

**NEW COURT APPOINTMENT PROCEDURES AND REPORTING REQUIREMENTS: HOW DO THEY APPLY TO MUNICIPAL COURTS?**

Mena Elena Ramon, General Counsel, Office of Court Administration

The 84th Texas Legislature passed two bills providing new procedures and reporting requirements for court appointments. Senate Bill 1876<sup>1</sup> (SB 1876) enacted new procedures for courts to follow when appointing attorneys ad litem, guardians ad litem, guardians, and mediators. Senate Bill 1369<sup>2</sup> (SB 1369) added new reporting requirements regarding the appointment and payment of persons covered under SB 1876 and competency evaluators.

**Applicability to Municipal Courts**

Both SB 1876 and SB 1369 apply to courts in the state that are “created by the Texas Constitution, by statute, or as authorized by statute.” SB 1876 adds one limitation – it only applies to those courts that are located in a county with a population of 25,000 or more.<sup>3</sup>

*New Reporting continued on pg. 4*

**BROADENING BEARDEN: PRE-TRIAL JUSTICE AND WHY BAIL PRACTICES MAY BE IN STORE FOR MAJOR CHANGES**

Ned Minevitz, TxDOT Grant Administrator & Program Attorney, TMCEC

The recent push for nationwide judicial fine, fee, and court cost reform by various advocacy groups is, at this point, no secret. Phrases such as “debtors’ prison”<sup>1</sup> and “going to jail for being poor”<sup>2</sup> are cropping up on news feeds on a seemingly daily basis. The movement involves bringing increased attention to the 1983 Supreme Court case, *Bearden v. Georgia*.<sup>3</sup> In *Bearden*, the Supreme Court held that jailing a probationer for not paying a fine with *no inquiry* into the reasons for nonpayment was unconstitutional.<sup>4</sup> The chief complaint

today is that courts are not conducting the required inquiry into a defendant’s ability to pay a legal financial obligation. So far, the discussion has generally been dominated by *post-judgment* legal financial obligations, i.e., a defendant’s monetary costs following conviction (such were the issues in *Bearden*). Recently, however, advocacy groups have added *pre-trial* costs (e.g., bail and bond conditions) into the fold.

*Broadening Bearden continued on pg. 9*

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## Texas Municipal Courts Education Center

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

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## AROUND THE STATE

### TMCA Recognizes Judge Rodney Adams and Court Administrator Rhonda Kuehn

This year, Judge Rodney Adams of Irving and Court Administrator Rhonda Kuehn of Brenham were awarded Outstanding Judge and Court Support Personnel (respectively) by the Texas Municipal Courts Association (TMCA). These awards are bestowed annually to a municipal judge and court support personnel who demonstrate excellence in the fair administration of justice. The presentation ceremony took place at the Annual TMCA Convention in San Antonio on June 10th.

Judge Adams, given the Outstanding Judge Award, has served as Presiding Judge of the Irving Municipal Court since 2010. He previously served as a municipal prosecutor and adjunct professor of Criminology at the University of Texas at Arlington. Prior to joining the judiciary, Judge Adams worked in public administration for 11 years at the municipal and federal levels with the Cities of Austin, Fort Worth, and San Antonio, and the United States Commission on Civil Rights. As a municipal judge, he has been active in proposing legislation to improve the administration of justice in Texas municipal courts. Judge Adams has been an active supporter of the Texas Municipal Traffic Safety Initiatives sponsored by the Texas Municipal Courts Education Center (TMCEC) and the Texas Department of Transportation. The Irving Municipal Court has been recognized for the past nine years for their outstanding work in saving lives under his leadership. Judge Adams has also served on the TMCEC faculty teaching a webinar on alcohol awareness. Judge Adams is very committed to his work and profession but still finds time to be active in his community and church.

Brenham Court Administrator Rhonda Kuehn was presented with the Outstanding Court Support Personnel Award. Rhonda serves as the President of the Gulf Coast Chapter of the Texas Court Clerks Association (TCCA). She currently co-chairs the TCCA Certification and Education Committee and sits as a member on the TMCA Education Committee. She has served on the TCCA Board as well as many of its committees. Under Rhonda's initiative, TMCEC and TCCA partnered to bring the local clerk clinics to smaller towns in FY16. The local clerk program will continue in FY17. Rhonda has also represented TCCA on the Texas Municipal League Board of Directors. Rhonda has given countless hours of her time and service to her profession through her association work, as well as teaching for TMCEC, TCCA, and local chapters of TCCA. Participants value her extensive knowledge of municipal law and procedures, command of the details involved, common sense, practical application of the law, and fun sense of humor that characterize her classes.

TMCA was established over 40 years ago and consists of over 1,000 members dedicated to the fair and impartial administration of justice. Through grant funds appropriated by the Legislature and provided by the Texas Court of Criminal Appeals, the TMCA formed an Education Center in 1983, now known as TMCEC, to provide professional education programs for municipal judges and court personnel.

<http://www.txmca.com/>

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# TRAFFIC LAW UPDATE

## TEXAS COURT OF CRIMINAL APPEALS DISTINGUISHES DRUGGED DRIVING CASE FROM *MCNEELY*

Ned Minevitz, TxDOT Grant Administrator & Program Attorney, TMCEC

In 2013, the U.S. Supreme Court declared in *Missouri v. McNeely* that the natural dissipation of alcohol in the blood does not constitute a *per se* exigency that would justify an exception to the warrant requirement in drunk driving cases.<sup>1</sup> The Court, however, maintained that it could be a factor in a totality of the circumstances analysis justifying a warrantless blood draw. Thus, after *McNeely*, the permissibility of a warrantless blood draw in drunk driving cases must still be determined on a case by case basis.

On May 25, 2016, the Texas Court of Criminal Appeals (CCA) delivered its opinion in *Cole v. State*. The facts are as follows: In 2011, Steven Cole drove his pickup truck 110 miles per hour through a red light at a busy intersection in the City of Longview, Texas.<sup>2</sup> He struck another pickup truck, killing the driver instantly.<sup>3</sup> While being treated, Cole told EMS that he had “taken some meth.”<sup>4</sup> At the hospital, Cole was described as “mumbling incoherently to himself and experiencing involuntary leg and hand movements,” which is consistent with methamphetamine intoxication.<sup>5</sup> Cole refused to give a blood sample, insisting that he had only used meth and had not consumed alcohol.<sup>6</sup> Law enforcement ordered the hospital to draw blood anyway, which showed intoxicating levels of amphetamine and methamphetamine.<sup>7</sup> At trial, the motion to suppress the blood evidence was overruled, which was later deemed an error by the appeals court.

In conducting its totality of the circumstances analysis, the CCA determined that a warrantless blood draw was permissible in this case. While multiple circumstances were factored into the decision in *Cole*, one stands out, especially to anybody that was less than thrilled with the *McNeely* decision. The CCA pointed out that *McNeely* relied heavily on the fact that alcohol dissipates from the bloodstream in a relatively predictable and gradual manner.<sup>8</sup> The dissipation rates of illegal drugs, however, are generally unknown. Thus, the Court went on to state that “law enforcement faced inevitable evidence destruction without the ability to know – unlike alcohol’s widely accepted elimination rate – how much evidence it was losing as time passed.”<sup>9</sup> This, the Court writes, “serves to distinguish this case from *McNeely*.”<sup>10</sup>

This short section of the *Cole* opinion, taking up only 12 lines, could potentially serve as a preview of things to come. Perhaps Texas courts will be more willing to permit warrantless blood draws where there is probable cause to believe the driver is under the influence of drugs. With many states considering legalizing marijuana (if they have not already), perhaps the Supreme Court will decide to examine whether the dissipation of drugs in the bloodstream creates a *per se* exception to the warrant requirement for blood draws in drugged driving cases. At the very least, *Cole* serves as an added arrow in Texas prosecutors’ quiver when fighting blood evidence suppression hearings in drugged driving cases. Stay tuned for further developments in future issues of *The Recorder*.

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1. *Missouri v. McNeely*, 133 S. Ct. 1552 (2013).  
2. *Cole v. State*, No. PD-0077-15, 2016 Tex. Crim. App. LEXIS 84, at \*1 (Tex. Crim. App. May 25, 2016).  
3. *Id.*  
4. *Id.* at \*3.

5. *Id.*  
6. *Id.* at \*4.  
7. *Id.* at \*5.  
8. *Id.* at \*19.  
9. *Id.*  
10. *Id.*

Municipal courts fall under the broad description of courts covered by both bills. However, as I will discuss in this article, the bills' provisions cover appointments that municipal courts, for the most part, do not make. Additionally, complying with some of the bills' requirements can be awkward for municipal courts because the requirements assume that all affected courts operate like district and county-level courts. The goal of this article is to explain the new requirements and how municipal courts can comply with them or, in instances where this is not feasible, how they can comply with the intent of the law.

## **Senate Bill 1876 - Court Appointment Procedures**

Effective September 1, 2015, SB 1876 added Chapter 37 to the Government Code. Chapter 37 provides new procedures for the appointment of attorneys ad litem, guardians ad litem, mediators, and guardians in counties with a population of 25,000 or more.<sup>4</sup> Although municipal courts rarely make any of these appointments, except for the occasional appointment of an attorney ad litem or guardian ad litem in a truancy case or other case involving a child or, perhaps, a mediator, the Chapter 37 requirements still apply to municipal courts.

The most significant change to practices in effect before September 1, 2015 is the requirement that a court, when required to appoint an attorney ad litem, guardian ad litem or guardian, appoint the person whose name appears first on a list that the court is required to maintain pursuant to Section 37.003 of the Government Code.<sup>5</sup> Courts are also required to follow this appointment process when appointing mediators in cases when the parties cannot agree on one.<sup>6</sup> Once a person from one of the lists is appointed, his or her name is moved to the end of the applicable list.<sup>7</sup>

New Section 37.003 of the Government Code requires courts to establish and maintain lists of: 1) "all attorneys who are qualified to serve as an attorney ad litem and are registered with the court," 2) "all attorneys and other persons who are qualified to serve as a guardian ad litem and are registered with the court," 3) "all persons who are registered with the court to serve as a mediator," and 4) "all attorneys and private professional guardians who are qualified to serve as a guardian as defined by Sec. 1002.012, Estates Code, and are registered with the court." A court may establish and maintain more than one list that is categorized by the type of case and a person's qualifications.<sup>8</sup>

### **DEFINITIONS**

#### **ATTORNEY AD LITEM**

"Attorney ad litem" means an attorney appointed by a court to represent the interests of a person, including a child or ward, a proposed ward, an incapacitated person or a person who has a legal disability, an unborn or unascertained person, or an unknown or missing potential heir. Attorneys ad litem are typically appointed in guardianship, probate, and family law proceedings. Municipal courts are most likely to report an appointment of an attorney ad litem in a truancy case.

#### **COMPETENCY EVALUATOR**

"Competency evaluator" means a physician or psychologist who is licensed or certified in this state and who performs examinations to determine whether an individual is incapacitated or has an intellectual disability for purposes of appointing a guardian for the individual. The term includes physicians and psychologists conducting examinations under Sections 1101.103 and 1101.104, Estates Code.

#### **GUARDIAN**

"Guardian" is a person appointed by the court to take care of the physical well-being of a child, incapacitated person, or ward, and/or the property of that child, incapacitated person, or ward. This person is usually appointed by the court as a guardian under Subchapter D, Chapter 1101 of the Estate Code.

#### **GUARDIAN AD LITEM**

"Guardian ad litem" means a person appointed by a court to represent the best interests of a child or an incapacitated person. This person does not have to be a licensed attorney. Municipal courts are most likely to report an appointment of a guardian ad litem in a truancy case.

#### **MEDIATOR**

"Mediator" means an impartial person who facilitates communication between parties to promote reconciliation, settlement, or understanding among them.

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## ***“Qualified to Serve”***

To be placed on the list to serve as an attorney ad litem, guardian ad litem, or guardian, Section 37.003 requires that the person be “qualified to serve” in that capacity and register with the court. The new law provides no guidance on how to determine if a person is “qualified to serve.” Although some of the appointee types that must be maintained on a Section 37.003 list have statutory qualification requirements,<sup>9</sup> the appointee types who would likely be appointed by a municipal judge do not (*e.g.*, attorneys and guardians ad litem and possibly mediators).

Without any guidance on how to determine whether a person is “qualified to serve,” municipal judges arguably can adopt their own objective standards. If judges are interested in setting up their own standards, they may find it helpful to review the standards established by the district and statutory county court judges in their county for persons to be placed on the Chapter 37 lists maintained by those courts.

## **Establishing and Maintaining the Lists**

Chapter 37 provides that a court may request that the court’s local administrative judge (LAJ) establish and maintain the required lists for the court. The law is silent as to whether municipal judges should each maintain their own lists or if the presiding judge may maintain the list for all of the court’s judges. If the judges decide to use one list, they should make sure that all of their appointments are made following the requirements of Chapter 37 to appoint the next person named on the list and to move the name of a person who is appointed to the end of the list.<sup>10, 11</sup>

Chapter 37 excludes some appointments from its requirements, but they are not the types of appointments that municipal courts usually make. The requirements do not apply to mediations “conducted by an alternative dispute resolution system established under Chapter 152, Civil Practices and Remedies Code,” and they do not apply to the appointment of 1) “a guardian ad litem or other person appointed under a program authorized by Section 107.031 of the Family Code (CASA appointment), 2) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203 of the Family Code, or 3) “a person other than an attorney or a private professional guardian appointed to serve as a guardian as defined by Section 1002.012, Estates Code.”<sup>12</sup>

Courts are permitted to appoint persons who are not next on the list or who are not on the list but meet the statutory or other requirements necessary for the appointment in two instances. The first is when the parties have agreed on the person and the court approves of the appointment.<sup>13</sup> The other is on a finding of good cause, if the appointment is required on a complex matter, because the person “possesses relevant specialized education, training, certification, skill, language proficiency, or knowledge of the subject matter,” “has relevant prior involvement with the parties,” or “is in a relevant geographic location.”<sup>14</sup>

SB 1876 requires an LAJ to ensure that appointments made by the courts in the county are made from the lists as required by Section 37.003.<sup>15</sup> It also requires the presiding judge of the probate courts to require that the LAJs for statutory probate courts in a county ensure that the statutory probate courts in the county comply with Chapter 37.<sup>16</sup> There is no comparable provisions for municipal courts. However, in order to comply with the intent of the law, it is recommended that the presiding judge of a municipal court ensure that all judges on the court are making any necessary appointments from a list maintained pursuant to Chapter 37.

## **Posting the Lists**

The lists maintained by the courts must to be posted annually “at the courthouse of the county in which the court is located and on any Internet website of the court.”<sup>17</sup> The bill is silent regarding the posting of lists in buildings that house municipal courts. To comply with the intent of the law, municipal courts should post their lists in the location where other court notices are posted.

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SB 1876 also requires that the lists be posted on “any Internet website of the court.” If courts do not maintain their own websites, they should coordinate with the person in the municipality who maintains the sites for the court and request that the lists be posted there. If there is no Internet website for the court, SB 1876 does not require that one be created solely for the purpose of posting the required lists.

### **Senate Bill 1369 – New Reporting Requirements Effective September 1, 2016**

Supreme Court of Texas Order Misc. Docket No. 07-9188<sup>18</sup> currently requires district, county, and probate courts to report to the Office of Court Administration (OCA) fees paid during a month in the amount of \$500 or more to persons appointed to positions for which any type of fee may be paid in a civil, probate, or family law case under Titles 1, 2, and 4 of the Family Code.

Senate Bill 1369’s new reporting requirements are more comprehensive than what is currently required under the Supreme Court’s order. The new law requires:<sup>19</sup>

- 1) reporting from appellate, justice, and municipal courts in addition to those courts already covered under the Supreme Court’s order;
- 2) reporting of fees paid for each court appointment during the month and *all* appointments made during the month regardless of whether a fee is paid – the Supreme Court’s order only requires reporting of fees paid;
- 3) if the amount paid to a person in a month in one case exceeds \$1,000, any information related to the case that is available to the court on the number of hours billed and billed expenses – this is not currently required under the Supreme Court’s order; and
- 4) reporting on appointments to all family law cases, including child protection cases and it also expands the reporting requirement to any relevant activity in criminal and juvenile cases – the Supreme Court’s order only applies to family law cases under Titles 1, 2, and 4 of the Family Code.

Unlike the Supreme Court’s order which requires that *any* fee payment over \$500 be reported, the new law only requires reporting of payments made to attorneys ad litem, guardians ad litem, guardians, mediators, and competency evaluators.<sup>20</sup> The new reporting requirements do not apply to: “1) a mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practices and Remedies Code, 2) information made confidential under state or federal law, including applicable rules, 3) a guardian ad litem or other person appointed under a program authorized by Section 107.031, Family Code, or 4) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code.”<sup>21</sup>

The monthly reports must be submitted to OCA no later than the 15th day of each month; this is a shorter time period than the Supreme Court’s current requirement that the reports be submitted no later than the 20th day following the end of the month.<sup>22</sup> Monthly reports must be submitted even if no appointments or payments are made during the reporting period. If a court fails to provide the clerk of the court the information required to be submitted in the required reports the court becomes ineligible for state grant funds in the following biennium.<sup>23</sup>

### **Report Content**

The report must include:<sup>24</sup>

- 1) the name of each person appointed by the court in the month;
- 2) the name of the judge and the date of the order approving compensation to be paid to a person appointed;
- 3) the number and style of the case;
- 4) the number of cases each person was appointed to in the month;
- 5) the total amount of compensation paid to each person and the source of compensation;
- 6) if the total amount paid to a person in one case in the month exceeds \$1,000, the number of hours billed for the work performed and the billed expenses; and
- 7) if no appointment was made during the reporting period, the clerk must submit a report indicating so.

Judges should be especially aware of the report content requirements so that all court appointment orders and orders approving payment include the information the clerk of the court requires to prepare and submit the monthly reports.

## Posting the Report

The new law also requires the clerk of the court to post the report at the courthouse of the county in which the court is located and on any Internet website of the court.<sup>25</sup> Like SB 1876, SB 1369 does not specifically address where municipal courts should post their reports. OCA recommends that they be posted in the same place the court posts any other court information. If the court maintains a website, the reports should also be posted there.

## Submitting the Report, Report Instructions, and Other Resources

The required reports should be submitted into the OCA appointments and fees reporting system, which is currently being updated by OCA to incorporate the changes made by SB 1369. OCA has also posted reporting instructions, frequently asked questions, and other resources on its website<sup>26</sup> to assist clerks and others with the new reporting requirements. This new requirement goes into effect September 1, 2016.

1. Act of May 31, 2015, 84th Leg., R.S., ch. 1223, 2015 Tex. Sess. Law Serv. 4071 (Vernon).
2. Act of June 1, 2015, 84th Leg., R.S., ch. 1199, 2015 Tex. Sess. Law Serv. 4024 (Vernon).
3. Section 37.001(a), Government Code.
4. *Id.*
5. Section 37.004(a), Government Code.
6. Section 37.004(b), Government Code.
7. Section 37.004(f), Government Code.
8. Section 37.003(b), Government Code.
9. For example, attorneys ad litem appointed for children and parents in child abuse and neglect cases. See, Sections 107.004 and 107.0131, Family Code.
10. Senate Bill 1876 repealed the provisions of Sections 74.092(a)(11) and (b) of the Government Code that required the LAJ to maintain a list of all attorneys who were qualified to serve as attorneys ad litem.
11. Section 37.003(c), Government Code.
12. Section 37.002, Government Code.
13. Section 37.004(c), Government Code.
14. Section 37.004(d), Government Code.
15. Section 74.092(11), Government Code.
16. Section 25.0022(d)(10), Government Code.
17. Section 37.005, Government Code.
18. [www.txcourts.gov/media/7527/SC-Order-07-9188.pdf](http://www.txcourts.gov/media/7527/SC-Order-07-9188.pdf)
19. Section 36.004(a), Government Code.
20. *Id.*
21. Section 36.003, Government Code.
22. Section 36.004(b), Government Code.
23. Section 36.005, Government Code.
24. Section 36.004(a), Government Code.
25. Section 36.004(b), Government Code.
26. Texas Judicial Branch, *Reporting to OCA*, [www.txcourts.gov/reporting-to-oca/news/sb-1369-appointments-fees-reporting.aspx](http://www.txcourts.gov/reporting-to-oca/news/sb-1369-appointments-fees-reporting.aspx)



### Checklists for Report on Appointments and Fees Approved Appellate, Justice, and Municipal Courts

For appointments as attorney ad litem, competency evaluator, guardian, guardian ad litem, or mediator

CHECKLIST FOR APPOINTMENTS	
<input type="checkbox"/>	Case number and style
<input type="checkbox"/>	Name of person or entity appointed
<input type="checkbox"/>	Position to which appointed
<input type="checkbox"/>	Date of appointment
CHECKLIST FOR ORDERS APPROVING PAYMENT	
<input type="checkbox"/>	Case Number and Style
<input type="checkbox"/>	Name of person or entity appointed
<input type="checkbox"/>	Position to which appointed
<input type="checkbox"/>	Date of approval of fee
<input type="checkbox"/>	Source of fees
<input type="checkbox"/>	Amount of fees approved
If fees exceed \$1,000:	
<input type="checkbox"/>	Number of hours billed for work performed
<input type="checkbox"/>	Billed expenses

For more information about the reporting requirements, visit [www.txcourts.gov/reporting-to-oca.aspx](http://www.txcourts.gov/reporting-to-oca.aspx).

CAUSE NO. \_\_\_\_\_

IN THE MATTER OF Child's Initials,  
A CHILD

§  
§  
§  
§  
§  
§

IN THE TRUANCY COURT

CITY OF \_\_\_\_\_ or  
PRECINCT NO. \_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

**APPOINTMENT OF ATTORNEY OR GUARDIAN AD LITEM**

- Appointment of Attorney.** The Court, having determined that it is in the best interest of the Child, **APPOINTS** \_\_\_\_\_, a licensed attorney in the State of Texas, to represent \_\_\_\_\_, the Child in the above referenced truancy proceeding.
- It is further **ORDERED** that \_\_\_\_\_,  the Child's parent  the person responsible for supporting the Child, pay the cost of the attorney appointed to represent the Child, the Court having determined the person has sufficient financial resources to pay the cost, in the following manner: \_\_\_\_\_.
- Appointment of Guardian Ad Litem.** The Court, having determined that  the Child appeared before the Court without a parent or guardian  the Child's parent or guardian is incapable or unwilling to make decisions in the best interest of the Child, **APPOINTS** \_\_\_\_\_, as guardian ad litem of \_\_\_\_\_, the Child for the purposes of the above referenced truancy proceeding.
- It is further **ORDERED** that \_\_\_\_\_,  the Child's parent  the person responsible for supporting the Child, reimburse the county/municipality for the cost of the guardian ad litem, the Court having determined the person has sufficient financial resources to offset the cost wholly or partly, in the following manner: \_\_\_\_\_.

Signed and entered this date: \_\_\_\_\_

\_\_\_\_\_

Judge, Truancy Court

(Court Seal)



This article's focus is on the nascent movement for pre-trial bail and bond reform. It will proceed by discussing (1) statistics on pre-trial incarceration and advocacy groups' rationale for reform; (2) statute and case law related to bail and bonds; (3) federal lawsuits challenging bail practices; and (4) examples of bail reforms that are already taking place.

## **I. The Pre-Trial Detention Problem**

Of the almost 750,000 people in local and county jails at any given time, approximately 60 percent are awaiting trial and have not yet been convicted of the crime they are charged with.<sup>5</sup> From 1996 to 2014, the total number of unconvicted inmates increased by 59 percent.<sup>6</sup> Of course, many of these people are detained because of a determination that they are unlikely to show up for their appearance date or would be a danger to society if released. There are also other reasons why defendants may not be granted release, such as detention due to undocumented immigrant status or risk of committing family violence. Many, however, are detained because they are financially unable to pay cash bail.<sup>7</sup> This is problematic because these detainees are innocent in the eyes of the law unless and until a guilty judgment is rendered. The fact that many are being held for non-violent, fine-only offenses only compounds the problem.

This issue is not lost on the numerous advocacy groups that have recently called for nationwide legal financial obligation reform. In fact, even the White House has chimed in. In a December 2015 issue brief, the White House Council of Economic Advisers wrote, "The growing use of fixed bail bonds as a condition for pretrial release has contributed to growth in jail populations, and often results in localities detaining the poorest rather than the most dangerous defendants."<sup>8</sup> A "fixed" bail bond is set according to a schedule where all defendants pay the same amount of bail for the same offense class. The result is arguably a disproportionate impact on indigent defendants: the price tag hurts them more, and wealthy defendants have less incentive to return to court as they might not mind sacrificing the bail money. Fixed bail amounts are unlawful in Texas under Chapter 17 of the Code of Criminal Procedure.<sup>9</sup>

Another knock against current bail practices is that bail bondsmen, who typically collect 10% of the bail amount from the defendant, are often unwilling to post low bail amounts because their fee would be nominal at best.<sup>10</sup> For example, if bail were set at \$250, a bail bondsman would only make \$25. In such cases where a bail bondsman refuses service, if the defendant cannot come up with the cash, he or she will be detained. Faced with the prospect of sitting in jail, some defendants believe it is in their best interest to take a plea deal rather than wait for trial.<sup>11</sup> In other cases, a defendant will agree to pay a bail bondsman a fee plus interest to post bail, only for the charge to be subsequently dropped.<sup>12</sup> For larger bail amounts, this fee can be substantial, and the defendant (charged with no crime) would be on the hook for it. Finally, critics of the bail system argue that "[t]he sheer speed of the arraignment process [in New York and other populous cities] makes it virtually impossible for the court to make informed decisions."<sup>13</sup> In other words, courts simply do not have the time to give due consideration to a defendant's ability to post cash bail.

In permitting the pre-trial release of a defendant, a court will often set bond conditions.<sup>14</sup> For example, an individual charged with driving while intoxicated may be required to wear an alcohol-monitoring bracelet (which can detect alcohol consumption through the defendant's sweat<sup>15</sup>) or install an ignition interlock device (IID) on his or her vehicle. The defendant, of course, is responsible for the cost of any conditions.<sup>16</sup> For a monitoring bracelet, the cost is roughly \$450 per month.<sup>17</sup> An IID can range from \$50 to \$100 per month.<sup>18</sup> If the defendant cannot afford the conditions, he or she is likely to have his or her bail revoked and end up back in jail. This presents the same problem as cash bail: defendants waiting for trial being incarcerated for inability to pay. This issue has already played out in the post-conviction probation arena: both statute and case law are clear that a court setting conditions of probation must consider an individual's ability to pay for the conditions.<sup>19</sup> Now there is an increased focus on pre-trial bond conditions.

## **II. The Law on Bail and Bonds**

When the Supreme Court decides that a federal constitutional right is so important that the states must provide that same right locally, they can "selectively incorporate" that right into the 14th Amendment. For example, the 8th

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Amendment right against cruel and unusual punishment was selectively incorporated in the 1962 case *Robinson v. California*.<sup>20</sup> The 8th Amendment right against excessive bail, however, has not been selectively incorporated.<sup>21</sup> Thus, this federal protection only applies to defendants in federal courts and there is no federal law requiring states to offer bail. Most states, however, including Texas, do provide a right to bail in their state constitution. The Texas Constitution states, “All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.”<sup>22</sup> This right is also codified in Article 1 of the Texas Code of Criminal Procedure.<sup>23</sup> Being a “right to bail” state, there are only limited situations in which bail can be denied in Texas.<sup>24</sup>

The Texas Code of Criminal Procedure provides that courts, judges, magistrates, or officers setting bail must consider the defendant’s ability to pay.<sup>25</sup> Under Texas’ bail setting law, “The ability to make bail is to be regarded, and proof may be taken upon this point.”<sup>26</sup> Another rule is that the bail must be “sufficiently high to give reasonable assurance that the undertaking will be complied with.”<sup>27</sup> Those setting bail are thus forced to walk a tightrope of setting it high enough that the defendant will appear, but low enough that the defendant can afford it. It is a reasonable argument that if the defendant can afford bail, it is not high enough to ensure that the defendant will appear. It is similarly reasonable to argue that the Code of Criminal Procedure provision requiring consideration of the ability to pay does not have sharp enough teeth: mere consideration of the defendant’s ability to pay does not ensure that defendant will ultimately be able to make bail. If the 8th Amendment right to bail is selectively incorporated, it is a safe bet that Texas law will be changed.

Where are advocates trying to effectuate change in pre-trial use of bail? State houses? Courthouses? The answer seems to be both. Efforts are afoot across the country to reform laws on a state-by-state basis. It is also possible that advocates may seek to have the right to bail selectively incorporated into the 14<sup>th</sup> Amendment. In practice, virtually all defendants are at least considered for pre-trial release. The issue that reform advocates are targeting is that some defendants can afford bail while some cannot. If the Supreme Court decides to selectively incorporate bail into the 14th Amendment, there would have to be a uniform understanding of what the right to bail means. Would state law and case law be upended? Possibilities of what the groups might advocate include (1) mandatory pre-trial release for all defendants charged with a certain offense level or less, or (2) the requirement that bail and bonds be set proportionately to a defendant’s income.<sup>28</sup> As the law stands now, courts retain a high level of discretion in setting bail and bond conditions.

### **III. Federal Lawsuits Challenging Bail Practices**

In the past couple of years, there has been a spate of federal lawsuits contesting the bail practices of state courts. One organization, Equal Justice Under Law (EJUL), has already filed 10 class action lawsuits of this nature in eight states since 2015.<sup>29</sup> The lawsuits have had some success, including a holding in Georgia that jailing pre-trial defendants without an indigency inquiry is unconstitutional.<sup>30</sup> A federal court in Mississippi declared that jailing a defendant who is too poor to post cash bond violates the Equal Protection Clause of the 14th Amendment.<sup>31</sup> EJUL’s self-proclaimed goal is to “bring to reality the commonly held value long ago proclaimed by the Supreme Court [in *United States v. Salero*]<sup>32</sup>: ‘In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.’”<sup>33</sup> Such lawsuits represent the push to overhaul United States bail practices.

A federal class action complaint filed in May 2016 against Harris County brought this fight to Texas. The complaint alleges that Harris County’s use of a “generic offense-based bail schedule” with no inquiry into a defendant’s ability to pay is unconstitutional.<sup>34</sup> The complaint further alleges that bail hearing officers “affirmatively refuse to hear any argument that an arrestee raises about her ability to pay.”<sup>35</sup> If accurate, this practice would appear to violate Section 17.15 of the Code of Criminal Procedure.

### **IV. Bail and Bond Reform is Already Here**

With an increased awareness of potentially deficient bail practices, many courts throughout the United States have begun to experiment with new methods of dealing with pre-trial arrestees. The following examples are illustrative of state courts’ efforts to ensure fairness and justice for indigent defendants. The State of New York began accepting

bail payment by credit card.<sup>36</sup> This practice increased the number of defendants who were able to make bail.<sup>37</sup> Nebraska implemented a practice of sending defendants a post card reminding them of their hearing date, which helped increase appearance rates.<sup>38</sup>

By far the most prevalent reform, though, is the Public Safety Assessment (PSA), a risk assessment tool that helps courts determine which defendants can safely be released for trial and which cannot. Developed by the Laura and John Arnold Foundation (LJAF), this tool has been implemented by 29 jurisdictions (including Harris County) and three states (Arizona, Kentucky, and New Jersey) as of June 2015.<sup>39</sup> It was created from a database of more than 1.5 million cases from more than 300 U.S. jurisdictions.<sup>40</sup> The PSA has produced decidedly positive results. Since implementation, Kentucky has seen a reduction in jail populations and pre-trial crime rates.<sup>41</sup> LJAF is currently conducting “extensive, third-party research studies” on the efficacy of the PSA.<sup>42</sup> The PSA advertises itself as completely objective and blind to a defendant’s race or social status. Rather, it examines nine objective factors that LJAF has determined are the most predictive of the risk of subsequent crime and not appearing.<sup>43</sup> It utilizes a series of point scales. When a certain level is reached, the defendant is considered too risky to be eligible for bail. Of course, the PSA is only a tool that courts voluntarily utilize – they are not bound to follow the PSA’s recommendation. The Texas Office of Court Administration is exploring the possibility of using the LJAF PSA throughout Texas. The infographic on page 13 shows an overview of the PSA process.<sup>44</sup>

## V. Conclusion

While *Bearden v. Georgia* dealt with incarceration, post-judgment fines, and probation fees, the issues surrounding bail reform seem to involve a similar corollary: incarceration, pre-trial detention, and money.

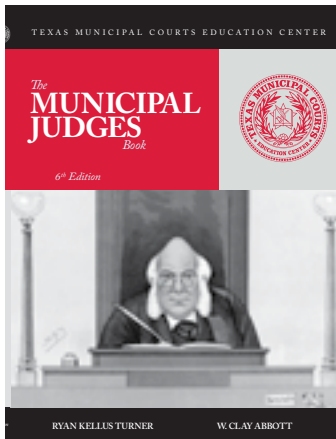
1. Bobby Cervantes, *Ridding Texas of Debtors’ Prisons*, Houston Chronicle, <http://www.houstonchronicle.com/politics/texas-take/article/Ridding-Texas-of-debtor-s-prisons-7241492.php>, April 11, 2016.
2. Kendall Taggart & Alex Campbell, *In Texas It’s a Crime to be Poor*, BuzzFeed, <https://www.buzzfeed.com/kendalltaggart/in-texas-its-a-crime-to-be-poor>, October 7, 2015.
3. *Bearden v. Georgia*, 461 U.S. 660 (1983), (requiring an indigency determination before assessing a fine).
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5. Nick Pinto, *The Bail Trap*, The New York Times Magazine, [http://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html?\\_r=0](http://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html?_r=0), August 13, 2015.
6. Todd D. Minton & Zhen Zeng, Ph.D., *Jail Inmates at Mid-year 2014*, Bureau of Justice Statistics, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5299>, June 11, 2015.
7. Note that cash bail is not the only type of bail. A “personal bond” allows the defendant’s release at no cost because it is determined that he is not likely to flee. A “property bond,” which is rare, allows a defendant to use property as collateral to secure the bond.
8. Council of Economic Advisers, Issue Brief, *Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor*, December 2015.
9. Article 17.15, Code of Criminal Procedure.
10. *Supra* n. 5.
11. Eric Risberg, *Lawsuits Aim to Upend Bail Bond System Throughout the U.S.*, CBS News, <http://www.cbsnews.com/news/lawsuits-seek-to-abolish-city-state-and-federal-bail-bond-systems/>, December 26, 2015.
12. *Id.*
13. *Supra* n. 5.
14. Article 17.40, Code of Criminal Procedure.
15. See, <https://www.scramsystems.com/>.
16. Article 17.43(b), Code of Criminal Procedure.
17. Ave Mince-Didier, *SCRAM Bracelets: Cost and Effectiveness*, Criminal Defense Lawyer, <http://www.criminaldefenselawyer.com/resources/criminal-defense/crime-penalties/the-cost-of-a-scram-bracelet-situations-used/> (accessed June 30, 2016).
18. IgnitionInterlockDevice.org, *Installation and Expense*, [www.ignitioninterlockdevice.org/installationexpense.html](http://www.ignitioninterlockdevice.org/installationexpense.html) (accessed June 30, 2016).
19. See, *Mathis v. State*, 424 S.W. 3d 89 (Tex. Crim. App. 2014); See also, Article 42.12, Code of Criminal Procedure.
20. *Robinson v. California*, 370 U.S. 660 (1962).
21. *McDonald v. City of Chicago*, 561 U.S. 742, 764 n. 12 (2010).
22. Bill of Rights, Tex. Const. art. I, § 11.
23. Article 1.07, Code of Criminal Procedure.
24. For example, bail may be denied in capital cases when the state provides proof that conviction and the death penalty will result from the trial (Bill of Rights, Tex. Const. art. I, § 11.), and for certain offenses listed under Article 17.153, Code of Criminal Procedure such as sexual offenses committed against a child and trafficking of a child.
25. *Supra* n. 9.
26. *Id.*
27. *Id.*
28. See, Livia Gershon, *Could Day Fines Improve the U.S. Justice System?*, JSTOR Daily, <http://daily.jstor.org/day-fines-improve-the-u-s-justice-system/>, May 6, 2015.
29. Equal Justice Under Law, *Ending the American Money Bail System*, <http://equaljusticeunderlaw.org/wp/current-cases/ending-the-american-money-bail-system/> (accessed June 30, 2016).

- 30, 2016).
30. *Walker v. City of Calhoun*, 2016 U.S. Dist. LEXIS 12305 (N.D. Ga. January 28, 2016).
  31. *Thompson v. Moss Point*, 2015 U.S. Dist. LEXIS 176442 (S.D. Miss. November 6, 2015).
  32. *United States v. Salerno*, 481 U.S. 739 (1987).
  33. *Supra* n. 29.
  34. Meagan Flynn, *Group Sues Harris County Over Bail System that Keeps People in Jail Just Because They're Poor*, HoustonPress, <http://www.houstonpress.com/news/group-sues-harris-county-over-bail-system-that-keeps-people-in-jail-just-because-theyre-poor-8417193>, May 20, 2016.
  35. *Id.*
  36. See, Mary T. Phillips, Ph.D., *Paying for Bail on Credit, Research Brief* series, no. 35, New York City Criminal Justice Agency, Inc., <https://issuu.com/csdesignworks/docs/research-brief35/1?e=2550004/9230374>. September 2014.
  37. The practice of using a credit card also arguably discriminates against those who do not have a credit card and raises

- the potential problem of defendants cancelling the charge after release.
38. Mitchel N. Herian & Brian H. Bornstein, *Reducing Failure to Appear in Nebraska: A Field Study*, *The Nebraska Lawyer*, pp. 11-14, September 2010.
  39. Laura and John Arnold Foundation, *Public Safety Assessment*, <http://www.arnoldfoundation.org/initiative/criminal-justice/crime-prevention/public-safety-assessment/> (accessed June 30, 2016).
  40. *Id.*
  41. *Id.*
  42. *Id.*
  43. *Id.*
  44. Laura and John Arnold Foundation, *Public Safety Assessment*, [www.arnoldfoundation.org/wp-content/uploads/PSA-Infographic.pdf](http://www.arnoldfoundation.org/wp-content/uploads/PSA-Infographic.pdf) (accessed July 11, 2016).

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## The Municipal Judges Book, 6th Edition



Featuring both historic and contemporary issues, *The Municipal Judges Book* critically analyzes the nature of municipal courts and the judge's role in the Texas criminal justice system. An ideal textbook for new judges and others interested in procedural and substantive laws impacting Texas municipal courts, the content includes (1) an introduction to municipal courts and the Texas judicial system, (2) role of the judge, (3) an overview of judicial ethics, (4) an introduction to the rights of the accused and victims, (5) judgments, indigence, and enforcement, (6) contempt, and (7) the adjudication of juveniles in municipal court

Since the beginning of statehood in 1845, Texas municipal courts have served an important role in both local government and the state judiciary. The evolution of these courts can best be described as the gradual accumulation of answers to long-standing questions. In the first 50 years of their existence, municipal courts were plagued by an indefinite legislative mandate and a lack of uniform procedures. In the last 50 years, uniform procedures have been created by the Legislature, many legal issues have been clarified, and, perhaps most notably, municipal courts have begun to gain a collective sense of identity and purpose that were notably absent during their formative years.

There still, however, remain many unanswered questions about municipal courts in Texas. Often an answer that would seem satisfactory in other Texas trial courts falls short because of the subtle nuances in Texas statutory law. As the subject matter of municipal courts continues to evolve, and as the case load of these courts increase, so do the number of people who have questions about the operations of such courts.

What was missing prior to this publication was a book that critically analyzed the nature of municipal courts and the judge's role in the Texas criminal justice system. This publication fills such a gap by providing a primer to judges assuming a municipal bench, as well as a refresher for seasoned judges. The book is also written for the broad array of people interested in Texas municipal courts (e.g., city officials, attorneys, other judges, legislators, educators, students, and the public at large). Just as municipal courts occupy a unique niche in the Texas judicial system, this book is intended to fill a unique niche in terms of the public's understanding of the courts with which most Texans come into contact.

Order copies directly from TMCEC. \$25.00 each.

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Texas Municipal Courts Education Center 2210 Hancock Drive, Austin, Texas 78701 Fax: (512) 435-6118

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# The Public Safety Assessment (PSA)

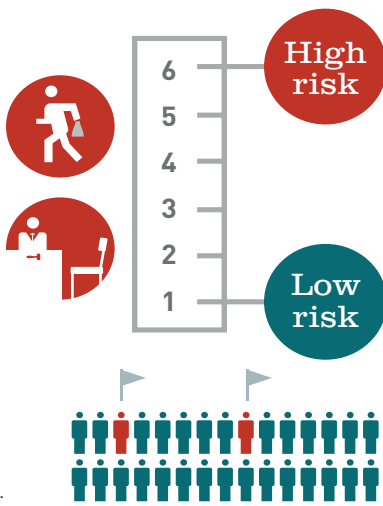
Following a person's arrest, a judge must decide whether that person should:



A judge considers many factors in making this decision. One tool that judges may use to help make this decision is the PSA.



The PSA produces a score that represents the likelihood that a defendant who is released before trial will commit a new crime or will fail to appear for a future court appearance.

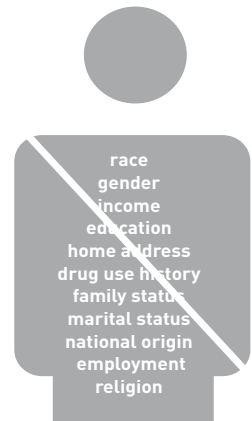


The PSA also flags the small number of defendants who pose an elevated risk of committing a crime of violence if released before trial.

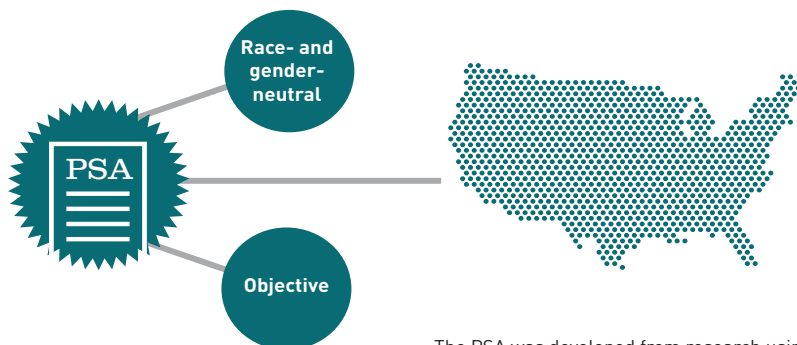
The PSA score is calculated based on nine factors.

- |   |   |  |
|---|---|--|
| Current violent offense                             | Pending charge at the time of the offense | Prior misdemeanor conviction                     |
| Prior felony conviction                             | Prior violent conviction                  | Prior failure to appear pretrial in past 2 years |
| Prior failure to appear pretrial older than 2 years | Prior sentence to incarceration           | Age at current arrest                            |

The PSA does NOT look at any of the following factors:



The PSA provides information that is race- and gender-neutral. It helps guide pretrial decision making in an effort to increase safety, reduce taxpayer costs, and enhance fairness and efficiency in the system.



The PSA was developed from research using data from across the United States.

The PSA score is not the only information that a judge considers, and the final decision will always be made by a judge.



For more information about the PSA, please visit [www.arnoldfoundation.org](http://www.arnoldfoundation.org).

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# RESOURCES FOR YOUR COURTS

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## 20 Year Anniversary of the Municipal Court Clerk Certification Program

Jaime Brew, Court Administrator, Sugar Land Municipal Court

This year is the 20-year anniversary of the Municipal Court Clerk Certification Program. In 1996, the Texas Court Clerks Association (TCCA) partnered with the Texas Municipal Courts Education Center (TMCEC), Texas Municipal Courts Association (TMCA), and Texas State University to establish a certification program that would provide professional development and educational growth to court staff in municipal and justice courts.

### Creation of the Certification Program

Before the implementation of the Municipal Court Certification Program, there were very few career development programs in existence that provided the proper training for municipal court staff. There were court clerk training programs available that offered continuing legal education; however, the training did not offer a sequenced, systematic curriculum.

It was decided to create a Municipal Court Certification Program that would be built on existing resources, networks, and organizations. As a result, TCCA, TMCEC, TMCA, and Texas State University continue to partner to provide legal education to over 1,500 clerks each year. These organizations desire to provide a professional development program for all municipal court clerks that would improve the operations of courts.

### History in the Making

TCCA and TMCEC began formal discussions on developing a certification program in the fall of 1994. On April 26, 1995, members of the TCCA Education Committee and representatives of TMCEC met to take the initial steps to create the Municipal Court Clerk Certification Program.

### Certification Programs Considered

Various alternatives were reviewed before moving forward with the present certification program.

Option 1: The committee considered obtaining certification through an undergraduate or graduate college, but this option was too expensive.

Option 2: Mandatory training for all municipal court clerks was another alternative option. TCCA did attempt to try to have legislation introduced and enacted to have mandatory training; however this effort was unsuccessful. It was decided that this option would have too high fiscal impact.

Option 3: The TCCA Education Committee and representatives from TMCEC also reviewed certification models from other associations such as the Texas Society of Association Executives, the Texas City Secretaries, and the Human Resources Certification Program.

The Education Committee and TMCEC created their own Municipal Court Clerk Certification Program. In 1995, the certification program was developed and an outline was finalized. This new program needed initial funding; therefore, the organization applied for the State Justice Institute (SJI) grant funding. TCCA Education Committee members contacted members of Congress who served on the Appropriations Committee for federal funding. TCCA and TMCEC gained support from Texas Municipal League (TML) and Texas State University in San Marcos.

The SJI grant was awarded to TCCA to implement the Municipal Court Clerk Certification Program. With this grant and additional funds, the certification program took shape. Study guides and exams were developed. Margaret Robbins, who was the Program Director at TMCEC, was very involved in creating the initial study guides and certification exams. In 1997, at the close of the SJI grant period, TCCA and TMCEC assumed all responsibility for continuing the certification program.

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## Key Individuals Who Developed the Certification Program

### TMCEC Staff:

Hope Lochridge – Executive Director  
Margaret Robbins – Program Director

### TCCA Education Committee:

Shirley Armstrong (TCCA President) – Carrollton Municipal Court  
Johnny Brooks – Arlington Municipal Court  
Rosie Caballero (Education Chair) – Keller Municipal Court  
Ralph Ferguson – Garland Municipal Court  
Leisa Hardin – Crowley Municipal Court

Winnie Kocot – Beaumont Municipal Court  
Pennie Jack – Denton County  
Hilda Cuthbertson – Bryan Municipal Court  
Mike Claunch – Cleburne Municipal Court  
Don Vanadore – Grand Prairie Municipal Court  
Shirley Koym – Deer Park Municipal Court  
Mary Salinas – San Marcos Municipal Court

## Success of the Municipal Court Clerk Certification Program

The Municipal Court Clerk Certification Program is recognized nationally and is used as a model for other organizations. Over the past 20 years the certification program has continued to improve. The program has provided court staff with the necessary knowledge and tools needed to succeed in the court profession. An extensive network of resources support the program, including study guides, prep sessions, online learning, local chapter trainings, mentoring, and more. As of 2015, there were 1,076 certified court clerks; 571 CCCI; 453 CCC II; and 65 (52 active) Certified Municipal Court Clerks. The number is expected to grow to more than 1,200 by the end of 2016.

## What People Have to Say About the Municipal Court Certification Program

*Jennifer Sullivan, First Clerk to Complete the Certification Program (Retired Court Administrator Sealy Municipal Court):*

“The Education Committee did an outstanding job of working with TMCEC to make it happen. I can’t remember exactly how long it took, but I think it was a year and a half...I’m so proud of TCCA and all that it has accomplished over the years. It is so successful because of all the committed volunteers that work and have worked tirelessly to improve the municipal court administration field.”

*Hope Lochridge, Executive Director of TMCEC:*

“The certification program offers a professional challenge to the many dedicated municipal court clerks who get involved. Study for the rigorous exams results in knowledge of the structure of the Texas court system, the many details of municipal case processing, and thought provoking ethical issues. It is a great accomplishment and something to be very proud of as clerks move through the three levels.”

*Hilda Cuthbertson, Retired Court Administrator (Bryan Municipal Court):*

“The certification program has gained greater acceptance by local government as a desired validation of having the knowledge, skills, and abilities to manage a municipal court effectively and efficiently while protecting the rights of the individuals that appear in our courts. The certification program is the vehicle through which local government and court professionals can ensure that qualified court support personnel will be available. Certified court administrators and court clerks will be sought out by savvy local governments as these are the crème de la crème professionals.”

*Rosie Caballero, Retired Court Administrator (Coppell Municipal Court):*

“I would only suggest that a clerk realize the value of the tools that have been provided to them through the certification program. These tools can be and should be used to hone their craft. Active use of the certification program can result in the difference between a career, or a job, and the choice is theirs.”

*Information provided by TCCA Education Committee archives, Jennifer Sullivan, Hope Lochridge, Hilda Cuthbertson, and Rosie Caballero.*

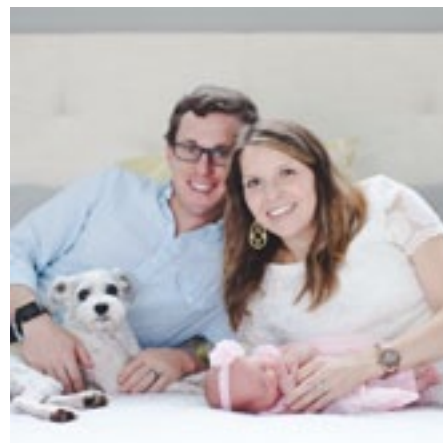
### Questions About the Program?

Contact TMCEC for more information about the certification program, go to [www.tmcec.com/clerk-certification](http://www.tmcec.com/clerk-certification) or call 800.252.3718.

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## Tessa Madison Leaves TMCEC After 8 Years of Service

On March 30<sup>th</sup>, TMCEC Program Coordinator, Tessa Madison, her husband Michael, and her fur baby Maebe welcomed a beautiful baby girl into the world. Finley June was born healthy and happy at 12:29 pm weighing 6lbs. 8ozs. As many of you know quite well, changes as well as decisions come with being a new parent. After much thought, Tessa and Michael decided to pursue a longtime dream of theirs which is to move to Colorado to raise Finley and Maebe. While this is great news for Tessa and her family, it is sad news for TMCEC and the Clerks Certification Program as her last day with TMCEC will be August 12<sup>th</sup>.



Tessa began working for TMCEC in May, 2008 after receiving her B.S. in Political Science and Pre-Law from the University of Texas. She quickly transitioned into overseeing the certification program of more than 1,000 clerks throughout the State. Since 2008 she has spent much of her time serving on the Texas Court Clerks Association (TCCA) Education and Certification Committee having never missed a meeting. In October 2011, Tessa was awarded the TCCA Board of Directors' Award for her outstanding contribution to court clerks and the certification program. In addition to her work with the certification program, she has served as the TMCEC meeting planner, handling all hotel bids and contracts.

Tessa will leave a wonderful legacy behind as she has made many lasting contributions to the certification program that have enhanced the way we obtain and renew clerk certification. Her ability to think creatively and “outside the box” have aided in the promotion of the program to over 3,500 court personnel in the State. Her ability to think about future technological and environmental trends has resulted in implementing electronic renewals and online certificates/publications. She has also written countless reports and articles promoting the program. In addition to the many tasks and responsibilities she has had, she has been encouraging and compassionate and cheered many of us on when we were ready to give up.

TCCA and the Education & Certification Committee will forever be grateful to Tessa for her hard work and dedication to the clerk certification program and municipal court personnel across the State. Please keep Tessa and her family in your thoughts and prayers as they make this transition in their lives. On behalf of TCCA, we send our best wishes for a healthy, happy, and bright future!

Submitted by:

Rhonda Kuehn, City of Brenham

TCCA Education Committee Co-Chair

### FY17 Preparation Courses Level I and II

The pre-conference prep sessions are usually from 1:00 - 5:00 p.m. on Day 1 at the site of the TMCEC regional programs. Dates are:

10/24/16	Tyler Holiday Inn South Broadway	03/27/17	Austin Omni Southpark
11/15/16	Austin Omni Southpark	04/03/17	Amarillo Wyndham Garden Inn
01/09/17	San Antonio Omni at the Colonnade	05/01/17	SPI Isla Grand
01/29/17	Galveston San Luis Resort Spa	06/05/17	Odessa MCM Elegante
02/26/17	Omni Houston Westside	06/26/17	Addison Crowne Plaza
03/06/17	Addison Crowne Plaza		



# FROM THE CENTER

## MTSI, TMCEC Recognized for Having “Best Practices” by TxDOT

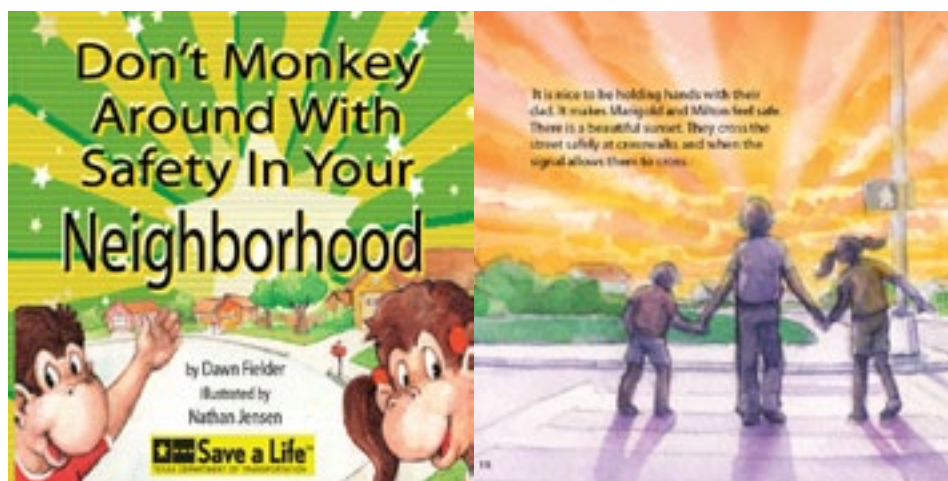
The Texas Department of Transportation (TxDOT) released its *Texas Highway Annual Report* for the 2015 fiscal year. The Texas Municipal Courts Education Center (TMCEC) and its Municipal Traffic Safety Initiatives (MTSI) program was recognized for its commitment and best practices to addressing alcohol and other drugs concerning traffic safety. “Best Practices are effective management practices employed by projects within the Traffic Safety Program that significantly increases the effectiveness and efficiency of that project, thus meeting the goals of the program,” as defined in the *Annual Report*.

“We are so pleased to be recognized and acknowledge the help received from hundreds of municipal courts who participated last year in National Night Out and Municipal Courts Week, as well as other community events. The TMCEC partnership with these courts greatly enhances what our small staff can do,” said Hope Lochridge, TMCEC Executive Director. The *Annual Report* was developed and prepared by the staff of the Traffic Safety Section of the TxDOT Traffic Operations Division.

***Don't Monkey Around with Safety in Your Neighborhood***  
**By Dawn Fielder, illustrated by Nathan Jensen**  
**Introducing the Seventh in our DRSR Children's Book Series!**

Marigold and Milton are back! And in this colorful children's book, student readers learn about safe behaviors as they follow the adventures of our two little monkeys spending a wonderful afternoon playing in their neighborhood. With their mom and dad watching, Marigold and Milton play a little soccer, play hide and seek, ride their bikes, and take a walk – all while being safe!

This publication is a part of the Driving on the Right Side of the Road program, developed by the Law-Related Education Department of the State Bar of Texas, Law Focused Education, Inc., and the Texas Municipal Courts Education Center with funding from the Texas Department of Transportation. This book, along with all of our other titles, is available to municipal courts, schools, and community groups throughout Texas free of charge. DRSR and TMCEC welcome you to explore our website ([www.drsrc.info](http://www.drsrc.info)) to discover what resources our program has to offer your courts and communities! If you have any questions, or would like to order materials, please contact Liz De La Garza at 512-320-8274 or email her at [elizabeth@tmcec.com](mailto:elizabeth@tmcec.com).





## Join the Discussion at Full Court Press

Full Court Press, the official blog of TMCEC, has now been in existence for two years. With Full Court Press, we aim to offer a timely, and frequently updated, resource to supplement our social media offerings on twitter and Facebook as well our traditional publications available in print and online, such as *The Recorder*. The short entries on Full Court Press allow us to examine topics and stories that support commentary and discussion among municipal court personnel in Texas. Thoughts and analysis that emerge within the comments written by readers as well as authors allows the staff at TMCEC to keep our fingers on the pulse of the courts, discover new issues, and even plan future training and publications.

We hope that you will check in with Full Court Press frequently at [blog.tmcec.com](http://blog.tmcec.com) (there is no “www.” preceding the address), or by clicking on the “blog” link at our website ([www.tmcec.com](http://www.tmcec.com)). Readers can quickly and easily find specific entries and information through the use of categories and tags assigned to the posts and can always chime in with their own thoughts on the topics. To comment on a blog entry, click on the title of the entry, and you will be taken to the page dedicated to that specific entry. At the bottom of the page, there is a “Leave a Reply” section where you can add a comment. Future responses to your comment will be emailed to the address you provide. Come join the discussion!

Below you will see a recent post from Full Court Press. To join the discussion, go to at [blog.tmcec.com](http://blog.tmcec.com) and click on the title of a post. You will be taken to a page dedicated to that post. At the bottom of the entry, there is a “Leave a Reply” section, where you can enter comments, thoughts, or questions.

## The Four Elements of Procedural Fairness

Examples of injustice in the criminal justice system have received a lot of publicity lately. “Making a Murderer”, a 10 episode documentary series that premiered on Netflix in December of 2015 is perhaps the latest example of a high-profile case that is used to show alleged police and prosecutor misconduct of a defendant accused of rape and, later, murder. It is a fascinating series that I encourage everyone to watch. While we may never know whether or not Steven Avery (the defendant in “Making a Murderer”) is guilty of murder, most can probably agree there is at least a compelling perception of injustice or a lack of fairness in the way the cases in the series were handled. Similarly, other documentaries and podcasts such as “Serial,” “The Central Park Five”, and “Paradise Lost” series regarding the West Memphis Three have captured the world’s attention and turned a light on issues of justice and fairness in the criminal justice system. In these stories, the stakes are high and people’s lives hang in the balance.

Felony investigations, trials, and adjudications are not the only ones that may reveal violations of fairness, however. The municipal and justice courts of Texas only deal with fine-only misdemeanors. If someone is not treated fairly in

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these venues, they don't face prison sentences or the death penalty, but fairness, of course, is still the foundation of our work. Everyone who comes through our courts should experience procedural fairness.

Procedural fairness can be explained as whether or not people experiencing the justice system perceive the procedures (and their treatment) as fair. This aspect of "perception" triggers judicial ethics in my mind, as we must avoid impropriety as well as the perception of impropriety in our courts, under our Canons of Judicial Conduct. Often, it is easy to know that we are acting properly under the law in our courts, but it can be difficult to deal with perceptions of impropriety yet, we must. Likewise, we can't disregard the perception of the court user when evaluating our procedural fairness.

The four key components of procedural fairness that all judges and court personnel should keep in mind to ensure procedural fairness are as follows:

(1) Understanding

- Is there an understanding of court and the process?
- Have we provided explanations and clear written information?

(2) Voice

- Are the court users being heard?
- Are we listening and do we strive to understand the situations, emotions, and needs of our court users?

(3) Respect

- Are all court users being treated with respect and dignity?
- Are we remaining actively mindful of the individual case?

(4) Neutrality

- Are we providing a neutral forum?
- Are we providing equal treatment—do we treat defending parties the same way we treat prosecuting parties?

Procedural fairness should be exhibited (and embraced) by all members of the court staff, and by keeping the four aspects of procedural fairness above in mind, our courts will be doing well.

Court staff have more contact with court users and experience a one-on-one exchange of information. If the court and the court staff have dealt with users fairly, then those users are more likely to cooperate, be pleasant, provide information, accept decisions, comply with orders, and leave with a positive perception of the court system.

How fair is your court? How can you improve procedural fairness in your court?

### **CourTools: A Survey to Measure Your Court's Accessibility and Fairness**

CourTools, developed by the National Center for State Courts in Williamsburg, Virginia, enables courts to collect and present evidence of their success in meeting the needs and expectations of customers. The first Cour Tool measures access and fairness. Directions are provided, as well as a survey form at <http://www.courtools.org/Trial-Court-Performance-Measures.aspx>. TMCEC highly recommends that courts use the survey annually to obtain ratings from court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect. The self-administered survey is filled out by all leaving the courthouse on a typical day. Once tallied, the survey results can be used to improve court management practices. In six months or a year, the survey can be re-conducted and results compared. NCSC provides an excel spreadsheet to help tally the results. TMCEC hopes that courts will use the survey and share how it helps with planning with TMCEC.

## 2016 - 2017 ACADEMIC SCHEDULE AT-A-GLANCE

Seminar	Date(s)	City	Hotel Information
New Judges & Clerks Orientation	October 12, 2016 (W)	Austin	TMCEC 2210 Hancock Drive, Austin, TX 78756
Regional Clerks Seminar	October 24-26, 2016 (M-T-W)	Tyler	Holiday Inn South Broadway 5701 South Broadway, Tyler, TX 75703
Regional Judges Seminar	October 26-28, 2016 (W-Th-F)	Tyler	Holiday Inn South Broadway 5701 South Broadway, Tyler, TX 75703
Regional Judges & Clerks Seminar	November 15-17, 2016 (T-W-Th)	Austin	Omni Southpark 4140 Governors Row, Austin, TX 78744
Clerks One Day Clinic	December 1, 2016 (Th)	San Angelo	McNease Convention Center 500 Rio Concho Dr., San Angelo, TX 76903
New Judges & Clerks Seminar	December 12-16, 2016 (M-T-W-Th-F)	Austin	Omni Southpark 4140 Governors Row, Austin, TX 78744
Regional Judges & Clerks Seminar	January 9-11, 2017 (M-T-W)	San Antonio	Omni San Antonio at the Colonnade 9821 Colonnade Blvd, San Antonio, TX 78230
Level III Assessment Clinic	January 23-26, 2017 (M-T-W-Th)	Austin	Crowne Plaza 6121 IH 35 North, Austin, TX 78752
Regional Clerks Seminar	January 29-31, 2017 (Su-M-T)	Galveston	San Luis Resort 5222 Seawall Blvd, Galveston, TX 77551
Clerks One Day Clinic	February 2, 2017 (Th)	McAllen	Doubletree Hotel 1800 S. 2nd Street, McAllen, TX 78503
New Judges & Clerks Orientation	February 8, 2017 (W)	Austin	TMCEC 2210 Hancock Drive, Austin, TX 78756
Regional Judges Seminar	February 19-21, 2017 (Su-M-T)	Galveston	San Luis Resort 5222 Seawall Blvd., Galveston, TX 77551
Regional Judges and Clerks Seminar	February 26-28, 2017 (Su-M-T)	Houston	Omni Houston Westside 13210 Katy Freeway, Houston, TX 77079
Regional Clerks Seminar	March 6-8, 2017 (M-T-W)	Addison	Crowne Plaza Dallas Galleria 14315 Midway Road, Addison, TX 75001
Regional Judges Seminar	March 8-10, 2017 (W-Th-F)	Addison	Crowne Plaza Dallas Galleria 14315 Midway Road, Addison, TX 75001
Prosecutor's Seminar	March 22-24, 2017 (W-Th-F)	San Marcos	Embassy Suites 1001 E McCarty Ln, San Marcos, TX 78666
Traffic Safety Seminar	March 27-29, 2017 (M-T-W)	Austin	Omni Southpark 4140 Governors Row, Austin, TX 78744
Regional Judges & Clerks Seminar	April 3-5, 2017 (M-T-W)	Amarillo	Ambassador Hotel 3100 I-40 Frontage Rd., Amarillo, TX 79102
Clerks One Day Clinic	April 20, 2017 (Th)	Beaumont	Holiday Inn & Suites 3950 I-10 South, Beaumont, TX 77705
Regional Clerks Seminar	May 1-3, 2017 (M-T-W)	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd, S. Padre Island, TX 78597
Regional Attorney Judges Seminar	May 7-9, 2017 (Su-M-T)	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd, S. Padre Island, TX 78597
Regional Non-Attorney Judges Seminar	May 9-11, 2017 (T-W-Th)	S. Padre Island	Isla Grand Beach Resort 500 Padre Blvd, S. Padre Island, TX 78597
Bailiffs and Warrant Officers Seminar	May 15-17, 2017 (M-T-W)	Huntsville	Veterans Conference Center 455 SH 75N, Huntsville, TX 77320
New Judges & Clerk Orientation	May 17, 2017 (W)	Austin	TMCEC 2210 Hancock Drive, Austin, TX 78756
Regional Judges & Clerks Seminar	June 5-7, 2017 (M-T-W)	Odessa	MCM Elegante 5200 E University Blvd, Odessa, TX 79762
Juvenile Case Mangers Seminar	June 11-13, 2017 (S-M-T)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
Prosecutors & Court Administrators Seminar	June 26-28, 2017 (M-T-W)	Addison	Crowne Plaza Dallas Galleria 14315 Midway Road, Addison, TX 75001
New Judges & Clerks Seminar	July 17-21, 2017 (M-T-W-Th-F)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
Legislative Update	August 4, 2017 (F)	Lubbock	Overton Hotel 2322 Mac Davis Ln. Lubbock, TX 79401
Legislative Update	August 8, 2017 (T)	Houston	Omni Houston Hotel 13210 Katy Freeway, Houston, TX 77079
Legislative Update	August 15, 2017 (T)	Dallas	Omni Dallas Hotel Park West 1590 LBJ Fwy, Dallas, TX 75234
Legislative Update	August 18, 2017 (F)	Austin	Omni Southpark 4140 Governors Row, Austin, TX 78744

Register online after September 1st: <https://register.tmcec.com>

TEXAS MUNICIPAL COURTS EDUCATION CENTER

FY17 REGISTRATION FORM:

Regional Judges & Clerks Seminar, Court Administrators, Bailiffs & Warrant Officers, Level III Assessment, Clinic, Traffic Safety, and Juvenile Case Managers

Conference Date: \_\_\_\_\_

Conference Site: \_\_\_\_\_

Check one:

- Non-Attorney Judge (\$50)
Attorney Judge not-seeking CLE credit (\$50)
Attorney Judge seeking CLE credit (\$150)
Regional Clerks (\$50)

- Traffic Safety Conference - Judges & Clerks (\$50)
Level III Assessment Clinic (\$100)
Court Administrators Seminar (\$100)
Bailiff/Warrant Officer (\$100)
Juvenile Case Manager (\$100)

By choosing TMCEC as your MCLE provider, attorney-judges help TMCEC pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

Name (please print legibly): Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Names you prefer to be called (if different): \_\_\_\_\_ Female/Male: \_\_\_\_\_

Position held: \_\_\_\_\_ Date appointed/hired/elected: \_\_\_\_\_ Are you also a mayor?: \_\_\_\_\_

Emergency contact (Please include name and contact number): \_\_\_\_\_

HOUSING INFORMATION - Note: \$50 a night single room fee

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a shared double occupancy room with another seminar participant at all regional judges and clerks seminars. To share with a specific seminar participant, you must indicate that person's name on this form.

- I request a private room (\$50 per night : # of nights x \$50 = \$ ). TMCEC can only guarantee a private room, type of room (queen, king, or 2 double beds\*) is dependent on hotels availability. Special Request:
I request a room shared with a seminar participant. Room will have 2 double beds. TMCEC will assign roommate or you may request roommate by entering seminar participant's name here:
I do not need a room at the seminar.

Hotel Arrival Date (this must be filled out in order to reserve a room): \_\_\_\_\_

\*If you bring a companion with you to stay in the hotel, the hotel reserves the right to charge an additional fee.

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_

Court Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_

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

\*Bailiffs/Warrant Officers: Municipal judge's signature required to attend Bailiffs/Warrant Officers' program.

Judge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

DOB: \_\_\_\_\_ TCOLE PID # \_\_\_\_\_

I have read and accepted the cancellation policy, which is outlined in full on page 10-11 of the Academic Catalog and under the Registration section of the website, www.tmcec.com. Full payment is due with the registration form. Registration shall be confirmed only upon receipt of the registration form (with all applicable information completed) and full payment of fees.

Participant Signature (may only be signed by participant)

Date

PAYMENT INFORMATION:

Registration/CLE Fee: \$ + Housing Fee: \$ = Amount Enclosed: \$

- Check Enclosed (Make checks payable to TMCEC.)
Credit Card

Credit Card Payment:

Amount to Charge: Credit Card Number Expiration Date

Credit card type: \$

MasterCard

Visa Name as it appears on card (print clearly):

Authorized signature:

Receipts are automatically sent to registrant upon payment. To have an additional receipt emailed to your finance department list email address here::

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.

# SHARED SOLUTIONS: FINES, FEES, & COSTS

TMCEC has several new items on its web page that focuses on Fines, Fees, & Costs:

- A set of questions to ask at Commitment Hearings (courtesy of Judge Richard Patteson of the Tyler Municipal Court, Thank you, Judge Patteson!).
- A series of best practices in a new set of materials entitled *Forward in Practice*. Here you will find shared solutions with considerations for implementation and the legal authority of the procedures if you decide to adopt the practice in your court. Current practices identified include:
  - [Kiosk Court: Remote Video-Conference Adjudication](#)
  - [Mitigation Docket or Compliance Court: Walk-In Court for Order Modification and Uncontested Pleas](#) (see also page 23 of this issue)
  - [“Safe Haven” Non-arrest Policies](#)
  - [Understanding the Implications in “Alternative Payment Procedures” for Capias Pro Fines](#)
  - [Handout/Information for Indigent Defendants](#)
  - [Using Electronic Means to Improve Compliance](#)

We continue to work on these shared solutions. Send your forms, pamphlets to [tmcec@tmcec.com](mailto:tmcec@tmcec.com).

<http://tmcec.com/fines/>

**From Our Courts: Fines, Fees, & Costs**

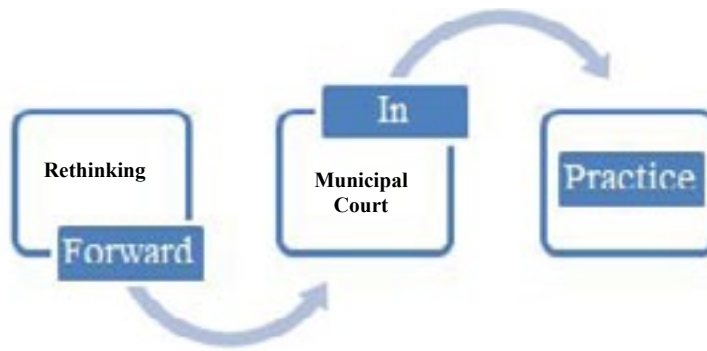
- [Lafayette Municipal Court Files: What Do I Get?](#)
- [College Student Blog on Arrests](#)
- [Questions for Commitment Hearing](#)

**Additional Resources Available:**

The TMCEC 2015 Fines Book has a number of items to help judges and court personnel work with indigent persons & papers in the Florida State.

**Checklist: INDIGENT, COMMUNITY SERVICE, JAIL CREDIT & PAYMENT PLANS**

- Advertisement as to Financial Changes
- Application for Fine Payment, Extension or Community Service
- **DEFENDANT AGREEMENT FORM**
- Schedule of Payments for Indigent Assessment
- Community Service Order
- Community Service Time Sheet
- Order of Discharge of Fine and Costs for Indigent Defendants and Offense
- Order Waiving Burden of Proof for Indigent Defendants
- Inmate/Prisoner List/Check Response Letter
- Defendant's Motion to Lay Out Fine on Jail
- Defendant's Motion at Circuit Court/County Court to Dispute an Indigent Defendant's Service



**Shared Solution:**

Mitigation Docket and Compliance Court: Walk-In Court for Order Modification and Uncontested Pleas

**Procedure:** The court makes a judge available during specified hours for any defendant with a pending case to appear without prior scheduling. The judge can, dispose of uncontested cases, set cases for contested hearings, recall warrants, and hear uncontested motions to modify, for example, payment plans and extensions to pay, or hear issues regarding indigency.

**Considerations:**

- A court considering use of a walk-in docket should also consider instituting a no-arrest policy at the courthouse for defendants with active warrants. This is important if for no reason other than avoiding the appearance that the docket is used as bait to lure in recalcitrant defendants.<sup>1</sup>
- All prosecutions in municipal court must be conducted by the city attorney or by a deputy city attorney.<sup>2</sup> Not having a prosecuting attorney present will limit the kinds of hearings which may be held. Dismissals (other than compliance dismissals<sup>3</sup>) would require the prosecution to move for dismissal.<sup>4</sup> A judge should not hear any evidence or testimony, sworn or otherwise, in a case that has not been adjudicated.<sup>5</sup> Sentencing hearings may be *ex parte*,<sup>6</sup> but trials require an attorney for the state be present.
- In addition to the judge, courts need to factor in the costs of scheduling a clerk, prosecutor, and bailiff at the walk-in docket. For cities without in-house prosecutors, this could entail a review of any agreements with contract attorneys. Courts should also be aware of related staffing issues such as overtime and other potential human resources issues for court personnel.
- Judges and clerks at such dockets must take care that no plea is taken from a person who was a juvenile at the time the offense was alleged, unless that person’s parent or guardian is present.<sup>7</sup> A judge should exercise caution, and verify that any underage defendant is accompanied by either a parent or a legal guardian, or that the case be reset to give notice.
- To observe such a docket, visit the Austin Municipal Court or San Antonio Municipal Court.

**Authority:**

1. Tex. Code of Judicial Conduct, Canon 2(A) (A judge... should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.)
2. Article 45.201, Code of Criminal Procedure.
3. See TMCEC Compliance Dismissal chart: [http://www.tmcec.com/files/7814/3939/6436/Compliance\\_Dismissals.pdf](http://www.tmcec.com/files/7814/3939/6436/Compliance_Dismissals.pdf).
4. Article 32.02, Code of Criminal Procedure.
5. Tex. Code of Jud. Conduct, Canon 6(C)(2).
6. TMCEC Bench Book, *Sentencing*, p. 189 (2015).
7. Article 45.0215, Code of Criminal Procedure.

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**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.

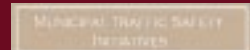
Photo Courtesy of Forest Hill Municipal Court,  
National Night Out 2015



**OCTOBER 4, 2016**  
NATIONAL NIGHT OUT

Join the hundreds of municipal courts in Texas already celebrating these special events as a way to prevent impaired driving and increase traffic safety in their communities!

TMCEC's TxDOT-funded Municipal Traffic Safety Initiatives grant can provide free educational safety materials to distribute to the public. Please visit <http://www.tmcec.com/mtsi/resources-municipal-courts/> to learn more!



**Drink. Drive. Goto Jail. TxDOT**

MUNICIPAL COURTS WEEK  
**November 7-11, 2016**