driving Under the Influence of Impairing Prescription Drugs	25
Alternatives to Live TMCEC Judicial Education	18	Guidelines for 800-Line Calls	31
2020 Spring Webinar Series	19		
DRSR Update	20		

**SPECIAL MESSAGE FROM THE EXECUTIVE DIRECTOR
REGARDING THE COVID-19 PANDEMIC, SEE PAGE 2**

Texas Municipal Courts Education Center

2210 Hancock Drive
Austin, Texas 78756
512.320.8274 or 800.252.3718
Fax: 512.435.6118
www.tncec.com

FY20 TMCEC Officers

President: Stewart Milner, Arlington
President-Elect: Pam Liston, Rowlett
First Vice-President: Ed Spillane, College Station
Second Vice-President: Danny Rodgers, Fort Worth
Secretary: Hilda P. Cuthbertson, Snook
Treasurer: Robert C. Richter, Missouri City
Past-President: Esmeralda Pena, Houston

Directors

Region 1: Gary Ellsworth, Spearman
Region 2: Robin A. Ramsay, Lewisville
Region 3: Michael Acuna, Dallas
Region 4: Forrest K. Phifer, Rusk
Region 5: Tim Meek, Midland
Region 6: Kathleen Person, Temple
Region 7: Bonnie Townsend, Luling
Region 8: Michael Davis, Conroe
Region 9: Julie Escalante, Baytown
Region 10: Horacio Pena, Palm Hurst

Staff

Avani Bhansali, Administrative Assistant
Robby Chapman, Deputy Counsel and
Program Attorney
Elizabeth De La Garza, TxDOT Grant Administrator
Crystal Ferguson, Office Manager/Research Assistant
Mark Goodner, General Counsel and
Director of Education
Antaris Jackson, Administrative Assistant and Design
Specialist
Matthew Kelling, Multimedia Specialist
Regan Metteauer, Deputy Director
Ned Minevitz, Program Attorney and TxDOT Grant
Administrator
Lily Pebworth, Program Coordinator
Elizabeth Rozacky, Program Attorney
Deadra Stark, Administrative Director/Controller
Patty Thamez, Administrative Assistant
Ryan Kellus Turner, Executive Director
Brandi Valentine, Registration Coordinator
Andrea Walker, Program Coordinator
Katherine Walker, Communication Assistant

April Managing Editor:

Ned Minevitz

Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. An annual subscription is available for \$35.

Articles and items of interest not otherwise copyrighted may be reprinted with attribution as follows: "Reprinted from *The Recorder: The Journal of Texas Municipal Courts* with permission from the Texas Municipal Courts Education Center."

The views expressed are solely those of the authors and are not necessarily those of the TMCEC Board of Directors or of TMCEC staff members.

Special thanks to Camiele White for design and layout of this edition of *The Recorder*.



FROM THE EXECUTIVE DIRECTOR

Ryan Kellus Turner

Where to start?

In 1993 my favorite album was "Together Alone" by my favorite band, Crowded House.

Technically it's a rock album. From the first track, *Kare Kare*, featuring a dark and dreamy unorthodox use of slide guitar to the last track (the title track, *Together Alone*) featuring a New Zealand Maori choir and log drummers, the album sonically bridges the gamut from somber to hyperkinetic, but the most memorable parts feature introspective, well-crafted song lyrics by Neil Finn that create an experience that is surreal.

Recent events make *Together Alone* by Crowded House apropos.

Like many of you, since March I unexpectedly find myself together alone with my family in a house that at times does not seem large enough for its occupants. Regular routines of work and school featuring friends and family—typical notions of a "productive day"—have all been upended. The experience is surreal.

Morning commutes to work no longer involve driving. I go upstairs. Mundane home maintenance like pulling weeds feels less like a chore and suddenly more like recreation.

Family conversations have included the novel and the unexpected. (Did you know that while toilet paper was patented in the 1890s it was not until 1930 that a selling point of some toilet paper was that it was splinter free?)

As the novelty of the "novel Coronavirus" (COVID-19) fades, people will struggle between "what was," "what is," and "what shall be." These challenges will occur in our professional and personal lives.

The struggle right now entails the uncertainty. COVID-19 is like the worst carnival ride ever. It is scary. It is slow. It is dangerous. And no one knows exactly how long it is going to last.

Preparing for Two Possibilities

In the wake of the President's declaration of a national emergency and the Governor's declaration of a state of disaster in Texas, TMCEC cancelled or rescheduled conferences, seminars, and roundtables through May 15, 2020.

To be clear, we have not, at this time, cancelled all of our live events for the remainder of this academic year, which ends on August 31.

TMCEC will continue to monitor decisions made by state and local health authorities with the interest of our constituents, staff, and faculty in mind.

Additional decisions about whether to cancel or reschedule events for the remainder of the academic year will be made in the weeks and months to come.

We are planning for two possibilities.

TMCEC is retooling for the possibility that continued distance learning is required for some time to come.

TMCEC is also actively planning a robust summer calendar of scheduled, rescheduled, and other “in-person” events that don’t require internet access. So please register now for an upcoming TMCEC summer event. Our future depends on our optimism. Plan accordingly.

In the Meantime

If you are a judge who has not completed your mandatory judicial education hours or you are a clerk participating in the Clerk Certification Program, you may now complete those hours via TMCEC webinars (whether live or on demand) on the Online Learning Center (OLC). Webinars you have completed since September 1, 2019 will count towards the required number of education hours.

The OLC will be instrumental in the days ahead. All TMCEC webinars (live or on demand) are on the OLC. (If you have never used it or require assistance, we are here to help you.)

Judicial education is essential particularly in a time of crisis. Currently, 41% of municipal judges have not completed their mandatory judicial education. For the duration of the disaster, judges may complete their hours online via distance learning. On March 30, the Texas Court of Criminal Appeals issued an [Order](#) authorizing judges to obtain required judicial education hours by electronic means. Under the [Rules of Judicial Education](#), municipal judges are required to complete a certain number of continuous hours at a live TMCEC seminar, depending on how long they have been a judge. The Order expires 30 days after the Governor lifts the Declaration of State of Disaster. If you are a judge who has not obtained the requisite number of judicial education hours, you will be notified by TMCEC.

The Texas Court Clerks Association, similarly, has authorized court support personnel participating in the Clerk Certification Program to complete the requisite number of education hours via live or archived TMCEC webinars.

TMCEC is “Open for Business”

In compliance with county and city directives, TMCEC began remote operations on March 25. While our headquarters on Hancock Drive is currently closed to the public, TMCEC staff are working remotely in five different counties. Thankfully, TMCEC, with the support of its Board of Directors and the Court of Criminal Appeals, recently acquired technology which has made our unexpected and abrupt transition to remote operations possible.

STAY INFORMED

To access TMCEC updates and information related to COVID-19, click on “COVID-19 Update” on the TMCEC homepage or log in to your account and click on the “Communications” tab for recent eblasts sent according to your communication preferences. For up-to-date information on canceled, postponed, or rescheduled events, click on the “Schedule” tab on the TMCEC homepage.

We are still working out some kinks, but TMCEC is very much “open for business.”

The 800 line (800-252-3718) is operational. Staff attorneys are returning calls as usual. (See page 31 for guidelines for 800-line calls.)

The website is being updated frequently. During business hours (8 AM – 5 PM) the chat function on the website is monitored. (To chat via the website, click on the blue and white oval in the lower right corner of your screen.)

We are monitoring email. General information can be requested by e-mail: info@tmcec.com. Messages received can also be forwarded to the appropriate staff member.

TMCEC will continue sending important announcements to you by email using the address associated with your name in our database. Make sure that messages sent from info@tmcec.com are not going to your spam folder.

We will maintain our presence on [Facebook](#) and [Twitter](#) and are planning ways to expand our use of social media.

Publications will continue. By the end of August we will have published two more issues of *The Recorder* and two more issues of *The Brief* (which is part of our public education and information initiative, C3 (Councils, Courts, and Cities)). You can also look forward to the eighth edition of *The Municipal Judges Book*.

TMCEC is committed to sharing information with you as it becomes available. For the latest updates (including orders issued by the Texas Supreme Court, Court of Criminal Appeals, and Office of Court Administration), visit tmcec.com and click on COVID-19 Update. From our COVID-19 Update page, please periodically check for updates to the TMCEC schedule of events (or click on the Schedule tab).

Where to end?

As I told my kids recently, this is our first global pandemic. It is not an experience we wanted, but together no one has to go it alone. So, let’s make the best of it. Be positive. Focus on things we can control, not on things that we cannot. Let’s be patient and forgiving with others (and ourselves).

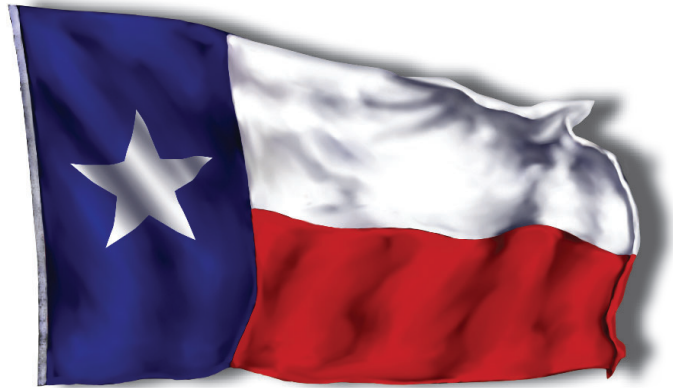
Stay safe. Stay home if you can. Take deep breaths (just not while people are sneezing nearby). And of course, don’t forget to wash your hands (preferably with soap and water while slowly counting to 20).

This too shall pass.



TMCEC TOGETHER ALONE (APRIL 2020)

AROUND THE STATE



In response to the COVID-19 outbreak in Texas, numerous orders, mandates, recommendations, guidelines, and rules have been imposed by federal, state, and local authorities. Below are three directives related to transportation law of interest to municipal courts.

March 16, 2020—Texas Vehicle Registration, Titling, and Handicap Placard Requirement Temporary Extension: Governor Greg Abbott granted a temporary extension to obtain initial vehicle registration and titles. The extension also applies to renewing existing vehicle registrations, permanent handicap placards, and titles (including title transfers). The statement further granted a temporary extension for an individual with an expired 30-day temporary permit to secure a new permit and/or vehicle registration. This temporary extension is in effect until 60 days after the Texas Department of Motor Vehicles informs the public that normal registration and titling operations have resumed.

March 18, 2020—Texas Driver License Expiration Date Extension: Governor Abbott announced that valid driver licenses and commercial driver licenses that expire on or after March 13, 2020 will have their expiration dates extended. The announcement also applies to state issued identification and voter registration cards. Expiration dates are put on hold until 60 days after the disaster declaration has been lifted. For example, if a Texas driver license has an expiration date of April 3, 2020, the new expiration date is now 60 days from the end of the disaster declaration. Note that this only applies to otherwise valid licenses.

March 27, 2020—Federal Real ID Enforcement Deadline Extension: The Department of Homeland Security delayed the nationwide Real ID enforcement deadline 12 months from October 1, 2020 to October 1, 2021. The Federal Real ID Act sets forth standards for state-issued driver licenses and identification cards in order for such licenses and identifications to be accepted by the Federal Government for “official purposes,” such as commercial air travel. Compliant licenses display an official Real ID emblem. In Texas, the emblem is a gold star. Due to the COVID-19 outbreak, the compliance enforcement deadline has been postponed to October 1, 2021.

MUNICIPAL TRAFFIC SAFETY INITIATIVES AWARDS

THE RESULTS ARE IN!

The annual MTSI Traffic Safety Awards presented by TMCEC recognize those municipal courts that have done outstanding work in traffic safety and impaired driving prevention. For more information on the awards and how to apply, visit <http://www.tmcec.com/mtsi/mtsi-awards/>.

Please join us in congratulating the following courts:

LOW VOLUME WINNERS

Alvin	Melissa
Freer	Rosebud
Lakeway	San Elizario
Lott	Universal City

MEDIUM VOLUME WINNERS

Carrollton	Harlingen
College Station	La Porte
Conroe	Midland

HIGH VOLUME WINNERS

Arlington	Irving
El Paso	San Antonio

NEW APPLICANT WINNERS

Aransas Pass	Pharr
Dallas	South Padre Island

HONORABLE MENTIONS

Allen, Austin, Bay City, Bulverde, Cedar Park, Collinsville, Columbus, Dayton, Houston, Linden, Mesquite, Wallis

that mean? That answer is decided on a case-by-case and statute-by-statute basis.⁶ In 2019, as the number of defendants petitioning appellate courts to answer such questions skyrocketed for various court costs, the Texas Legislature decided to act. Like Mission Control pointing Astronaut Jack Swigert in the right direction on board Apollo 13, the Legislature indicated that it was aware of the problem and would attempt to make things right.

Commencing Countdown, Engines On: Getting Up to Speed with Events Before S.B. 346

S.B. 346 (2019) sought to accomplish the largest reorganization of court costs in modern Texas history. What compelled the Legislature to enact such sweeping changes?

Previous legislation in 1997 and 2003 consolidated a litany of criminal court costs imposed on defendants in criminal cases and created controverted court costs, such as the Time Payment Fee.⁷ It failed, however, to address underlying issues regarding the use of these consolidated court costs.

In *Salinas v. State* (2017),⁸ the Court of Criminal Appeals found two of the funds included in the consolidated court cost to be unconstitutional. Using the reasoning laid out in *Peraza*, the Court determined that the Abused Children’s Counseling Fund and Comprehensive Rehabilitation Fund did not serve legitimate criminal justice purposes. By simply redistributing the funds, the Legislature, at the time, used a stop-gap measure to address the underlying problem. S.B. 346 sought to resolve the problem by “segregating court costs that recoup the costs of court, fines that are meant to punish, and reimbursement fees to recover costs outside the typical court cost.”⁹

Brace for Impact: The Following Section Contains Math and Important Technical Details

S.B. 346 created two categories of consolidated court costs: the State Consolidated Fee and the Local Consolidated Fee.

In municipal courts, the State Consolidated Fee (\$62) is assessed in all criminal cases other than those involving parking and pedestrian offenses. The city keeps 10% of this amount if reported timely to the Comptroller. The Comptroller allocates the rest to a list of different dedicated accounts within the state’s general revenue fund. S.B. 346 added accounts to this list and redirected amounts to other accounts that courts could deem related to legitimate criminal justice purposes. It is reminiscent of what the Legislature did following *Salinas*—only on a much larger scale. For example, the Truancy Prevention and Diversion Account was added to the list of dedicated accounts.¹⁰ Money allocated into this account is required to be distributed only to local governmental entities for truancy prevention and intervention services.¹¹ Other pre-existing accounts, such as the Fair Defense Account, received an increased allocation from 17.8448% to 17.8857%.¹²

The \$14 Local Consolidated Fee is new (sort of). The fee is assessed in all criminal cases, including criminal cases created by ordinances. It standardizes collection by replacing a number of former court costs that under prior law could only be assessed after enactment of certain ordinances creating designated funds (e.g., the Court Technology Fund and Court Security Fund).

Floating in a Most Peculiar Way: The Fine Line Between “Fines” and “Fees”

In municipal and justice courts, judgments and sentences prescribe that the “defendant pay the amount of the *fine* and the *costs* to the state.”¹³ There is a difference, however, between a “court cost” and a “fine.” In *Weir v. State* (2009), the Court of Criminal Appeals opined that court costs are a *non-punitive* recoupment of the costs of judicial resources expended in connection with a trial.¹⁴ Fines, in contrast, are meant to *punish*.¹⁵ Discussing the differences, the Court also noted that in previous cases, a fine was classified as a fine because, among other things, the state called it a fine and it was not clearly intended to reimburse the state.¹⁶ This matters because, unlike court costs that must be used for legitimate criminal

justice purposes, fines generally have no similar strings attached. Fines collected in municipal courts are deposited into the city's treasury.

S.B. 346 sought to address the criticism that certain state court costs were not being used for a dedicated criminal justice purpose but instead were used by the state in a manner resembling a fine. The formerly named Local Traffic Fee was designated as a "cost," but had no prohibition on its use and was authorized to go into the municipal treasury.¹⁷ The formerly named Child Safety Fund was also designated as a "cost" but funded school crossing guard programs, with any excess expended for programs designed to enhance public safety and security; large cities deposited it into a Child Safety Trust Fund.¹⁸ To address the criticism and to avoid additional constitutional challenges to these fees and costs, S.B. 346 simply reclassified them as fines.¹⁹

S.B. 346 also renamed a plethora of former costs and fees as either "reimbursement fees" or "fines." Reimbursement fees include costs which recover trial expenses, such as the cost of a peace officer for issuing a written notice to appear or the cost of impaneling a jury.²⁰ The newly renamed fines, on the other hand, address the problem of local retained fees and costs that might not have passed constitutional muster if challenged under *Peraza* because they were treated as general revenue and were not retained for a dedicated criminal justice purpose. Notably, this included the Special Expense Fee, which could be assessed as part of deferred disposition. It is now called a Deferred Fine.

Five Important Considerations

S.B. 346 changed so many facets of Texas law governing court costs that it is no surprise that courts have struggled to apply its provisions. There are several statutes—both clearly worded and also those ripe for varying interpretations—that are affected by the legislative changes. Some undisputed matters and matters resolved under former law now seem primed for debate. What follows are five of the lingering issues associated with S.B. 346.

1. Engine Trouble: The Unintended Consequences of Renaming Costs and Fees as Fines

It is more than a matter of semantics. S.B. 346, in an effort to avert constitutional challenges to various court costs, seemed to ignore the plain meaning of the word "fine" and the fact that fines have historically suggested moral condemnation for illegal actions.²¹ Ignoring the term's historic plain meaning is likely to have unintended consequences and raises new questions. Examples include:

Partial Payments

Since 1971, Texas law has provided for installment payments when a defendant is unable to fully satisfy his or her fine and costs.²² The law does not specify how partial payments are applied to satisfy court costs and the fine owed. Texas courts have long used the Costs-First Allocation Rule to properly allocate partial payments.²³ This rule states that partial payments collected should first go to the payment of costs and fees, and second to the fine amount (once the costs have all been paid).²⁴ The amounts collected are allocated *pro rata*, with no one cost taking precedence over another, but fines always being last. Under S.B. 346, three former court costs are now state fines: the State Traffic Fine, Local Traffic Fine, and Fine for Child Safety Fund.²⁵ Prior to the bill, these were all considered court costs, paid before any fine following partial payment. Does the Costs-First Allocation Rule still apply? If so, these three fines would be paid after any other court cost following partial payment. Was this intended?

Construction or Maintenance Work Zone Fines

For the safety of vulnerable roadside workers, Texas law provides that traffic crimes committed within a construction or maintenance work zone are treated differently than those committed elsewhere. The Code of

Criminal Procedure provides that deferred disposition and a driving safety course are not options to keep these offenses off a defendant’s driving record. Additionally, the Transportation Code requires that the minimum and maximum fine for the offense be doubled.²⁶

This begs the question: which fine? Section 542.404 of the Transportation Code indicates that the “fine applicable to the offense” is doubled. It is clear that this includes the fine assessed within the range authorized for the offense. Less clear is whether it also includes the state fines (State Traffic Fine, Local Traffic Fine, and Fine for Child Safety Fund).

Parks and Wildlife Remittance

The Parks and Wildlife Code contains more than 100 offenses that are punishable as a Class C Parks and Wildlife misdemeanor.²⁷ The Parks and Wildlife Code requires that the court send a portion of the *fine* collected for these offenses to the Parks and Wildlife Department within 10 days after the date of collection.²⁸ There has long been a lack of clarity on the percentages for municipal courts, but the agreed interpretation is that municipal courts remit 85% of the fine amount, which is the same as justice courts.²⁹ In 2009, Texas Attorney General Greg Abbott was asked whether the deferred disposition Special Expense Fee qualified as a “fine” and if a court then must remit a percentage of that fee to the Parks and Wildlife Department. In Attorney General Opinion GA-0745, Abbott opined that courts should not remit a percentage of the Special Expense Fee.³⁰ The Attorney General’s reasoning was that it was called a “special expense fee” and therefore is not a “fine.” Does the rationale of GA-0745 still apply now that S.B. 346 renamed the Special Expense Fee as a Deferred Fine?

2. Technical Difficulties: Additional FTA/VPTA Fines in Some Municipal Courts Might Raise New Constitutional Issues

Under former Article 45.203(c) of the Code of Criminal Procedure, upon passage of a required ordinance, a municipal court could collect a “special expense” if a warrant was issued for either Failure to Appear (FTA) or Violation of Promise to Appear (VPTA). Under the new Article 45.203(c), effective January 1, 2020, this special expense is now classified as a fine. The new fine, which also may only be collected if prescribed by ordinance, is not triggered by warrant issuances, but rather by FTA/VPTA convictions. This means that in addition to the fine for either FTA (up to \$500)³¹ or VPTA (\$1-200),³² a defendant may also have to pay a fine prescribed by an ordinance under Article 45.203(c) (up to \$25).

The Legislature’s reclassification of this special expense as a fine may have unintended consequences. Fines, unlike costs, are punishment.³³ Because cities are permitted but not required to adopt an ordinance prescribing this new fine, the punishment for FTA or VPTA will vary by city. There is long-standing case law proscribing different punishments for the same conduct in different political subdivisions.³⁴ Absent a rational basis, prescribing different penalties for the same conduct in different cities violates due process and equal protection.³⁵ S.B. 346’s intent was, at least in part, to avoid constitutional challenges to court costs in Texas. While it may have shut the door on *Peraza*-based separation of power challenges—it might have opened the door to due process and equal protection ones.

3. JCM, TPDF, and TPDA (TMI?)

Juvenile case managers across Texas expressed concern when S.B. 346 repealed the Juvenile Case Manager (JCM) Fee. However, the cost was not eliminated—it became a state cost called the Truancy Prevention and Diversion Fund (TPDF). To add to the confusion, S.B. 346 renamed and renumbered the previous Truancy Prevention and Diversion Fund—now called the Truancy Prevention and Diversion Account (TPDA).

After S.B. 346, courts should familiarize themselves with the differences between the TPDF and TPDA and be able to distinguish them from their pre-2020 counterparts (see chart on page 10).

Before S.B. 346	After S.B. 346
Juvenile Case Manager Fee Art. 102.0174 CCP	Truancy Prevention and Diversion Fund (TPDF) Art. 134.156 LGC
Truancy Prevention and Diversion Fund Art. 102.015 CCP	Truancy Prevention and Diversion Account (TPDA) Art. 133.125 LGC

TPDF

The new TPDF operates differently than the old \$2 fee that had the same name prior to 2020. This version, which is \$5, is a dedicated fund within the Local Consolidated Fee.³⁶ Putting juvenile case managers at ease, the TPDF mirrors the language and uses of the previous JCM Fee. Unlike the JCM Fee, however, the TPDF does not require an ordinance to collect it. The TPDF retains the JCM Fee’s requirement that it be used to finance a juvenile case manager’s position. In the past, if a city did not have a juvenile case manager, it was unlikely to have an ordinance authorizing collection of the JCM Fee. Because the TPDF is now required to be collected under state law, even cities without a juvenile case manager will collect it—with no statutory way to use it. The \$5 TPDF is required to be assessed as part of the Local Consolidated Fee on every “nonjailable misdemeanor offense, including violation of a criminal violation of a municipal ordinance.”³⁷ Thus, courts without a juvenile case manager will likely be forced to sit on a significant, ever-growing amount of money as long as the current TPDF is active. This presents not only a practical issue of managing the amount, but also a question as to public policy and the use (or lack of use) of public money.³⁸

TPDA

The new TPDA is now an account within the state’s general revenue fund.³⁹ A local governmental entity may request these funds from the Criminal Justice Division of the Governor’s Office in order to help fund truancy prevention and intervention services, depending on availability and other eligibility requirements.⁴⁰ Its function mirrors that of the pre-2020 Truancy Prevention and Diversion Fund.

4. Time Payment Turbulence

Texas has long given defendants that cannot satisfy a judgment the ability to pay in installments.⁴¹ For municipal and justice courts, where sentences are fine-only, this is not a novel concept. The court orders payment arrangements—be it, for example, \$10 or \$100 a month.⁴² These court orders are the product of judicial discretion.

Time-payment-related court costs, conversely, leave little room for judicial discretion. According to Article 102.030 of the Code of Criminal Procedure, courts are required to assess a fee on the 31st day after a judgment if the fines and costs are not paid in full.⁴³ Prior to January 1, 2020, the fee was \$25 and divided equally between the state and the city. The city’s portion was further divided, with 10% (\$2.50) used for the express purpose of improving the efficiency of the administration of justice and the remaining \$10 placed in the city’s general revenue fund.

The pre-2020 Time Payment Fee has been challenged in courts of appeal throughout the state.⁴⁴ Citing *Peraza* and *Salinas*, these challenges assert that most of the fee is not allocated to a legitimate criminal

justice purpose. A number of courts of appeal have found that of the \$25, only the \$2.50 dedicated to the administration of justice passes constitutional muster.⁴⁵ However, to date, the Court of Criminal Appeals has not struck down the Time Payment Fee. Depending on which judicial region a court is located and whether the respective court of appeals has considered the constitutionality of the Time Payment Fee, it is possible that, as of this writing, courts are charging either a \$2.50 or \$25 Time Payment Fee to applicable cases.

S.B. 346 attempted to remedy the legal infirmity identified by different courts of appeal. It changed the name of this cost from “Time Payment Fee” to “Time Payment Reimbursement Fee.” The bill reduced the fee amount to \$15 and requires its deposit “into a separate account within the city’s general revenue fund to be used for the purpose of improving the collection of outstanding court costs, fines, reimbursement fees, restitution, or improving the efficiency of the administration of justice.”⁴⁶

Problem solved? Not so fast. It is indisputable that the \$25 Time Payment Fee will still apply to certain older cases. But how to determine which ones is subject to debate.

5. Effective-Date Confusion: One Small Step for Court Costs, One Giant Leap for Courts

Court cost effective dates in Texas have long bred confusion. The effective date for criminal court costs varies depending on which trial court is assessing the cost. In 2013, the Legislature enacted Section 51.608 of the Government Code, which “sought to end the confusion over whether the assessment of court costs should be based on the costs in effect at the time the violation occurred (as is the fine) or the costs in effect on the date the defendant was convicted.”⁴⁷ As introduced, Section 51.608 was applicable to all criminal trial courts. However, because of concerns regarding costs associated with redesigning and reprogramming court software systems and the possibility of outstanding warrants and inaccurate court costs, municipal and justice courts were ultimately excluded from it.⁴⁸ Consequently, district and county courts assess the court costs that are in effect at the time of conviction and municipal and justice courts assess the court costs effective at the time of the offense.

After S.B. 346, municipal and justice courts may regret not being included in Section 51.608. Unlike district and county courts that determine court costs in all cases based on the effective court costs at the time of conviction, municipal and justice courts are burdened with the task of determining what court costs applied when the offense occurred. This is a cumbersome exercise as offenses, costs, and allocations have undergone numerous changes, big and small, over the years. To illustrate this point, consider that TMCEC’s website links to 14 distinct court cost charts going back to 1999.⁴⁹

Assessing court costs effective at the time of the offense creates confusion for judges, clerks, and attorneys in municipal and justice courts. It is arguably an antiquated approach stemming from a bygone era when court costs, like fines, were considered punitive in nature. That era ended when the Court of Criminal Appeals held in *Weir* that court costs are a *non-punitive* recoupment of the costs of judicial resources.⁵⁰ Prior to *Weir*, when court costs were legally considered punitive, there were concerns about defendants that committed offenses prior to a court cost’s effective date: if costs were assessed that were not in effect at the time the offense was committed, it could constitute the application of a retroactive law prohibited by the Texas Constitution.⁵¹ (It remains to be seen whether the conversion of former court costs to fines in S.B. 346 will spawn similar concerns.)

S.B. 346’s language has resulted in confusion regarding its application and effective date. In November 2019, the Navarro County District Attorney requested an attorney general opinion concerning the new local criminal fees in Subchapter C of Chapter 134 of the Local Government Code and whether they are applicable based on the date of conviction or date of the offense.⁵² Similarly, in December 2019, the Chief Judge of the Arlington Municipal Court requested that the Office of Court Administration provide guidance regarding the effective

date of the \$15 Time Payment Reimbursement Fee that replaced the former \$25 Time Payment Fee. As of this writing, the attorney general has not issued an opinion, but the Office of Court Administration issued a formal letter on March 12, 2020 (see page 15).

Conclusion: Blasting into a New Frontier

Did S.B. 346 have the “Right Stuff?” It constituted a major step toward consolidating criminal court costs, improving the collection and audit of such costs, and addressing issues stemming from cases like *Peraza* and *Salinas*. But, Houston, we still have some problems. The best of intentions can still have unintended consequences. It is not rocket science—it is public policy. When substantial legislative changes are made, subsequent legislation is almost always necessary. In other words: another mission awaits.

1. Apollo 13 (Imagine Entertainment 1995).
2. *Peraza v. State*, 467 S.W.3d 508 (Tex. Crim. App. 2015).
3. *Peraza*, 467 S.W.3d at 517-18.
4. *Id.*
5. *Id.*
6. *Id.*
7. H.B. 2424, 78th Leg., Reg. Sess. (Tex. 2003); S.B. 1417, 75th Leg., Reg. Sess. (Tex. 1997).
8. *Salinas v. State*, 523 S.W.3d 103 (Tex. Crim. App. 2017).
9. Hearing on Tex. S.B. 346 Before the S. Comm. on State Affairs, 86th Leg., R.S. (March 18, 2019) (statement of David Slayton, Administrative Director, Office of Court Administration) (available at http://tlcsenate.granicus.com/MediaPlayer.php?clip_id=13973).
10. Tex. Loc. Gov't Code § 133.102(e)18.
11. Tex. Loc. Gov't Code § 133.125(b).
12. Tex. Loc. Gov't Code § 133.102(e)(12). Interestingly, the Fair Defense Account has been the biggest beneficiary of the post-*Salinas* legislative changes to dedicated accounts allocations, increasing from 8.0143% in 2015 to 17.8448% in 2017 to 17.8857% in 2020.
13. Tex. Code Crim. Pro. Ann. art. 45.041
14. *Weir v. State*, 278 S.W.3d 365, 365-66 (Tex. Crim. App. 2009) (emphasis added).
15. *Weir*, 278 S.W.3d at 366.
16. *Id.*; see also *People v. Jones*, 223 Ill. 2d 569, 592-93 (2006).
17. Tex. Transp. Code Ann. § 542.403(b)(1).
18. Tex. Crim. Pro. Code Ann. § 102.014(b), (c).
19. The third state fine, the State Traffic Fine assessed under Section 542.4031 of the Transportation Code, was the only one to be called a fine prior to S.B.346. The Comptroller allocates it by statute as 70% to the credit of the undedicated portion of the general revenue fund and 30% to the credit of the designated Trauma Facility and Emergency Medical Services Account under Section 780.003 of the Health and Safety Code. As a fine, this one appears to pass constitutional muster. It is noteworthy, however, that at the time of writing the Comptroller references the State Traffic Fine as a “court cost” on its website. City Criminal Costs and Fees, Texas Comptroller of Public Accounts, <https://comptroller.texas.gov/help/court-costs/city-criminal/return.php> (last visited March 11, 2020).
20. Tex. Crim. Pro. Code Ann. § 102.011(a)(1); Tex. Code Crim. Pro. Ann. art. 45.026, § (a). Criminal sanctions, including fines, have “traditionally been viewed as expressing society’s strong moral condemnation of the defendant’s behavior.” Oxford Companion to American Law 197 (Kenmit L. Hall et al. eds., 2002).
21. Tex. Code Crim. Pro. Ann. art. 45.041.
22. Tex. Att’y Gen. Op. No. GM-0755 (1939). Subsequent opinions addressed this topic six more times in 80 years, the latest in 2004 where the Attorney General notes how many times attorney general opinions have reaffirmed the Costs-First Allocation Rule and also that there is no statutory authority for it. Tex. Att’y Gen. Op. No. GA-0147 (2004).
23. Tex. Att’y Gen. Op. No. GA-0147 (2004).
24. The State Traffic Fine is not new but was in the past treated like a court cost despite its name. City Criminal Costs and Fees, Texas Comptroller of Public Accounts, <https://comptroller.texas.gov/help/court-costs/city-criminal/return.php> (last visited March 11, 2020).
25. Tex. Code Crim. Pro. Ann. art. 45.051, § (f)(1), art. 45.0511 § (p) (3); Tex. Transp. Code Ann. § 542.404.
26. Tex. Parks & Wild. Code Ann. § 31.127.
27. Tex. Parks & Wild. Code Ann. § 12.107.
28. Tex. Parks & Wild. Code Ann. § 12.107(b).
29. Tex. Att’y Gen. Op. No. GA-0745 (2009).
30. Tex. Penal Code Ann. §§ 12.23, 38.10(e).
31. Tex. Transp. Code Ann. §§ 542.401, 543.009.
32. *Weir v. State*, 278 S.W.3d 365, 366 (Tex. Crim. App. 2009).
33. *Ex parte Carson*, 159 S.W.2d 126 (Tex. Crim. App. 1942); *Ex parte Ferguson*, 132 S.W.2d 408 (Tex. Crim. App. 1939); *Ex parte Sizemore*, 8 S.W.2d 134 (Tex. Crim. App. 1928).
34. *Memet v. State*, 642 S.W. 518, 525-26 (Tex. App.—Houston [14th Dist.] 1982, no writ).
35. Tex. Loc. Gov't Code § 134.103(b)(2).
36. Tex. Loc. Gov't Code § 134.103(a).
37. One suggested use for the TPDF could alter the use to clearly allow for funding of juvenile diversion programs. The issue with this,

The below charts outline municipal court costs as of the publish date of this *Recorder* for offenses committed on or after January 1, 2020. To view prior years' charts, visit <http://www.tmcec.com/resources/charts/>.

OFFENSE/DESCRIPTION	Consolidated Fees		State Fines			Total
	State	Local	STF	LTF	CSF	
Municipal Ordinance						
Parking (criminal offense)	N/A	14.00	N/A	N/A	varies*	14.00*
Pedestrian	N/A	14.00	N/A	N/A	N/A	14.00
Other city ordinances not categorized above	62.00	14.00	N/A	N/A	N/A	76.00
State Law						
Transportation Code, Rules of the Road (Chapters 541-600)						
• Parking and Pedestrian (in school crossing zone)	N/A	14.00	50.00	3.00	25.00	92.00
• Parking and Pedestrian (outside school crossing zone)	N/A	14.00	50.00	3.00	N/A	67.00
• Passing a School Bus (Section 545.066)	62.00	14.00	50.00	3.00	25.00	154.00
• Other Rules of the Road offense in a school crossing zone	62.00	14.00	50.00	3.00	25.00	154.00
• Other Rules of the Road offense outside a school crossing zone	62.00	14.00	50.00	3.00	N/A	129.00
Parking and Pedestrian Offense (not under the Rules of the Road)	N/A	14.00	N/A	N/A	N/A	14.00
Education Code						
• Parent Contributing to Nonattendance (Section 25.093)	62.00	14.00	N/A	N/A	20.00	96.00
All other fine-only misdemeanors not mentioned above	62.00	14.00	N/A	N/A	N/A	76.00

- * **Parking 542.202 or Chapter 682, Transportation Code:**
- \$2-\$5 court cost for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).
 - Up to \$5 court cost for cities with population less than 850,000 that have adopted appropriate ordinance, regulation, or order (optional).

CONSOLIDATED FEES AND STATE FINES BREAKDOWN

	Chart Title	Full Name	Legal Authority	Applies To	Apportionment
Consolidated Fees	State	Consolidated Fee	Section 133.102, Local Government Code	All but parking and pedestrian offenses	90% State, 10% City If timely remitted on quarterly report
	Local	Local Consolidated Fee	Section 134.103, Local Government Code	Nonjailable misdemeanor offenses, including criminal violation of a municipal ordinance	100% City • Must be allocated into one of four specific funds based on percentages in Section 134.103(b), Local Government Code (see separate chart below) • The money allocated may only be used for the purposes indicated in the individual fund and no other purpose
State Fines	STF	State Traffic Fine	Section 542.4031, Transportation Code	Rules of the Road offenses (Chapters 541-600, Transportation Code)	96% State, 4% City If timely remitted on quarterly report
	LTF	Local Traffic Fine	Section 542.403, Transportation Code	Rules of the Road offenses (Chapters 541-600, Transportation Code)	100% City
	CSF	Child Safety Fine	Article 102.014, Code of Criminal Procedure	Rules of the Road offenses occurring in a school crossing zone; passing a school bus; parent contributing to nonattendance; some city ordinance parking violations	100% City • Must be deposited in municipal child safety trust fund in municipalities with population greater than 850,000 • For others, shall first fund school crossing guard program with excess expended for programs designed to enhance public safety and security

LOCAL CONSOLIDATED FEE ALLOCATION

The Local Consolidated Fee is a \$14 cost collected on all nonjailable misdemeanor offenses, including criminal violation of a municipal ordinance (Section 134.103, Local Government Code). The municipal treasurer is required to allocate the \$14 to four separate funds or accounts outlined below, based on percentages in the statute, and maintain that individual fund or account. The money in the fund or account may only be used for the purposes provided by law (Section 134.151(a), Local Government Code).

	Allocation	Specific Statute	Percentage	Dollar Amount	Allowed Uses
Local Consolidated Fee	Municipal Court Building Security Fund	Article 102.017, Code of Criminal Procedure	35%	4.90	May only be used for security personnel, services, and items related to buildings that house the operation of municipal court. A non-exhaustive list of potential uses is included in Article 102.017(c), Code of Criminal Procedure.
	Local Truancy Prevention and Diversion Fund	Section 134.156, Local Government Code	35.7143%	5.00	May only be used to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses relating to the position of juvenile case manager. Money may not be used to supplement the income of an employee whose primary role is not juvenile case manager.
	Municipal Court Technology Fund	Article 102.0172, Code of Criminal Procedure	28.5714%	4.00	May only be used to finance the purchase of or to maintain technological enhancements for a municipal court. A non-exhaustive list of potential uses is included in Article 102.0172(b), Code of Criminal Procedure.
	Municipal Jury Fund	Section 134.154, Local Government Code	0.7143%	.10	May only be used by municipality to fund juror reimbursements and otherwise finance jury services

	Fee or Fine	Amount	Legal Authority	Applies To	Apportionment
Nonappearance	Failure to Appear/Violate Promise to Appear Fine	Not to exceed \$25	Article 45.203(c), Code of Criminal Procedure	For an offense of failure to appear (FTA) or violate promise to appear (VPTA)	100% City <ul style="list-style-type: none"> City must have an ordinance of the collection of the fine after due notice Formerly known as the "Warrant Special Expense Fee" prior to January 2020. Is now assessed on the offense, not on a warrant.
	Jury Impanelling Reimbursement Fee	Actual Costs incurred for impanelling	Article 45.026, Code of Criminal Procedure	A party that does not waive jury trial and who fails to appear for the trial	100% City
Passive Enforcement	OmniBase Reimbursement Fee	\$10	Section 706.007(d), Transportation Code	Failure to appear or failure to satisfy a judgment for any fine-only offense if the city has contracted with the Department of Public Safety	100% City <ul style="list-style-type: none"> City must have contracted with the Department of Public Safety Fee retained by city, out of which OmniBase is paid
	Scofflaw Reimbursement Fee	\$20	Section 702.003, Transportation Code	A person who has an outstanding warrant for failure to appear or failure to satisfy the judgment on a violation of a traffic law if the city has contracted with Department of Motor Vehicles or County to deny vehicle registration	100% Department of Motor Vehicles or County Assessor-Collector <ul style="list-style-type: none"> City must have contracted with the Department of Motor Vehicles or County Assessor-Collector
	Third Party Collections	30% of the unpaid fines, fees, costs, restitution, or forfeited bonds	Article 103.0031, Code of Criminal Procedure	Unpaid fines, fees, costs, restitution, or forfeited bonds if the city has a contract with a third party collections agency	By contract
Payments	Time Payment Reimbursement Fee	\$15	Article 102.030, Code of Criminal Procedure	A person convicted of a misdemeanor and pays any part of the fine, court costs, restitution, or another reimbursement fee on or after the 31st day after the date judgment is entered	100% City <ul style="list-style-type: none"> City must deposit into a separate account in the city's general revenue fund to be used for the purpose of improving the collection of outstanding court costs, fines, reimbursement fees, restitution, or improving the efficiency of administration of justice

ADDITIONAL REIMBURSEMENT FEES AND FINES

The following fees are collected upon conviction for services performed by a peace officer (Article 102.011, Code of Criminal Procedure; Section 133.104, Local Government Code).

- \$5 arrest reimbursement fee for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, penal law, or for making an arrest without a warrant; when service is performed by a peace officer employed by the State, 20% is sent to the State on the quarterly report.
- \$50 warrant reimbursement fee for executing or processing an issued arrest warrant, capias, or capias pro fine; when service is performed by a peace officer employed by the State, 20% is sent to the State on the quarterly report; when service is performed by another agency, that agency can request the amount of the fee.
- \$5 for serving a subpoena.
- \$5 for summoning a jury.
- \$35 for serving any other writ (includes summons for a defendant or a child's parent).
- Other costs: costs for peace officer's time testifying off duty or mileage for certain transports.



OFFICE OF COURT ADMINISTRATION

DAVID SLAYTON
Administrative Director

March 12, 2020

The Honorable Stewart Milner
Chief Municipal Court Judge, City of Arlington
101 S. Mesquite Street
Arlington, Texas 76010

Re: Time Payment Fee

Dear Judge Milner:

Thank you for your inquiry regarding the appropriate time payment fee to be assessed for late payment of court costs and fees that were assessed on convictions for offenses that occurred before January 1, 2020.

The time payment fee (Code of Criminal Procedure Art. 102.030(a)(2), formerly Local Government Code Sec. 133.103(a)(2)) is a fee that is assessed when a defendant fails to pay his or her court costs and fees within 30 days following the date a defendant's judgment is entered. It is not a court cost or fee that is assessed for an offense; it is an administrative fee that only becomes due in the event a defendant fails to pay his or her court costs and fees within 30 days following the date of judgment. For this reason, it is the Office of Court Administration's position that the amount of the time payment fee due from a defendant is the amount of the fee in effect on the date it may be assessed, the 31st day after the date the judgment is entered. In determining the time payment fee amount due, the focus should be on *when* the 31st day following entry of the judgment or order ordering the payment occurs, not the date of the offense. If the 31st day occurs on or before December 31, 2019, the time payment fee is \$25,¹ the amount in effect before January 1, 2020. However, if the 31st day occurs on or after January 1, 2020, the time payment fee is \$15, the new fee established by SB 346 (86th Legislature, Regular Session).

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink that reads "David Slayton".

David Slayton

¹ Please note that some appellate courts have declared all but \$2.50 of the \$25 time payment fee unconstitutional - 1st Court of Appeals - *Kremplewski v State*, August 2019 (Tex. App. – Houston [1st Dist.], pet. filed); 10th Court of Appeals - *Simmons v State*, 590 SW3rd 702 (Tex. App.- Waco, 2019, pet. filed); 11th Court of Appeals - *King v State*, July 2019, *not designated for publication*; 13th Court of Appeals – *Townsend v State*, Nov. 2019, *not designated for publication*; and 14th Court of Appeals - *Johnson v State*, 573 SW3rd 328 (Tex. App. – Houston [14th Dist.] 2019, pet. filed). These cases are currently on appeal to the Court of Criminal Appeals.

UPCOMING MTSI EVENTS

Municipal Traffic Safety Initiatives Impaired Driving Symposium

Register
Today!



Conference
for
Judges Only

Corpus Christi, TX | August 3-4, 2020

MUNICIPAL TRAFFIC SAFETY
INITIATIVES

Register at:
<http://www.tmcec.com/registration/>
or
<http://www.tmcec.com/mtsi/impaired-driving-symposium>



Municipal Traffic Safety Initiatives Motivational Interviewing Workshop Presented by Andy Fazio

Register
Today!



No
Registration
Fee!

Houston, TX | Date: August 7, 2020

MUNICIPAL TRAFFIC SAFETY
INITIATIVES

Register at:
<http://www.tmcec.com/registration/>
or
<http://www.tmcec.com/mtsi/motivational-interviewing>



Travel, lodging, and meals reimbursed to participants (following state and federal guidelines)

REGIONAL ROUNDTABLES

The Regional Roundtables will be held in the cities listed below

Conroe Baytown McAllen
Temple Luling

EDUCATIONAL CREDIT

TMCEC is excited to introduce the Regional Roundtables. Each Roundtable counts for 2.5 hours of judicial flex-time and clerk certification credit.

CLE is also available for attorneys (2.5 hours; .5 ethics)

**SPACE IS LIMITED.
REGISTER NOW!**



June 5, 2020 • 11:00 am to 2:00 pm
The Clubhouse at Evergreen Park,
1530 Evergreen Road,
Baytown, Texas 77523

June 19, 2020 • 11:00 am to 2:00 pm
Temple Sammons Senior Center
Lakeview Room
Sammons Community Center
2220 W Ave D,
Temple, TX 76501

July 17, 2020 • 11:00 am to 2:00 pm
Zedler Mill
1107 S. Laurel Ave.,
Luling, TX 78648

August 28, 2020 • 11:00 am to 2:00 pm
Conroe Municipal Court
2300 Plantation Dr.,
Conroe, TX 77303

A TMCEC board member and staff attorney will travel to each of the ten regions in the state to facilitate a small group discussion. The discussion topics will relate to fines, fees, costs, alternate sentencing, and jail commitments.

Regional Roundtable participants will have the opportunity to discuss challenges, share solutions, and learn from others' experiences. Throughout the year, TMCEC will compile feedback from each Regional Roundtable. At the end of the academic year, TMCEC will share the results with participants from all ten regions.

There is no registration fee to attend. Registration is limited to 30 participants. You may register online, by mail, or by fax. Fax: 512.435.6118

Website: www.tmcec.com/programs/clinics/

ALTERNATIVES TO LIVE TMCEC JUDICIAL EDUCATION

Texas continues to modify its approach to handling the COVID-19 pandemic, and TMCEC is working to provide all municipal judges with multiple opportunities to satisfy annual judicial education requirements. As TMCEC moves toward providing education in new ways while attempting to reschedule live seminars, we want to remind judges of two existing alternatives to attending live TMCEC training this year: Opt Outs and Waivers. We understand that many judges are in the midst of shelter-in-place directives while also facing increasing demands at the court and at home. Opting out of TMCEC education or requesting a waiver may provide some relief.

Opt Outs

Experienced municipal judges who have completed two years of TMCEC courses may opt to fulfill the 16-hour mandatory judicial education requirements for 2019-2020 by attending a course offered by an approved continuing education provider. The course must relate to the jurisdiction of the municipal courts and be at least eight hours in length. Video, audio, and online programs are ineligible at this time. Judges may opt out only every other year. Judges are asked to complete an Intent to Opt Out form prior to April 30, 2020. If you have questions, please contact Mark Goodner at TMCEC (800.252.3718 or goodner@tmcec.com). A copy of approved providers as well as an Intent to Opt Out Form can be found on page 20 of the 2019-2020 Academic Schedule as well as on the TMCEC website at <http://www.tmcec.com/programs/judges/alternative-judicial-education/>.

Waivers

Perhaps more than any other year, judges may experience hardship in attending a live TMCEC event. Judges may be eligible, however, to receive a waiver due to the statewide emergency. If a judge is unable to attend the mandatory 16 hours of judicial education within the academic year (September 1, 2019 - August 31, 2020), he or she may request a waiver from the Municipal Courts Education Committee.

The Committee typically only reviews requests for waivers in September after the end of the academic year, but this year the Committee will review requests multiple times. When an emergency situation has occurred and is well-documented in the request for a waiver, the Committee may handle it in one of three ways:

1. The Committee may grant a conditional waiver that will require the judge to attend two conferences (one at his or her own expense) in the following academic year;
2. The Committee may grant an unconditional waiver of education requirements for the year (typically, this is very rare); or
3. The Committee may deny a waiver request. If a waiver request is denied, the judge's name may be sent to the State Commission on Judicial Conduct.

A copy of a waiver request form can be found on the TMCEC website at <http://www.tmcec.com/programs/judges/alternative-judicial-education/>.

2020 Spring Webinars Series

Texas Municipal Courts Education Center

April 16: Enforcing the Hemp and CBD Laws in Texas	Presented by Chuck Carlile, Staff Instructor FRIDAY and ADAPT Program
April 23: Cyber Security	Presented by Casey Kennedy, Director of Information Services Office of Court Administration
April 30: Morning Coffee: Municipal Courts in the Age of Coronavirus (part 2)	Presented by Ryan Kellus Turner, Ned Minevitz, and Elizabeth Rozacky, TMCEC Attorneys
May 7: Questions Answered	Presented by Mark Goodner, Robby Chapman, and Ned Minevitz TMCEC Attorneys
May 14: Case Law and Attorney General Opinion Update	Presented by Ryan Kellus Turner Executive Director, TMCEC
May 21: Judicial Misuse of Social Media	Presented by John Browning, Adjunct Professor at SMU Dedman School of Law, Partner at Spencer Fane LLP
May 28: Citations and Complaints	Presented by Judge Michael Acuna Municipal Judge, City of Dallas

How to View an On-Demand Webinar

Go to the Online Learning Center at <http://online.tmcec.com>. Log on and click on "Webinars On Demand." Webinars are organized by the year presented. Most webinars are available for judicial education and certification credit. Some may also be available for CLE credit.

For more detailed instructions on watching webinars, visit the Upcoming Webinars page of the OLC, the Webinars page on tmcec.com, or contact TMCEC at 800.252.3718.

About Webinars:

Webinar participation is open to all municipal judges, clerks, court administrators, prosecutors, bailiffs, warrant officers, juvenile case managers, and court interpreters.

All webinars begin at 10:00 a.m. and last one hour. Webinar participation counts for one hour of credit toward the clerk certification program. Webinars noted with a label on the OLC count for one hour of judicial credit (red label) and many will be submitted for MCLE credit from the State Bar for licensed attorneys (yellow label).

How to View a Live Webinar:

1. Visit the Online Learning Center (OLC) at <https://tmcec.remote-learner.net/>.
2. Once on the Online Learning Center home page, find the login box in the upper left side of the page.
3. Enter your TMCEC username and password and click Login. If you do not have your TMCEC login information, call us at 800.252.3718.
4. First, click on **Webinars**. Then click on **Upcoming Webinars**. Finally, click on the title for the broadcast.
5. This will take you to the main webinar page for the desired webinar broadcast. To view the webinar, you will click on "**Webinar (Live)**" under Webinar Access and Credit, and then click on the link that will be available at 9:30 a.m. on the day of the webinar.
6. The Webinar link will open a new window in GoToTraining. Register for the webinar by entering your first and last name and email address. You will be able to enter the session beginning at 9:30 a.m. or after on the day of the webinar. To do so, click "**Join the Webinar**." If prompted to accept the download, click "**Yes**" or "**Always**."

We strongly encourage everyone interested in participating to log into the OLC before any upcoming live webinar to get comfortable navigating the site.

COURTS TO CLASSROOMS: DRSR UPDATE

Driving on the Right Side of the Road (DRSR) is a TxDOT funded program aimed at teaching school aged students about best practices in traffic safety. With this generous funding, the Texas Municipal Courts Education Center (TMCEC) and Texas Law Related Education/Law Focused Education, Inc. have created materials to use in the classroom, in community groups or presentations, and in homes to help teach children the important rules of the road that will keep them safe from childhood through young adulthood. All the resources that DRSR has created are free of charge. They are available both in hard copy through TMCEC and online through the DRSR website, www.drsr.info.

Some of the free resources available to your court are:

- Children's Books about Safety: DRSR currently has seven colorful and interactive children's books that use monkeys to teach children about traffic safety. All books are available in both English, Spanish, and big book form. These titles include:
 - *Don't Monkey Around with Safety in the Car*
 - *Don't Monkey Around on Your Bicycle*
 - *Don't Monkey Around with Safety on Field Trips*
 - *Safe-T-Squad*
 - *Be Careful, Lulu!*
 - *Safe, Not Sorry* sticker book
 - *Don't Monkey Around with Safety in Your Neighborhood*



These books can be used in a court lobby or used actively during school presentations given by your court. Parents can use these books at home as bed-time reading. Teachers use these books during reading time or as prizes for students to take home.

- Curriculum and Lessons about Safety: DRSR has developed a curriculum for teachers to use in the classroom to teach safety while teaching social studies, math, health, and reading/writing. Court personnel can use this curriculum while presenting at schools or to community groups. For more information about how to use the DRSR K-3 and K-12 curricula, please contact us! We would love to help you organize a presentation for your local schools and community groups. These lessons are available on the DRSR website (www.drsr.info) or in hard copy from TMCEC.
- Mock Trials: TMCEC offers three comprehensive guidebooks on setting up a mock trial. The books contain everything you need to get started organizing a mock trial in your community. Please contact Liz De La Garza (elizabeth@tmcec.com) for DRSR titles and Ned Minevitz (ned@tmcec.com) for MTSI materials. Titles include:
 - *DRSR Mock Trial Guide*
 - *DRSR State v. Young*
 - *MTSI Driving Under the Influence Mock Trial Lesson*
- Traffic Safety DVDs: DRSR has an extensive lending library that covers a wide variety of traffic safety issues. These DVDs can be lent to your court for a month at a time at no charge to you. Topics include

underage drinking, impaired driving, and more. Please contact Liz De La Garza at elizabeth@tmcec.com for more information!

- **Posters, Brochures, and Promotional Items:** Many courts have set up a traffic safety exhibit in their courtroom lobbies to help teach the public about traffic safety. DRSR has a wide variety of posters, safety brochures, and promotional items to help you stock an exhibit area. We have posters that discourage impaired driving and distracted driving. Informational posters about booster seats and seat belt laws are also available. DRSR carries safety education materials from TxDOT, the National Safety Council, and from other traffic safety organizations. All these items can be shipped free of charge to your court!
- **New and Exciting Traffic Safety Education Materials:**
 - *Texas Road Tips – 2019 Edition* – TxDOT has produced a glove-box sized book that helps all drivers remember the rules of the road. Subjects in the book include aggressive driving, collisions, distracted driving, driving while intoxicated, highway driving, and so much more! This is a great item to distribute to anyone visiting your court!
 - **Buckle Bear** – DRSR has purchased more of these traffic safety education puppets for use in municipal courts! Please contact DRSR to borrow this lap puppet and its traffic safety education materials!
 - **Distracted and Drowsy Driving Goggles** – DRSR has purchased a few more of these campaign kits. They are great teaching tools to use at safety events in your city! They come with a miniature car attached to a pole and steering wheel that takes participants through a town drawn on a sturdy map. Used with the distracted/drowsy goggles to educate users on the dangers of these behaviors. Contact DRSR to borrow these highly effective kits for your next community event!



If you and your court are hosting any kind of community outreach, contact DRSR for materials and assistance in getting the most of your efforts! DRSR, TxDOT, and TMCEC commend the courts who are reaching out beyond their courtroom to their communities. Together, we can save lives!

To request more information about how to use or obtain DRSR's books and curriculum, please contact Liz De La Garza at 512-320-8274 or elizabeth@tmcec.com.



MUNICIPAL JUDGES REQUIRED TO COMPLETE CHILD WELFARE AND IDEA TRAINING IN THE 2019-2020 ACADEMIC YEAR

In the 81st Regular Legislative Session (way back in 2009), a new requirement was placed upon municipal judges to complete minimum education related to child welfare and the Individuals with Disabilities Education Act (IDEA).

WHAT IS THE IDEA?

IDEA is the federal law enacted with the goal of providing full educational opportunities to all students with disabilities in the United States. Those full educational opportunities are provided in public schools through special education programs. Therefore, IDEA serves as the basis for all special education programs in every public school in Texas. More specific to courts, the IDEA helps ensure certain rights to children in special education programs who may be adversely affected by disciplinary proceedings in the juvenile justice system.

WHAT IS THE REQUIREMENT FOR EDUCATION RELATED TO THE IDEA?

In 2009, House Bill 1793 added Section 22.1105 to the Government Code, which established additional education requirements for every judge who handles juveniles charged with fine-only offenses. Under Sec. 22.1105, judges must complete a two-hour course of instruction related to understanding the relevant issues of child welfare and the IDEA in every judicial academic year ending in 0 or 5.

CAN I MEET THIS REQUIREMENT THROUGH TMCEC THIS YEAR?

Yes, TMCEC offers you multiple options for satisfying this requirement.

1. **In-Person Training at a Regional Seminar** – Several classes are approved for IDEA/Child Welfare credit at the regional seminars. Judges can complete the two-hour requirement in full, or partially while at the seminar.
2. **Webinars** – Multiple webinars are available that will cover child welfare and the IDEA topics. Judges who watch two webinars will fulfill the two-hour requirement.
3. **Videos on the Online Learning Center** – A [child welfare and IDEA page](#) is available this academic year with access to three videos dealing with child welfare and the IDEA. Judges who watch this series will fulfill the requirement.

HOW DO I REPORT THIS REQUIREMENT?

Judges who fulfilled the requirement at an in-person Regional Seminar, were able to indicate they have met the requirement on the Record of Attendance. Judges who watch webinars or the videos will be able to submit a Child Welfare/IDEA Certification for Credit available on the OLC page.

THE 2020 LEVEL III ASSESSMENT CLINIC WAS A SUCCESS!

The goals of Assessment Clinics are to prepare clerks to pass the Level III exam, to successfully write observation journals, and to equip them with the knowledge and skills required to become a Certified Municipal Court Clerk. All of which better them as municipal court support personnel and improves the profession as a whole. With 26 Level II Certified Clerks in attendance this year, participation in the Clerk Certification Program, specifically Level III, continues to grow each year. With some new faculty this year, there was no shortage of information to be obtained and utilized by the clerks in their journeys to become Certified Municipal Court Clerks. The clerks learned about journal writing, diversity, and leadership, among other things. Participants were engaged and eager throughout the four-day conference. TMCEC hopes that attendees will continue to pursue Level III Certification.



SBOT ANNUAL CONFERENCE



The Municipal Judges Section of the State Bar of Texas (SBOT) is presenting *Mental Health & Municipal Courts: How Judges Can Lead* as its topic at the annual Section meeting on June 26, 2020 in Dallas at the SBOT Annual Meeting. The presentation is at the Dallas Hilton Anatole from 11:00 a.m. - 12:00 p.m. Judges may attend on this date at no cost with a luncheon provided. There will be a panel discussion, moderated by Hon. Rodney Adams, Presiding Judge, Irving Municipal Court, and featuring the following panelists:

- Kristi Taylor, Executive Director, Texas Judicial Commission on Mental Health
- Hon. Kristin Wade, Presiding Judge, Dallas County Court of Criminal Appeals #1
- Hon. Ann Collins, Municipal Judge, Fort Worth

The panel will expound on how municipal courts can become an effective diversionary tool for encouraging defendants charged with Class C misdemeanor offenses toward pursuing appropriate services when they present themselves at the courts or in custody with behavioral health challenges. The hope is to staunch further engagement in criminality and exposure to the criminal justice system through addressing their and even their household's mental health, substance use, and alcohol use issues.



DRIVING UNDER THE INFLUENCE OF IMPAIRING PRESCRIPTION DRUGS



This article has been adapted from *Attitudes and Awareness Surrounding Driving Under the Influence of Impairing Prescription Drugs*, a comprehensive target audience study envisioned and conducted by GDC Marketing and Ideation in concert with Baseline & Associates, Inc. for execution of the polling and Suma Social Marketing for execution of the focus groups. The project was sponsored by the Texas Department of Transportation (TxDOT). It is reprinted with permission. TxDOT commissioned the study to better understand the public's mindset regarding impairing prescription drugs and potential messaging to educate them to change their attitudes and behavior regarding driving while impaired by prescription drugs. The study included two sections—quantitative and qualitative.

This study aimed to identify what percentage of the population uses impairing prescription drugs (IPDs) and what percentage admits to driving under their influence; identify segments of the population most likely to drive on IPDs; measure the public's attitude and awareness regarding the risks and consequences therein; and identify a messaging strategy to inform the public, most importantly those segments most at risk of driving under IPDs, about the risks and consequences of driving on IPDs, with the ultimate goal of reducing those incidences. For both phases, researchers limited their study to adults who regularly (multiple times a week) drove an automobile.

The Problem

The Governor's Highway Safety Association (GHSA) has identified drug-impaired driving as a critical issue for states and state highway safety offices ("Drug Impaired Driving: A Guide For States," *GHSA*, April 2017). Despite common knowledge that driving under the influence of alcohol is overtly dangerous, the public is not fully informed about the dangers of drug-impaired driving, particularly as it relates to prescription drugs. Though scientific research still lacks the ability to discern which prescription drugs are impairing, there is sufficient peer-reviewed research to definitively say certain drugs are inherently impairing, including three classifications of prescription drugs: benzodiazepine (BDZ) class anti-anxiety drugs, non-BDZ sleep medications, and narcotic painkillers.

BDZ class anti-anxiety drugs, such as Xanax®, and non-BDZ sleep medications, such as Ambien®, are the same classification of drug as alcohol. Research on BDZ classification drugs has shown they increase traffic crash risk by a factor of between 1.5 and 6.5 times depending on the dose, which is similar to risks associated with blood alcohol concentrations of about 0.6 and 1 g/L, respectively ("Driving on Benzodiazepine Use," *CNS Drugs*, November 1998.)

A study on non-BDZ hypnotics, such as Ambien®, showed that users were more than twice as likely as non-users to have a car crash over the five years studied ("Sedative Hypnotic Medication Use and the Risk of Motor Vehicle Crash," *American Journal of Public Health*, August 2015.) The report estimates the risk is equivalent to blood alcohol concentrations between 0.06% and 0.11% (ibid.).

Narcotic painkillers, such as opioids, are classified as narcotic analgesics (painkillers). Studies on driving under the influence of narcotic painkillers have shown a statistically significant increase in crashes. Columbia University's

Mailman School of Public Health published a finding showing from 1995 to 2015 the number of fatally injured drivers who tested positive for prescription opioids rose sevenfold from 1% in 1995 to over 7% in 2015 (“Trends in Prescription Opioids Detected in Fatally Injured Drivers in 6 US States: 1995-2015,” *American Journal of Public Health*, September 2017).

A large number of prescriptions are written for narcotic painkillers. In fact, the most commonly prescribed drug, hydrocodone, is a narcotic painkiller (“The 10 most popular prescription drugs in the US,” *Business Insider*, December 2017).

Quantitative and Qualitative Studies: A Summary

From January 10 to 18, 2017, researchers interviewed a sample size of 601 adults from Texas over the internet.

From February 28 to March 2, 2017, researchers interviewed five (5) focus groups of 8-10 participants in El Paso (1), Dallas (2), and Austin (2). All three (3) focus groups were comprised of women between the ages of 28-48 years old. Two (2) of the focus groups (Dallas and Austin) were comprised of those who used narcotic painkillers and/or BDZ class anti-anxiety drugs.

Quantitative Findings

One goal of this study was to better understand how common the use of these three IPDs is, especially compared to the use of other impairing substances. It should be noted that the list of IPDs included in this study is not exhaustive.

Nineteen percent (19%) of the Texas adult population took at least one of three IPDs, with some participants taking more than one:

- 11% have taken a narcotic painkiller, like OxyContin® or codeine
- 8% have taken a BDZ class anti-anxiety drug, like Xanax®
- 6% have taken a prescription sleep aid, like Ambien®

These findings show alcohol use is the most common, with one of three IPDs close behind. Marijuana use is significantly less common than IPD use, while illegal drug use is relatively rare (2% as self-reported).

Of the 19% of individuals who admitted to taking one of the three IPDs identified in the study, researchers noted a few demographic differences from the general population. The first difference was gender, with nearly a quarter of females (24%) admitting to taking an IPD, as opposed to only 13% of males. In terms of race and ethnicity, Caucasians mirrored the overall population (18%), but Hispanics were more likely to have taken an IPD (22%) while African-Americans were less likely (11%).

The next goal of the study was to discover the prevalence of driving under the influence of an impairing prescription drug, especially compared to other dangerous driving behaviors. This involved determining what percentage of respondents self-identified as engaging in these behaviors, as well as determining what percentage stated they were a passenger in a vehicle with a driver who engaged in these behaviors. The study uncovered a very strong correlation between those two groups. Since this was a self-reported study, all responses were subjective and based on the respondents’ personal perspectives (for example, whether they define speeding as excessive speed or above the posted speed limit).

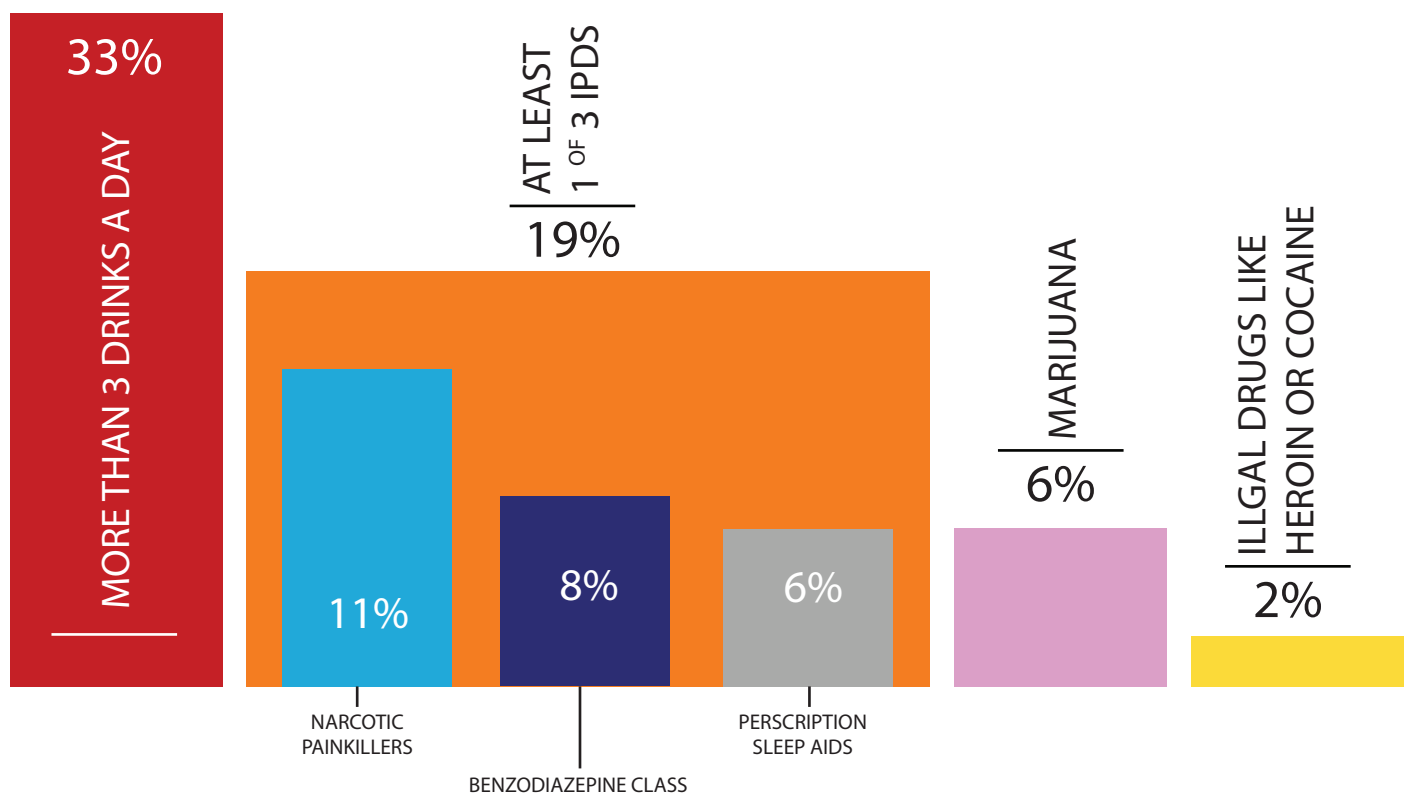
Of the most common risks to driving, the amount of people who admitted to driving under the influence of IPDs was significantly lower than speeding (61%), texting (39%), and driving after consuming more than three alcoholic drinks in a day (18%). Ten percent of the focus group participants admitted to driving within a few hours of taking at least one IPD:

- 7% driving within a few hours of taking a narcotic painkiller
- 4% driving within a few hours of taking a BDZ class anti-anxiety drug
- 1% driving within a few hours of taking a prescription sleep aid

Of the impaired driving behaviors, most studies tended to align with IPD overall use rates. The prescription sleep aid category, however, is far lower than its overall use rate would suggest.

When comparing people who use IPDs with people who admitted to driving under the influence of IPDs, some interesting demographic trends emerge. As expected, from the usage data, this category is more likely to be female (12%) than male (7%) and more likely to be Hispanic (13%) than other races or ethnicities. However, one key distinction did emerge: individuals 55 years of age or older (7%) are less likely to have driven while consuming IPDs than individuals 18-34 (10%) or 34-54 (11%).

While 9% of the overall sample stated they were involved in a motor vehicle crash in the past year (whether they were a passenger, at-fault driver, or other driver), twice as many drivers (18%) self-identified as passengers in a



vehicle driven by someone using an IPD or admitted to driving on IPDs and had been involved in a crash in the past year.

Furthermore, 13% of the sample stated that they had received a traffic citation in the past year, but 20% of the passengers or drivers on IPDs had received a traffic citation in the past year.

While these findings did not address fault for the crashes, they certainly did display a statistically significant pattern of engaging illegal driving behaviors and being involved in crashes.

Another goal of this study was to measure the public’s attitudes toward and awareness of the risks of driving on IPDs.

The results of the research concluded that a significant amount of the public considered driving while texting (91%), driving while under the influence of an illegal drug (90%), driving within a few hours of taking a prescription sleep

aid like Ambien® (90%), and driving after consuming more than three alcoholic drinks in a day (83%) were more serious concerns than driving within a few hours of taking a prescription painkiller (77%).

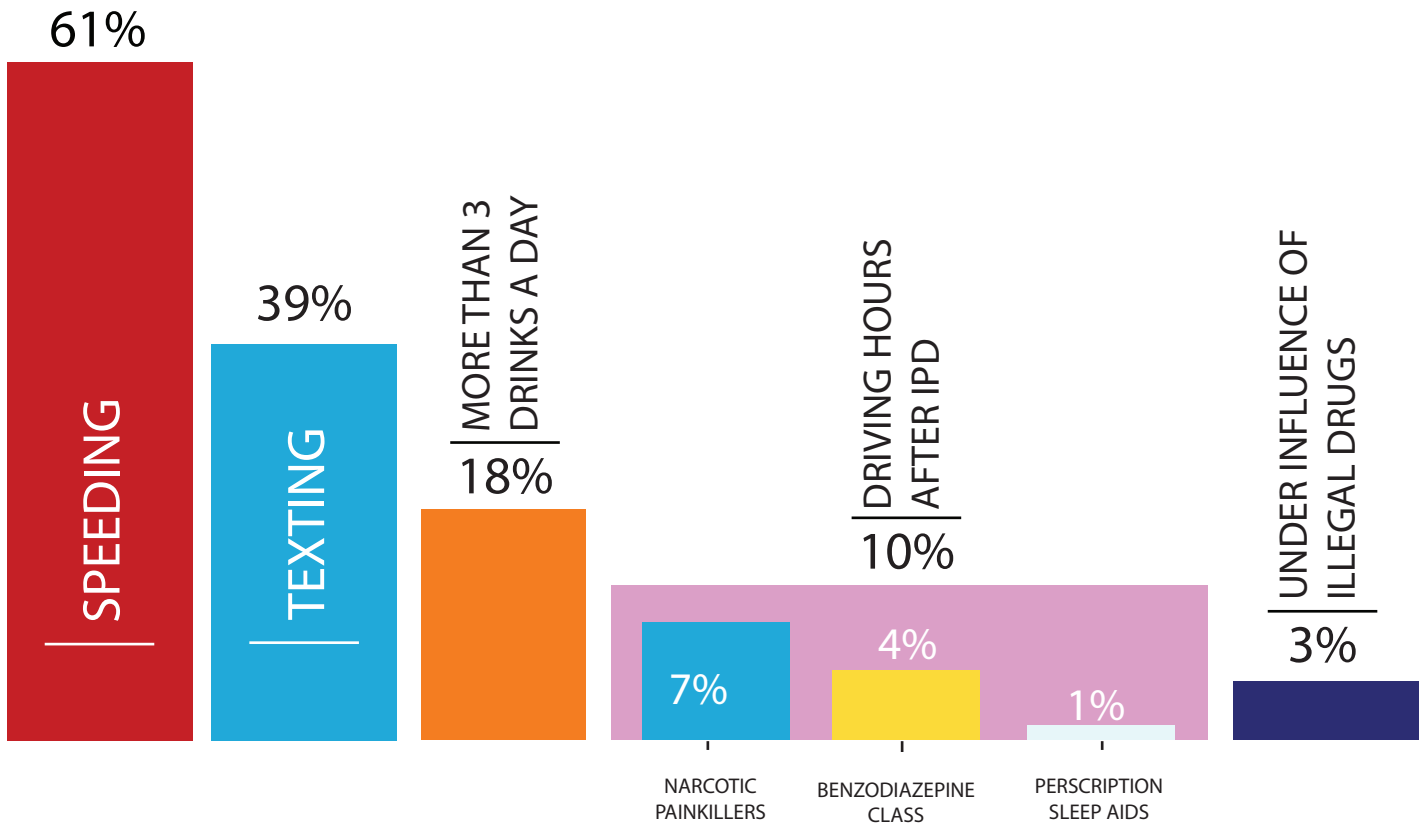
Much of the reasoning behind these findings has to do with the understanding of the severity of driving under the influence of IPDs. Researchers sought two pieces of information : 1) if respondents thought it was reasonable to expect people not to drive under the influence of an IPD; and 2) the perception of the legal penalty for driving under the influence of an IPD.

1 in 5 people (20%) believe it’s very reasonable to expect people not to drive under the influence of the other two drug classifications or not to drive on BDZ class anti-anxiety drugs. This trend of respondents viewing non-BDZ sleep medications, like Ambien®, differently than the other two types of drugs illustrates that the public has a far greater understanding of the risks involved with taking Ambien® and driving, and believing it is unacceptable to do so.

Qualitative Findings

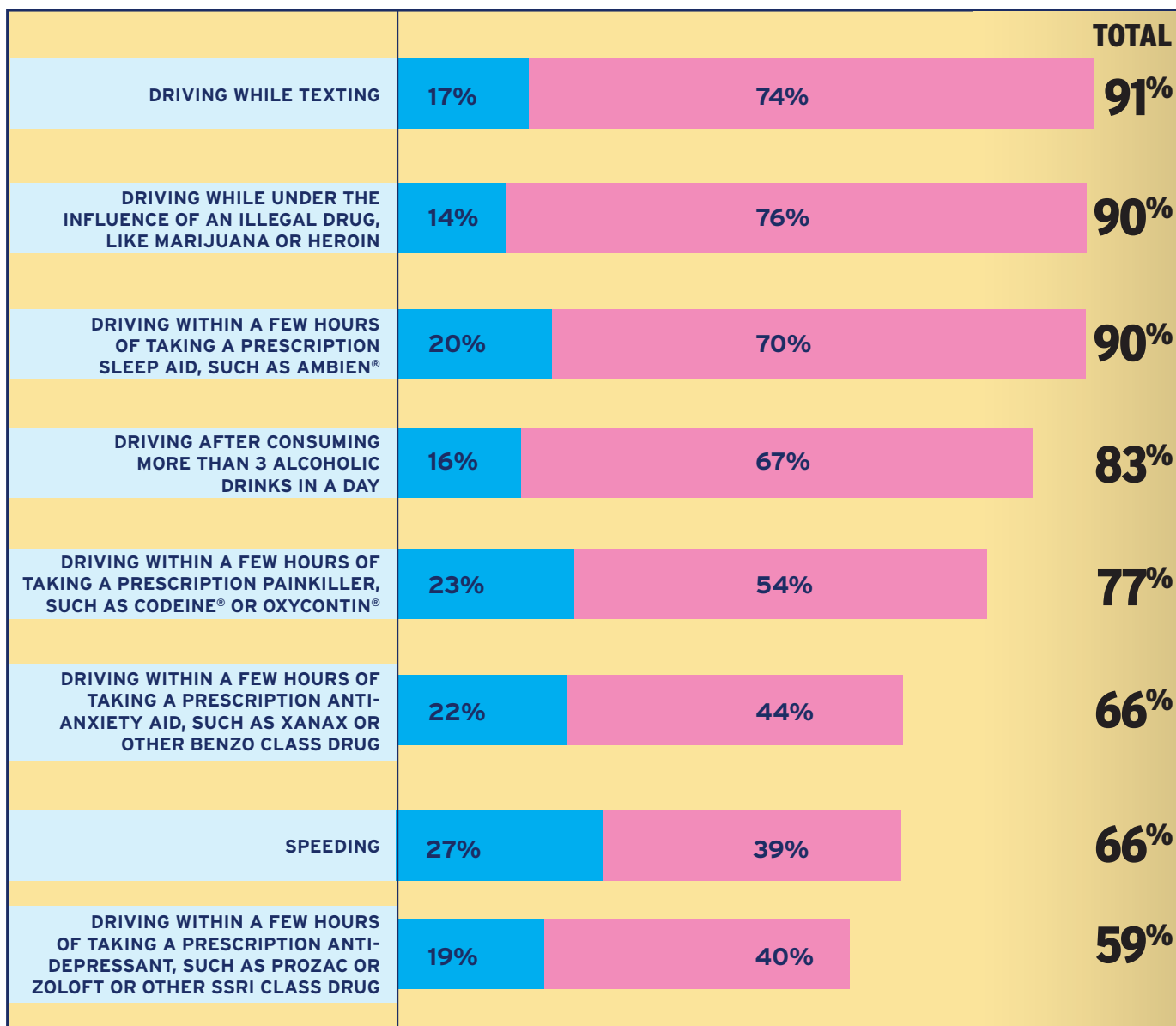
The qualitative research did the job of answering the why of public perception. Participants grasped that illegal drugs and alcohol create impairment but did not believe prescription drugs did. Instead, they associated them with drowsiness. Participants believed that if there truly was a problem with prescription or illegal drugs, they would have seen TV commercials and marketing campaigns surrounding this issue. Therefore, participants in most of the focus groups felt it was not reasonable to expect individuals to not drive after taking an IPD. There was an absolute expectation that “you have to drive.” However, the El Paso focus group expressed an alternative perspective. Participants believed it was reasonable to expect people not to drive on an IPD because someone in their family would be available to drive them around.

Respondents believed pharmacists are far more likely to educate them on this issue, but even pharmacist experience was far from universal. One difference to note is that IPD users were significantly more likely than



THE PUBLIC'S ATTITUDES AND AWARENESS OF THE RISKS OF DRIVING ON IMPAIRING PRESCRIPTION DRUGS

SERIOUS **VERY SERIOUS**



non-users to know their pharmacist and regularly discuss drug interactions and side effects with them. For both users and non-users, participants recalled hearing “soft” warnings including being urged to “see how this affects you” and being told that it’s “not recommended to drive while on this.”

Under the circumstances that many respondents were ill-informed of the dangers of driving under the influence of IPDs, focus groups indicated messaging (from medical sources especially) needs to be explicit and simple. Further, when asked about potential legal consequences, participants overwhelmingly did not know the law. There was a general belief that if one has a valid prescription, then penalties will not be the same as if someone who does not have a prescription and is “abusing” the drug. In fact, many participants saw the doctor’s prescription as making it allowable to take the drug and thus also allowable to drive and conduct all other “normal” life functions. Many respondents stated that the doctor would have explicitly told them it was illegal to drive under the influence of the drug, if it really was. Respondents also did not believe that law enforcement can detect individuals under the influence of prescription drugs.

Researchers conducted message testing to find out what messages would affect the overall participant mindset. Of the three messages tested, one emerged as the most motivational. Additionally, it was the only one that was universally understood: “Penalties for operating a vehicle under the influence of an impairing prescription drug are the same as being intoxicated on alcohol.”

When probed to ascertain why this message was most effective, it became clear that people inherently understood the risks and consequences of drunk driving. By framing driving under the influence of an IPD in this way, it removed ambiguity and became a clear-cut issue.

Conclusion

While adverse physiological effects of all prescription drugs are not fully understood, researchers have concluded some drugs clearly impair driving ability. Of the three classifications of drugs analyzed in this study, participants did not understand the risk of driving under the influence of BDZ class and narcotic painkillers. The percentage of the population that admits to driving under the influence of IPDs indicates this is a widespread and serious problem in Texas. The demographic makeup of the audience most likely to drive under the influence of these two classifications of drugs (35-54, over-index female) is significantly different than the demographic makeup of the audience most likely to drive under the influence of alcohol (17-35, over-index male). Message testing indicates a public information and education campaign could effectively change public perceptions and reduce the number of people driving under the influence of these prescription drugs.

Special thanks to David Ocamb, Chief Planning & Research Officer, GDC Marketing & Ideation, and Marsha Scott, Traffic Safety Program Manager, Texas Department of Transportation, for making it possible to publish this research for the benefit of municipal courts across Texas.

Sources

- Boudreau, Denise M.; Ebel, Beth E.; Grossman, David C; Hansen, Ryan N.; Sullivan, Sean D. (2015). “Sedative Hypnotic Medication Use and the Risk of Motor Vehicle Crash.” *American Journal of Public Health* 105 (8), e64-e69.
- Chihuri, Stanford; Li, Guohua (2017). “Trends in Prescription Opioids Detected in Fatally Injured Drivers in 6 US States: 1995–2015.” *American Journal of Public Health* 107 (9), 1487-1492.
- GHSA (2017). *Drug-Impaired Driving: A Guide For States*. Governors Highway Safety Association.
- Miller, Sara G. (2016). “1 in 6 Americans Takes a Psychiatric Drug.” Retrieved from www.scientificamerican.com/article/1-in-6-americans-takes-a-psychiatric-drug.
- Ramsey, Lydia (2017). “The 10 most popular prescription drugs in the US.” Retrieved from www.businessinsider.com/common-popular-prescription-drugs-us-2017-7.
- van Laar, M.W., Volkerts, E.R. & van Laar, M. Mol Diag Ther (1998). “Driving and Benzodiazepine Use.” *CNS Drugs* 10 (5), 383-396.

GUIDELINES FOR 800-LINE CALLS

TMCEC fields hundreds of calls on the 800-line from the more than 900 cities with municipal courts across Texas. Please observe the following rules when utilizing the 800-line so that TMCEC may efficiently and effectively serve all of its constituents:

- Remember, TMCEC only takes questions from judges, clerks, city prosecutors, bailiffs, and warrant officers. Please do not refer defendants, commercial vendors, members of your city council, or other peace officers to TMCEC.
- While you may rely on the 800-line as your primary method of resolving court-related questions, we ask that you view it as a last resort.
- Before you decide to call, please make a concerted effort to locate the pertinent portions of relevant statutes (e.g., Penal Code, Code of Criminal Procedure, Transportation Code, etc.).
- Please do not call without first having carefully examined the statute(s) in question.
- Questions pertaining to court costs, records and reporting, record management, local government issues, open record requests, and ethical dilemmas should be made directly to agencies specializing in the subject matter, whenever possible.
- Judges with questions are asked to call in person rather than having clerks or other court personnel call on their behalf.
- Clerks should consult with their judges prior to calling, whenever possible.
- TMCEC cannot give legal advice. Please do not attempt to utilize the legal resources of TMCEC in lieu of consulting your city attorney.
- Questions should not be submitted by means other than the 800-line. Do not use email or chat features to submit a legal question.
- Please do not ask TMCEC to prepare a written response to your legal question—TMCEC is unable to do so.
- Please do not call TMCEC if your question pertains to a personal legal matter.



If you call, your patience is appreciated. Your call will be returned as soon as possible. However, due to the volume of telephone calls received and the importance of other services provided by TMCEC (e.g., training, program development, publications) your call may not be returned immediately. We do make every effort to return calls within 24 hours.

**TEXAS MUNICIPAL COURTS
EDUCATION CENTER
2210 Hancock Drive
AUSTIN, TX 78756
www.tmcec.com**

Change Service Requested

Presorted Standard
U.S. Postage
PAID
Austin, Texas
Permit No. 114

TMCEC MISSION STATEMENT

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

Court Costs *Continued from pg. 12*

however, is that many courts that do not have JCMs do not have one for a reason: there are not enough juvenile cases to warrant funding the position. Thus, while expanding the fund to juvenile diversion programs could assist a slightly larger number of courts, the same problem would exist as in current law for a significant amount of small and medium Texas municipal courts.

38. Tex. Loc. Gov't Code § 133.125(a).

39. Tex. Loc. Gov't Code § 133.125(c).

40. *Tate v. Short*, 401 U.S. 395 (1971). *Media buzz aside, current Texas laws are ahead of other states and do not authorize most controversial practices occurring in local courts of other states.*, Special Edition of The Recorder, Oct. 2016, at 6.

41. See Tex. Code Crim. Pro. Ann. art. 45.041.

42. Tex. Crim. Pro. Code Ann. § 102.030.

43. *E.g.*, *Ovalle v. State*, 592 S.W.3d 615, 618 (Tex. App.—Dallas 2020, no pet.); *Simmons v. State*, 590 S.W.3d 702, 712-13 (Tex. App.—Waco 2019, no pet.); *Dulin v. State*, 583 S.W.3d 351, 353 (Tex. App.—Austin 2019, pet. granted); *Kremplewski v. State*, No. 01-19-00033-CR, 2019 Tex. App. LEXIS 6919, 2019 WL 3720627, at *3 (Tex. App.—Houston [1st Dist.] Aug. 8, 2019, no pet.); *King v. State*, No. 11-17-00179-CR, 2019 Tex. App. LEXIS 5902, 2019

WL 3023513, at *5 (Tex. App.—Eastland July 11, 2019, no pet.) (mem. op., not designated for publication); *Townsend v. State*, No. 13-18-00049-CR, 2019 Tex. App. LEXIS 10071, 2019 WL 6205470, at *8 (Tex. App.—Corpus Christi Nov. 21, 2019, no pet.) (mem. op., not designated for publication); *Johnson v. State*, 573 S.W.3d 328, 340 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

44. *Id.* Note that the precedents established by a court of appeals are binding on the lower courts in its own district, but not in others.

45. Tex. Crim. Pro. Code Ann. § 102.030(d).

46. See *2013 Legislative Update*, The Recorder, Aug. 2013, at 10.

47. *Id.*

48. Charts, Texas Municipal Courts Education Center, <http://tmcec.com/resources/charts/> (last visited April 9, 2020).

49. *Weir v. State*, 278 S.W.3d 365, 365-66 (Tex. Crim. App. 2009) (emphasis added).

50. The Time Payment Fee does not violate the Texas Constitution, Article I, Section 16, which states that: “No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligations of contracts shall be made.” Tex. Att’y Gen. Op. No. DM-464 (1997) at 3.

51. Tex. Att’y Gen. Op. No. RQ-0314-KP (2019).