Municipal Court Recorder

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Delineating the Four Rules of Expunction for Kids

By James D. Bethke
Director, Task Force on Indigent Defense

In general, "expunction" is a legal process of eliminating any official records or files whether written or electronic relating to an arrest[1]. The term "expungment" is also commonly used for this process—even appearing in the Alcoholic Beverage Code—and while it is proper, is probably not preferred to expunction.

In 2001, the Texas Legislature added Code of Criminal Procedure Article 45.0216, *Expunction of Certain Conviction Records of Children*. One of the purposes of Article 45.0216 was to simplify the process of erasing a child's—that is a person who has not turned 17—record of conviction for a conviction of a non-jailable misdemeanor. The provisions of Article 45.0216, Code of Criminal Procedure do not seem to apply to traffic offenses under the Transportation Code or ordinance. As part of this legislative reform, Code of Criminal Procedure Article 58.01, *Sealing Files and Records of Children* in justice and municipal court cases was repealed, although those provisions continue to apply to offenses committee before September 1, 2001. Article 45.0216 is limited in scope and does not apply to minors convicted of an offense under Chapter 106 of the Alcoholic Beverage Code, Chapter 106 of the Health and Safety Code (tobacco), or individuals convicted of the offense of failure to attend school under Section 25.094 of the Education Code because these convictions have existing statutes regarding their expunctions.

The following is an analysis of the four sets of rules governing expunctions of the records of offenses committed by minors or children in municipal or justice court. These rules are separate and distinct from the expunction procedures provided under Chapter 55 of the Code of Criminal Procedure. All of the provisions discussed here relate to expunctions ordered by municipal judges in municipal court cases.

Rule One

Code of Criminal Procedure Article 45.0216, *Expunction of Certain Conviction*

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Shame-based Sentencing: Thinking "Outside of the Box" or "Out of Bounds"?

By Ryan Kellus Turner
Program Attorney & Deputy Counsel, TMCEC

In our last issue, we discussed deferred disposition and the authority of the municipal judge to impose "reasonable conditions"[1] as a term of probation. Critical to our discussion was the fundamental question: What constitutes a reasonable condition?

While case law provides limited guidance, scholars agree that a municipal court's discretion is broad but not unlimited.[2] Judges "should prescribe additional conditions to fit the particular situation. Probation conditions must be reasonably related

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AROUND THE STATE

TMCA Annual Meeting

The 2002 Annual Meeting of the Texas Municipal Courts Association will bring the Association together to prepare for the future of municipal courts. Corpus Christi has been selected to host the gathering because the City of Corpus Christi Municipal Court is on the forefront of court technology. Educational programs about technology and a visit to the Corpus Christi Municipal Court are both scheduled for the Meeting. Educational opportunities for members will include sessions to prepare for 2003 legislative activity. An in-depth session on how the Legislature works and what to expect in the 2003 Session will be presented. An annual business meeting will also be held to conduct important work of the organization.

Meetings will be conducted at the host hotel, the Omni Corpus Christi Marina. Special lodging rates of $80 (single occupancy) and $104 (double occupancy) have been secured for participants. Participants may have one guest stay at no extra charge using the single occupancy rate. Contact the hotel directly to reserve a room: toll-free 800/843-6664. The hotel is located at 707 North Shoreline Boulevard in Corpus Christi (78401). A limited number of rooms at the special meeting rate will be held for TMCA members until October 3, 2002.

The registration fee is $95 and covers all educational sessions, materials, President's Reception, and the Association's Annual Dinner and Banquet which will take place aboard the World War II Aircraft Carrier, *USS Lexington*. Additional banquet tickets may be purchased for $45 each. For a registration form, contact the Honorable Robert C. Richter, Jr., City of Missouri City, 1350 NASA Road One, Suite 200, Houston, TX 77058, telephone: 281/333-9229.

Best of Texas – 2002: Technology

On September 24, 2002, at the Omni Austin Hotel-Southpark, the *Best of Texas-2002 A Government Technology Executive Leadership Forum* will be held. The conference is free for government employees and designed for persons who influence or participate in technology decisions or implementations. The conference begins at 9:00 a.m. and concludes at 4:00 p.m. Topics include *Digital Government from A to Z; Where are We? Where Should We Be?; Web Development; Document Imaging Management; Cyber-Security; Legacy Systems; Geographic Information Systems; Disaster Recovery;* and the *Best of Texas Case Studies*. To register, go online to www.govtech.net or call 800/917-7732 ext. 393.

FROM THE GENERAL COUNSEL

W. Clay Abbott

Juvenile Confessions

In this edition you will find an excellent article on juvenile custodial statements by Associate Judge Pat Garza of Bexar County, Texas. It was first published in the *State Bar Juvenile Law Newsletter* (June 2002). Since many municipal judges act as magistrates in this regard, we hope the article will be helpful. Judge Garza squarely addresses several thorny issues of law, including juvenile processing offices, parental notification, and parental presence. The article is not directed to magistrates in particular, but contains an excellent analysis of the law.

The law, as Judge Garza eloquently points out, is made to protect the juveniles in police custody and to ensure that choices the juvenile makes are as voluntary and informed as possible. Plus, any article that starts and finishes with "Harry Potter" can't be too bad.

For a more hands-on treatment of juvenile warnings see Chapter 13H of the *TMCEC Bench Book v.4*, and the "Magistrate's Verification and Certification for Statement of a Juvenile" form found in the TMCEC *2001 Forms Book*.

Attorney General Opinion JC-0516 and Collection Contracts

With the passage of SB 1778 during the 77th Legislative Session a little over a year ago, there has been a flood of law firms and collection agencies anxious to help collect unpaid municipal cases for a fee of 30 percent of the total they collect. The fee is charged to the defendant and is disclosed prior to the fine or other cost. The bill was hailed as another tool to be used for more effective collection and enforcement of judgments in municipal courts.

An immediate issue was raised about whether cases in which the defendant failed to appear and no plea or judgment was made were "debts and accounts receivable such as fines" under the newly amended Article 103.0031, Code of Criminal Procedure. The Attorney General squarely addressed the issue on June 24, 2002 in Opinion No. JC-0516 and opined that suggested fines were neither debts nor accounts receivable under the law.

The concept that a judgment must be entered before a fine is due would seem to be fairly elementary. That concept is the linchpin to the opinion. The opinion also cites language in Article 103.0031, Code of Criminal Procedure referring to amounts "ordered paid by the court." Again a judgment based on a plea or finding of guilt is the mechanism used by the court to order payment.

You may ask what difference does this make? The additional fee of 30 percent paid by the defendant is not authorized where there is no order or judgment made before referral for collection. The existing rules requiring that any moneys collected first go to state court cost are still in effect where there has been no previous order by the court. In other words, on failure to appear cases, any contractual fee for collection comes out of the municipality's funds, not the defendant's or the state's funds. If, under contract, the collection entity keeps a partial payment on a case without an order and fails to collect all state costs, the municipality pays the cost it never even saw due to its collection contract.

Many municipalities have entered contracts that put them under tremendous liability exposure under the A.G. opinion and a common sense reading of the statute. Often this has been based on legal advice from the firms or agencies benefiting from the contract. If your municipality has signed such a contract, the issues raised by Opinion JC-0516 need to be brought to the attention of the city attorney and city management. If your municipality has not entered a contract, make sure the contracting entities in your city are aware of these issues.

The collection folks swear that the problem will be solved legislatively. My concern is that the obvious fixes would be to give judicial authority to collection companies and violate practically ever constitutional protection provided to citizens accused of Class C misdemeanors in Texas. The intrinsic conflict is not a new one for municipal courts. The intrinsic conflict is whether municipal courts are actual criminal courts or simply administrative taxing machines. Thanks to the most recent opinion from the Attorney General, it appears that for the time being we remain courts and not ATMs.

Can a Prosecutor and a Defense Lawyer Marry?

The simple answer is yes. The larger question is who would want either one? Joking aside, the issue of what conflicts might arise in that situation

Police Interactions with Juveniles and Their Effect on Juvenile Confessions

By The Honorable Pat Garza
Associate Judge, Bexar County

"It is our choices, Harry, that show what we truly are, far more than our abilities."

*– Albus Dumbledore**

Professor Dumbledore in Harry Potter understood what we have been trying to teach our children for years. Harry Potter, while blessed with extraordinary abilities, found his future shaped and molded by the choices he made. Like Harry, many kids today also have extraordinary abilities. Some are blessed with great intelligence, some have a natural charisma, some are born with physical beauty or have obtained unique athletic ability, but when it is all said and done their future and the path they travel will boil down to the choices they too make. While a single indiscretion may not change a child's life, their continuous choices will inevitably mold who they truly are. For many kids, a single unlawful act or unfortunate circumstance can be traced back to a single moment. That single point in time when that child had a choice. They knew the right thing to do, but chose the alternative.

In the area of juvenile confessions, the Legislature has enacted laws to shield children from making difficult choices before they are ready. You see, the better a parent teaches his child to respect and cooperate with authority, the more that child needs the protections of the Family Code. The Legislature and the courts in recognizing the tenuous predicament that children are placed, have attempted to assist them with their choices when interacting with law enforcement officers. Their lack of experience and judgment is presupposed in the legislation and failure by a law enforcement officer to adhere to these protective provisions may affect the voluntary nature of the child's interactions with him.

Once a law enforcement officer has taken a child into custody, failure to properly handle and transport that child may render his confession or evidence obtained inadmissible, even if the officer has fully complied with Section 51.095 (Confession Statute) of the Family Code. The proper handling and delivery of the child during custody (and in compliance with the code) may be key in establishing that a confession is voluntary.

> A statement by a juvenile that is otherwise admissible under section 51.09 [51.095] may be found to be inadmissible if the requirements of section 52.02(a) are not followed. *Comer, 776 S.W.2d* at *195-96.*

Section 52.02 of the Family Code is an expression of the Legislature's intent to restrict involvement of law enforcement officers to the initial seizure and prompt release or commitment of the juvenile offender. It mandates that an officer (after taking a child into custody) must "without unnecessary delay, and without first taking the child to any place other than a juvenile processing

*Rowling, J.K., *Harry Potter and the Sorcerer's Stone (1997)*

From the General Counsel continued from page 3

was the topic of Ethics Opinion 539 handed down by the Professional Ethics Committee of the State Bar of Texas. The reaction to the opinion has been fiercely negative.

The basics of the opinion are that a conflict exists on behalf of both spouses, even if the spouses do not directly oppose each other. The defense attorney has a conflict only on criminal cases in the county (and, presumptively, in the municipality) in which the spouse works. This position is stated but never analyzed. The conflict may be waived after full disclosure. The opinion goes on that the prosecutor and the prosecutor's office has an unwaivable and seemingly irresolvable conflict. Suggestions are not made how to proceed in these cases.

The opinion has been attacked by the Texas District and County Attorney's Association, many defense lawyers, several courts, and a large number of female attorneys who feel the opinion is flawed, overbroad, and sexist. TDCAA requested the committee to reconsider, which they refused. The suggestion of the committee is that TDCAA ask the Supreme Court to rewrite the Rules of Professional Conduct. Of course, litigation and pretrial motions to dismiss have flourished and are likely to filter down to our courts soon. TDCAA has made available both a brief and a motion to address challenges on prosecutions based on Opinion 539. Both of those well-researched documents can be found at www.tdcaa.com or linked through the TMCEC web site at www.tmcec.com.

office" take the child to any one of six enumerated places. By the clear language of the statute, it is not merely a question of whether the officer does one of the six enumerated options without unnecessary delay, but also whether he takes the juvenile to any other place first.[1]

A brief history of the evolution and creation of Sections 52.02 and 52.025 would be helpful in understanding the court's interpretation of strict adherence to these provisions.

The first significant case interpreting Section 52.02 with respect to its relationship to a juvenile's confession was *Comer v State*, 776 S.W.2d 191 (Tex. Crim. App.—1989). In *Comer*, the Court of Appeals upheld the admission of the written confession in the criminal trial on the grounds that compliance with Section 51.09(b) [now Section 51.095] was all that was required. Section 51.09(b) is the provision that requires that a law enforcement officer who wishes to obtain a confession from a child to take that child to a neutral magistrate in order to ensure that the confession is being freely and voluntarily given.[2] The Court of Criminal Appeals however, reversed, rejecting the argument that compliance with Section 51.09(b) would trump any Section 52.02 violation. At the time that *Comer* was decided, Section 52.025 (juvenile processing office exception) did not exist, and as a result, law enforcement had no exception contained in the statute to for the processing of a juvenile offender (including the taking of his statement).

In 1991, three years after *Comer*, Section 52.02 was amended and Section 52.025 was created to authorize police officers to temporary hold juveniles in a "juvenile processing office," for certain specific purposes. These changes gave law enforcement a place (and an authorization) to take confessions of juveniles while they are in custody.

In 1999, the Court of Criminal Appeals decided *John Baptist Vie Le v. The State of Texas*, 993 S.W.2d 650 (Tex. Crim. App.—1999), the second significant decision pertaining to violations of Section 52.02.

John Baptist Vie Le was arrested by a law enforcement officer who wanted to take the child's statement. As in *Comer*, the officer complied with the requirements of Section 51.09(b), but failed to fully comply with Section 52.02 by not having the child in a juvenile processing office when he obtained the child's confession. The court concluded that appellant's statement was taken in violation of the Family Code, and reversed and remanded the case for the appeals court to consider whether or not the admission of the improper statement had harmed the appellant.

In deciding *Le* the Court of Criminal Appeals, while making reference to *Comer* powerfully stated:

> ...we must not ignore the Legislature's mandatory provisions regarding the arrest of juveniles. We informed the citizenry, a decade ago in a unanimous opinion, of the Legislature's clear intent to reduce an officer's impact on a juvenile in custody. Today we remind police officers of the Family Code's strict requirements.[3]

Section 52.02 of the Family Code clearly requires that an officer deliver the child (to one of six locations) "without unnecessary delay." In *Roquemore v. State*,[4] a Court of Criminal Appeals opinion, the officer instead of taking the respondent directly to a juvenile processing office, as required by the statute, took the child (at the child's request) to the place where the child had said stolen property was hidden. In suppressing the confession the court stated:

> The procedure and options are clear in Section 52.02(a), and first taking the juvenile, at his own suggestion, to the location of stolen property is not enumerated. Because the appellant was not transported to the juvenile division "without first being taken to any other place," the officers violated Section 52.02(a). *Comer*, 776 S.W.2d at 196-97.[5]

While most cases have found that most delays are unnecessary, in *Contreras v. State*, another Court of Criminal Appeals opinion, it was a "necessary delay" to hold a child in a patrol car at the scene of an offense for 50 minutes before bringing her to the juvenile processing office to obtain a statement. The court accepted the state's argument that the delay was necessary because police were attending to the victim and interviewing witnesses to the offense.[6] The delay was considered deminimus.

Requirement of Parental Notification Upon Arrest

Section 52.02(b), F.C. states:

> A person taking a child into custody shall promptly give notice of his action and a statement of the reason for taking the child into custody, to:
>
> (1) the child's parent, guardian, or custodian; and
>
> (2) the office or official designated by the juvenile court.

In *Gonzales v. State*,[7] the Houston Court of Appeals [1st Dist.] suppressed the juvenile's confession because Section 52.02(b)(1) was not satisfied where the evidence at the hearing on the juvenile's motion to suppress did not show that the

juvenile's parents had been notified while the officers took the juvenile's confession. However, in February 2002, the Court of Criminal Appeals reversed and remanded *Gonzales* for consideration of a causal connection between the failure to notify the juvenile's parent of his arrest and the receipt of his confession.[8]

In *State v. Simpson*,[9] the Tyler Court of Appeals affirmed the trial court's suppression of a juvenile's confession pursuant to Section 52.02(b) because the juvenile's mother was not notified until the Sunday evening following his arrest at 11:00 a.m. on the preceding Friday.

In *In the Matter of C.R.*,[10] police failed to notify the respondent's mother that her son had been taken into custody and the reason for doing so. At a minimum, one hour elapsed from the time the respondent was taken into custody until the initial contact with his mother. In addition, police discouraged her from coming to the police station to see her son and ultimately notified her only when the respondent was taken to the juvenile detention facility. The Austin Court of Appeals held that the requirement of parental notice had been violated and that the written statement given during the period of violation should have been excluded from evidence.[11]

It is the responsibility of the person taking the child into custody to notify the parents of the arrest with a statement of the reason for taking him into custody. In *Pham v. State*,[12] the police officer arrested the child at school, took the child to a magistrate to have the child's warning explained, then returned the child to a processing office to take his statement, but failed to contact the child's parents. The trial court admitted the confession, but the Houston Court of Appeals [1st Dist.] reversed stating:

> The duty to notify a child's parents belonged to the 'person taking a child into custody,' *i.e.*, Officers Hale and Parish, and [*12] their supervisor, Officer Miller in this case. It was their responsibility to see to it that notice of appellant's arrest, with a statement of the reason for taking him into custody, was promptly given to appellant's parents and the official designated by the juvenile court. These officers were apparently oblivious to the fact they had such a duty, and they did not perform as required.[13]

In *Hill v. State*,[14] a Tyler Court of Appeals decision, the child was arrested shortly before 9:25 a.m., but his mother was not contacted until 1:45 p.m., four hours and 20 minutes later. The detective never attempted to contact anyone, testifying he was busy working the crime scenes, collecting evidence, and taking the child's statement. The court found that while the four hour and 20 minute delay standing alone might not warrant reversal pursuant to Section 52.02(b), the impact of the delay was enhanced by the fact that the juvenile was in the process of deciding whether or not to waive important constitutional rights. It is also noteworthy that his mother was reached by telephone on the very first attempt immediately after the child's confession had been obtained following his on-again off-again attempts to claim his constitutional rights. There was scant direct evidence in the record of any efforts to contact her or anyone else until after the confession was obtained. Under these circumstances the court held that this was not prompt notification under Section 52.02(b) of the Family Code.[15]

The Juvenile Processing Office

The juvenile processing office is a temporary location that allows an officer to do certain specific things. The options in Section 52.02(a) are permanent options, while the juvenile processing office is a temporary option (no longer than six hours). If the officer decides to take the child to a juvenile processing office, he must eventually take the child to one of the options in Section 52.02(a). One office cannot be both a juvenile processing office and one of options listed in Section 52.02(a).[16]

In *Anthony v. State*,[17] the 4th Court in San Antonio ruled that a statement was illegally obtained and could not be admitted to support a criminal conviction because the officers did not contact the juvenile officer or take the required step of processing defendant in an area specifically utilized for juveniles.

In *In re R.R.*,[18] a Corpus Christi Court of Appeals case, officers took the juvenile directly to the police station, but because no evidence showed that the juvenile was detained in an office designated as the "juvenile processing office," the confession was illegally obtained and, therefore, inadmissible.

But see also, *Williams v. State*,[19] where the officer picked up Williams at the Bexar County jail because he had given a false name to the arresting officer. The officer who picked up Williams determined that he was a child and took the child to the homicide office to take the child's statement. The homicide office was not a designated juvenile processing office. The juvenile processing office that was normally used was being remodeled and under construction. A second juvenile processing office was locked and unavailable. The court stated that the purpose for requiring juveniles to be interrogated in specially designated areas is to protect them from exposure to adult offenders and the stigma of criminality. Because no one else was in the homicide office at the time Williams made his statement, this purpose was fulfilled. To hold that Williams' statement was inadmissible under these circumstances would be to place form above substance. The court

also noted:

> ... the interest in achieving the purpose of sections 52.02 and 52.025 is somewhat diminished in this case, given that Williams had already been exposed to adult offenders and the stigma of criminality when he was booked into the Bexar County Jail as a result of his own misrepresentations.[20]

Parental Presence In The Processing Office

The issuance of warnings to the child as required by Section 51.095 (Confession Statute) and the receipt of a statement by the child under Section 51.095 must be done in the Juvenile Processing Office.[21]

Section 52.025(c) states:

> (c) A *child* may not be left unattended in a juvenile processing office and is *entitled to be accompanied by the child's parent, guardian, or other custodian* or by the child's attorney [emphasis added].

While Section 51.095 (Confession Statute) does not mandate that a parent be present during the taking of a confession nor that the magistrate advise the juvenile that he has a right to have a parent present, Section 52.025(c) does mandate that the confession and the required warnings be received in the juvenile processing office, and in the juvenile processing office the child *does* have a right to be accompanied by his parent, guardian or attorney. If an officer complies with the provisions of Section 51.095, Section 52.02, as well as Section 52.025, the child has a right to have his parent, custodian, or attorney present during the confession.

In *In the Matter of C.R.*,[22] the Austin Court of Appeals stated that the Legislature may well have concluded that juveniles are more susceptible to pressure from officers and investigators and that, as a result, justice demands they have available to them the advice and counsel of an adult who is on their side and acting in their interest.

Section 52.025(c) appears to take that intent one step further. The entitlement to having a parent present in the processing office is not lessened because an officer is attempting to obtain a statement from the child. In fact, the reverse is probably true. Section 51.095 governs how to proceed in the taking of a statement of a child in custody, but Section 52.025 governs how to proceed if the child is not delivered to one of the six statutory locations. If the officer elects to continue his contact with the child it must be done in the processing office and the child has right to be accompanied by his parent (in the processing office), irrespective of whether or not the officer wants to get a statement from the child. An officer who has taken a child into custody and who wishes to take the child's statement should notify the child's parents of the arrest, take the child to a processing office, fully comply with Section 51.095, and if the child requests, allow him to be accompanied by his parent or guardian.

Section 52.025(b) clearly states that the child has right to be accompanied by his parent, guardian or attorney. What if the provision had only stated that the child had a right to have his attorney present? Would the courts not have already required law enforcement officers to advise the child of his right to have his attorney present. What would be the legislative intent to give the child the right to have his attorney present if not to advise him of his rights and to assist him in all matters conducted while in the processing office (*i.e.*, the warnings preceding a confession and the giving of a confession itself). The Legislature has attempted to give the child assistance in the processing office by giving him the right to have his attorney present (or parent). If it is the legislative intent that the child have assistance in the processing office, why wouldn't it intend to have someone notify the child of this right? The irony is, one reason for giving the child the right to having his parent or attorney present (in the processing office) would be to assist him in understanding and advising him regarding his right to having his parent or attorney present. There are many questions still unanswered regarding parental presence. Is there truly a duty to inform the child of this right, and if so, whose duty is it? Can the parent claim the right for the child (as guardian)?

It should also not be assumed that the right to be present belongs to the parent. The parent clearly has a right to be notified of the arrest, but there is no provision that specifically gives the parent the right to be present in the processing office or during a confession. It does not appear that an officer could refuse a child's request to have his parent or guardian present in the juvenile processing office, but refusing the parents request to be present, while not recommended, is still debatable. I have found no Texas authority which entitles a parent or guardian to be present during the taking of a statement. But, in some jurisdictions courts have held that a minor's request, made during custodial interrogation, to see his parents constituted an invocation of the minor's Fifth Amendment right to remain silent.[23] While a statement need not be taken at a juvenile processing office, if it is, all of the requirements of Section 52.025 should be complied with.

Causal Connection and Taint Attenuation Analysis

In *Gonzales v. State*,[24] police complied with all the requirements of Section 51.095 (Confession Statute) and Section 52.02(a) (Release or Delivery to Court Statute), but failed to notify the child's parents of his custody as required by Section 52.02(b). The Court of Appeals disallowed the confession for failure to promptly notify the parents of the child's arrest as required. The Court of Criminal Appeals, however, reversed and remanded for consideration of a causal connection between the failure to notify the parent (upon taking a child into custody) and the receipt of the confession.[25]

The Court held that Section 51.095 is considered an independent exclusionary statute. It sets out what must be done before the statement of a juvenile will be admissible. The reasonable inference is that if the stated conditions are not met, the statement of the child will not be admissible.[26] However, the violation of Section 52.02(b) does not implicate the provisions of Section 51.095 and there is no clear legislative intent to suppress a statement under that section when a violation is detected. The Court through Section 51.17 of the Family Code, invoked Chapter 38 of the Code of Criminal Procedure and found that if evidence is to be excluded because of a Section 52.02(b) violation, it must be excluded through the operation of Article 38.23(a) of the Code of Criminal Procedure.

Article 38.23(a) C.C.P. is an exclusionary rule and provides:

> no evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas ...shall be admitted in evidence.

The Court of Criminal Appeals has previously established:

> evidence is not "obtained ...in violation" of a provision of law if there is no causal connection between the illegal conduct and the acquisition of the evidence.[27]

While the juvenile's parents were not timely notified of respondent's custody, the lower court failed to conduct a causal connection analysis to determine its affect upon the taking of the statement. Utilizing the standard set out in *Comer*, the Court of Criminal Appeals remanded the case to the lower court so that it may ascertain "with any degree of confidence that," had the appellant's parents been notified timely "he would still have chosen to confess his crime."[28]

Along with the causal connection analysis a court should also conduct a taint attenuation analysis before excluding a confession because of a Section 52.02 violation. In *Comer*, before reversing the case for failing to transport a juvenile "forthwith" to the custody of the juvenile custody facility, the Court of Criminal Appeals conducted a taint attenuation analysis, utilizing the four factors from *Bell v. State*, 724 S.W.2d 780 (Tex. Crim. App. 1986). *Comer*, 776 S.W.2d at 196-97.

Those factors are:

(1) the giving of Miranda warnings;

(2) the temporal proximity of the arrest and the confession;

(3) the ...presence of intervening circumstances; and

(4) the purpose and flagrancy of the official misconduct.

Conclusion

Professor Dumbledore, in Harry Potter, attempted to restrict and protect Harry from that which Harry did not yet understand or comprehend. The Texas courts have similarly attempted to restrict and protect juveniles in their relationship with law enforcement, until they too are ready and can fully understand.

Beginning at a very young age, children have been instructed and taught to listen and cooperate with people who stand in authority over them. To respect their elders and always tell the truth. As a society, we attempt to teach these principles to our children. We do so by design, to allow people in authority to control and discipline them in our absence. For a child who has learned respect, an unpretentious request by a person in authority in a situation of great consequence may be as effective as a direct order. We as parents are aware of it, teachers and school administrators are aware of it, and law enforcement is aware of it. The Legislature and the courts have attempted to keep us from taking advantage of it. They have done so by (among other things) requiring parental notification when a child is taken into custody and by giving the child the right to have a parent present if the child is not immediately released or placed in detention. A person can know what is necessary and implement by choice that which is intended, or he can use his skill and abilities to secure that which he seeks, at the expense of those who looks to him for help and trust. But then:

"It is our choices, that show what we truly are, far more than our abilities."

Table of Authorities

1. *Roquemore v. State*, 60 S.W.3d 862, No. 722-00, 2001 Tex. Crim. App. LEXIS 106 (Tex.Crim.App. 9/14/01).
2. Texas Family Code § 51.095.
3. *Le v. State*, 993 S.W.2d 650 at 655 (Tex. Crim. App. 1999).
4. *Roquemore v. State*, 11 S.W.3d 395, 400 (Tex. App.—Houston [1st Dist.] 2000, pet. granted).
5. *Roquemore v. State*, 11 S.W.3d 395, 400 (Tex. App.—Houston [1st Dist.] 2000,

pet. granted).

6. *Contreras v. State*, 67 S.W.3d 181, 2001 Tex. Crim. App. LEXIS 58 (Tex.Crim.App. June 27, 2001). [Motion for rehearing on petition for discretionary review denied, (Sep. 12, 2001)].

7. *Gonzales v. State*, 9 S.W.3d 267 (Tex. App.—Houston [1st Dist.] 1999, pet. granted)

8. *Gonzales v. State*, No. 47-00, 2002 Tex. Crim. App. Lexis 34 (Tex.Crim.App. February 13, 2002) [rev. & rem. for causal connection analysis].

9. *State v. Simpson*, 51 S.W.3d 633 (Tex. App.—Tyler No. 12-00-00235-CR, December 29, 2000).

10. *In the Matter of C.R.*, 995 S.W.2d 778 (Tex. App.—Austin 1999, pet. denied).

11. *In the Matter of C. R.*, 995 S.W.2d 778 (Tex. App.—Austin 1999, pet. denied).

12. *Pham v. State*, 36 S.W.3d 199, No. 01-99-00631-Cr, 2000 Tex. App. Lexis 8656 (Tex. App.—Houston [1st Dist.] Dec. 28, 2000.

13. *Pham v. State*, 36 S.W.3d 199 at 203, No. 01-99-00631-Cr, 2000 Tex. App. Lexis 8656 (Tex. App.—Houston [1st Dist.] Dec. 28, 2000.

14. *Hill v. State*, ___S.W.3d ___, No. 12-00-00172-CR; 2001 Tex. App. Lexis 3050 (Tex. App.—Tyler) May, 2001.

15. *Hill v. State*, ___S.W.3d ___, No. 12-00-00172-CR; 2001 Tex. App. Lexis 3050 (Tex. App.—Tyler) May, 2001.

16. *Le v. State*, 993 S.W.2d 650 (Tex. Crim. App. 1999).

17. *Anthony v. State*, 954 S.W.2d 132, 135 (Tex. App.—San Antonio 1997, no pet.).

18. *In re R.R.*, 931 S.W.2d 11, 14 (Tex. App.—Corpus Christi 1996, no writ).

19. *Williams v. State*, 995 S.W.2d 754 (Tex. App.—San Antonio) 1999.

20. *Williams v. State*, 995 S.W.2d 754 at 759 (Tex. App.—San Antonio) 1999.

21. Texas Family Code § 52.025(b) 4 & 5.

22. *In the Matter C.R.*, 995 S.W.2d 778 (Tex. App.—Austin) 1999.

23. *People v. Burton*, 6 Cal.3d 375, 491 P.2d 793 (1971).

24. *Gonzales v. State*, No. 47-00, 2002 Tex. Crim. App. Lexis 34 (Tex.Crim.App. February 13, 2002) [rev. & rem. for causal connection analysis].

25. *Gonzales v. State*, No. 47-00, 2002 Tex. Crim. App. Lexis 34 (Tex.Crim.App. February 13, 2002) [rev. & rem. for causal connection analysis].

26. *Gonzales v. State*, No. 47-00, 2002 Tex. Crim. App. Lexis 34 (Tex.Crim.App. February 13, 2002) [rev. & rem. for causal connection analysis].

27. *Gonzales v. State*, No. 47-00, 2002 Tex. Crim. App. Lexis 34 (Tex.Crim.App. February 13, 2002) [rev. & rem. for causal connection analysis].

28. *Gonzales v. State*, No. 47-00, 2002 Tex. Crim. App. Lexis 34 at n8 (Tex.Crim.App. February 13, 2002) [rev. & rem. for causal connection analysis].

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Expunction continued from page 1

Records of Children, allows a person who has reached 17 years of age to file a request in the court where he or she was convicted to have his or her records expunged. To qualify for expunction, a child must not have been convicted of more than one non-traffic Class C misdemeanor or ordinance violation. Also, the records of a person under 17 years of age relating to a complaint dismissed through deferred disposition or teen court may be expunged under this Article.

To file a motion for expunction under this Article, the person's request must be: 1) in writing; 2) under oath; and 3) contain the person's statement that he or she has not been convicted of another non-traffic Class C misdemeanor other than the one sought to be expunged. Although the Article is silent on the form in which the request must be made, in keeping with the objectives of Chapter 45, the form should be simple and without undue formalism.

This Article also requires that the judge inform the child and any parent in open court of the child's expunction rights. In addition, the judge must provide the child and parent with a copy of Article 45.0216. This notification should be done at or before the entry of a judgment or deferred order.

If the court determines that the person is entitled to expunction, then the court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record. This means the records must be both physically destroyed and references deleted from electronic storage. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose. The person whose records have been expunged may legally deny that this event never happened.

This statute prohibits the collection of any court costs or fees for this procedure.

Rule Two

Alcoholic Beverage Code Section 106.12, *Expungement of Conviction of Minor*, allows a person who has reached 21 years of age to file a request in the court where he or she was convicted to have his or her records expunged. To qualify for expungement under Chapter 106 of the Alcoholic Beverage Code, the person must: 1) not have been convicted of more than one violation under Chapter 106 of the Alcoholic Beverage Code; and 2) file a sworn statement that he or she was not convicted of any violation of this

code except for the one that he or she seeks to have expunged.

Unlike Article 45.0216 there is not a specific requirement under Section 106.12 for the court to inform the minor of his or her rights to expungement under the Alcoholic Beverage Code. However, in the interest of justice it makes sense for the court to also inform the minor of his or rights under this section at sentencing and provide the minor a copy of this law.

If the court finds that the applicant's sworn statement is true, then the court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

Section 106.012 does not address whether courts may assess and collect costs for this expungement. Article 102.006, C.C.P., however, provides that certain fees for expungement proceedings shall be collected. The ones that may apply to municipal courts include one dollar plus postage for each certified mailing of notice of hearing; and two dollars plus postage for each certified mailing of certified copies of an order of expungement.

Rule Three

Code of Criminal Procedure Article 45.055, *Expunction of Conviction and Records in Failure to Attend School Cases,* applies to the expunction of records of individuals convicted of *Failure to Attend School.*[2] The request may be made on or after the person turns 18 years of age. Of interest, the applicant may determine the form of the application for expunction under this Article. Notwithstanding, the application must be: 1) in writing; 2) under oath; and 3) state that the applicant had no more than one conviction.

The court may expunge the conviction without a hearing or order a hearing if facts are in doubt. Like the previous expunction rules, if the court grants the application for expunction, the applicant is released from a disabilities resulting from the conviction, and the conviction may not be made known for any purpose. Again, this means records

	Alcoholic Beverage Code	Alcoholic Beverage Code DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chpt. 729
Expunction*	Sec. 106.12 Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.	Sec. 106.12 Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.	Sec. 25.094(g) Only for offense of failure to attend school. •Court must notify child of right; •Court must give copy of Art. 45.055, C.C.P. Art. 45.055, C.C.P. •May apply at age 18 if only one conviction for offense of Failure to Attend School; •Must submit written request made under oath; •Form of submission determined by applicant; •No fee can be charged	Sec. 161.255, H.S.C. Yes. •May apply to the court to have conviction expunged; •Applicant must have completed tobacco awareness course; •May have multiple convictions expunged as long as applicant completed tobacco awareness course for each conviction.	Art. 45.0216, C.C.P. •Not more than one conviction; •Child may apply on or after age 17; •Apply to trial court; •Child makes request under oath; •Court cannot charge fee.	Chpt. 55, C.C.P. Expunction order must be filed in district court.

* Art. 45.0216, C.C.P. provides that proceedings under Art. 45.051, C.C.P. (deferred disposition) and proceedings under Art. 45.052, C.C.P. (teen court) may be expunged under Art. 45.0216, C.C.P.

and references must be physically destroyed including any electronically maintained records and references. Courts may not collect any fee or court cost for seeking an expunction under this section.

Rule Four

Health & Safety Code Section 161.255, *Expungement of Conviction*, allows an individual to have tobacco-related convictions expunged if the defendant satisfactorily completed a tobacco awareness program or tobacco-related community service for each conviction. Although the defendant must apply for the expunction, Section 161.255 does not provide for any requirement for the application. Although not necessary, the court may set a hearing on the application. All agencies or persons who have a relation to the case, records about the case, or knowledge about the applicant should be notified. At the hearing, if the judge determines that the applicant has complied, then the court will order all records including the conviction, along with the complaint, verdict, sentence, and other documents to be destroyed.

After the order is issued, the applicant is released from all disabilities arising from the conviction. Thereafter like the other expunction rules, the case cannot be shown or made known for any purpose. Under the Health & Safety Code, an applicant may request multiple expunctions as long as the applicant has completed the tobacco awareness course or the tobacco-related community service for each conviction that the applicant is applying for expunction. Since the expunction provision only applies to convictions, any charge that is dismissed would not be subject to expunction.

Summary

The primary purpose of the rules of expunction is to give young persons the opportunity to start fresh upon reaching a certain age and proceed into adulthood with a clean record from past mishaps. These rules also provide the courts some leverage to encourage young persons to act more appropriately and learn from past mistakes without the consequence of having to report a non-jailable misdemeanor conviction on every school, job, or military application for the rest of the person's life. In each of the rules, a person whose records have been expunged may legally deny that this event ever happened.

[1] Tex. Code Crim. Proc. Ann art. 55.01 (Vernon Supp. 2002). This article pertains to the expunction of criminal records for adults. A proceeding under this article must be filed in district court and is beyond the scope of this paper.

[2] Tex. Educ. Code Ann. sec. 25.094 (Vernon Supp. 2002).

Shame continued from page 1

to the nature and circumstances of the offense and the history and characteristics of the offender.[3] What little literature exists on the subject, suggests a condition of probation will be held unreasonable and invalid if it:

(1) does not relate to the crime for which the defendant was convicted;

(2) relates to conduct which itself is not criminal; or

(3) requires or forbids conduct that is not reasonably related to future criminality.[4]

While in many instances imposing a pecuniary fine may serve as a deterrent, there are also many instances where the benefits of imposing a fine are limited or negligible (*e.g.*, juvenile cases where the parent is likely to pay the juvenile's fine, indigent defendants where the imposition of the fine becomes a community service order, and cases where the defendants with unlimited financial resources). Hence in the last issue, judges were challenged to examine the circumstances in which they order deferred disposition and to "think outside of the box" by custom tailoring the terms of probation to address the behavior, attitudes, and beliefs underlying the criminal conduct.

The imposition of rehabilitative or remedial conditions to bring about positive changes in the behavior of defendants is so widely accepted amongst judges that it has become a contemporary legal movement (therapeutic jurisprudence). But where do judges cross the line? When does "creative sentencing" become anti-therapeutic? When does it constitute an abuse of discretion?

Across the Nation

While ultimately it depends on the facts and circumstance, critics allege that some judicial efforts to "think outside of the box" have "gone out of bounds." Consider the following national headlines:

- In North Carolina, a woman convicted of vehicular manslaughter is ordered to make a monthly, hour-long trek around the county court house toting a sign saying, "I am a convicted drunk driver. And as a result I took a life."
- In Michigan, a physician convicted of health-care fraud was ordered to advertise his guilty plea in two newspapers and a professional journal.
- In Washington D.C., a lobbyist who plead guilty to illegal campaign contributions was ordered to write an essay about his crime and distribute it to 2,000 Washington lobbyists and political action committees.

While critics claim that such probation conditions are cruel, ineffective, and barbarically reminiscent of the fictional Hester Prynne,[5] proponents of such

shame-based sentencing retort that humiliation has its place in the criminal justice system and in some cases is the key to public awareness.

In Texas

The controversy surrounding shame-based sentencing is not unknown in Texas.

- In Corpus Christi, District Judge J. Manuel Banales has ordered registered sex offenders to post notices on their homes and automobiles warning the public of their crimes (reportedly, one offender attempted suicide; two others were evicted from their home; others reported their homes being vandalized). More recently Judge Banales ordered an offender to abstain from sexual intercourse until married.
- In Houston, District Judge Ted Poe's notoriety for use of shame sentencing has been perhaps the most highly publicized in the state. On more than 300 instances Judge Poe has ordered probationers to notify the public of their crimes. Sentences have ranged from requiring a man who assaulted his wife to apologize on the steps of City Hall to ordering drunken drivers to parade in front of a local bar with a sign stating, "I killed two people while driving drunk." Others drunk drivers have been ordered to erect a cross and a Star of David at the accident site and maintain the symbols and the area around them, observe an autopsy of a person killed in a drunk driving accident, place flowers on the victims' graves on their birthday for 10 years, and carry the victim's photograph(s) in their wallets at all times.

Provocative is not Necessarily Shameful

With such instances in mind, readers should be mindful that not all provocative creative sentences are necessarily shame-based. Case in point, college students in San Angelo accused of illegally parking on campus in an area designated for persons with a disability are given the alternative of experiencing 21 hours of life on campus in a wheel chair. While some may believe this to be shame-based, Presiding Judge Allen Gilbert explains that the purpose of the condition is not to shame the offender but to increase the violator's awareness of the daily obstacles encountered by people in wheelchairs.[6] Applying the previously stated criteria, the imposition of such a condition would unlikely be deemed an abuse of discretion.

In Municipal Courts

While the TMCEC is unaware of any highly publicized incidents of controversial creative sentencing involving Texas municipal judges, we need look to neighboring states.

- In Rogers, Arkansas, a mother who pled guilty to failing to properly restrain her daughter in safety seat was ordered by Municipal Judge Doug Schrantz to write the child's obituary – even though the child was alive! What the judge did not know at the time was that the child had been critically ill and at times near death from a condition that caused her to stop breathing. In subsequent legal action it was alleged that due to medical conditions everyday of the child's life had been a tremendous struggle for the mother and that Judge Schrantz's order was morbid and bordered on being sadistic.
- In Lake Charles, Louisiana, City Judge Thomas P. Quirk sent hundred of offenders to church in lieu of paying fines or being committed to jail for not paying fine until the American Civil Liberties Union intervened in 1994.

Conclusion

Instances, such as that involving Judge Shrantz and Judge Quirk, illustrate the possibility that extreme creative sentencing can result in a judge being caught off guard, subject to media scrutiny, or even sued in his or her individual capacity. While presumably a judge acting in his or her official capacity could avoid civil liability through judicial immunity, this does not insulate the judge from the nightmare of being sued or from potential disciplinary action by the Commission on Judicial Conduct. As some Texas judges subject to disciplinary action have learned, just because a particular course of action is apparently lawful and not statutorily prohibited does not mean that it is ethical.[7] Accordingly, whether the imposition of a creative term comes about subsequent to a defendant's request for deferred disposition or upon the court's determination of guilt and imposition of deferred disposition, judges are urged to carefully consider the full implications of their orders before imposing any creative condition. The absence of specific guidelines in Article 45.051 of the Code of Criminal Procedure suggests that judges and attorneys should be vigilant to avoid unreasonable or unconstitutional conditions.

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[1] Article 45.051(b)(8), Code of Criminal Procedure.

[2] Thomas E. Baker & Charles W. Bubany, "Probation for Class C Misdemeanors: To Fine or Not to Fine is Now the Question" *South Texas Law Journal.* Vol. 2, No. 2 (1982) at 254.

[3] *Id.*

[4] *Id.*

[5] Nathaniel Hawthorne, *The Scarlet Letter* (1850).

[6] "Students Sentenced to a Wheelchair Get Lessons in Sensitivity" *Boston Globe,* December 8, 2000 (Section A2).

[7] In 2000, the Commission on Judicial Conduct issued a public statement that a judge may not ethically hold a commission as a peace officer, despite the fact that the Attorney General has stated that it is not a violation of state law for a member of the judiciary to hold a peace officer's commission.

Deferred Adjudication is Not Deferred Disposition

By Ryan Kellus Turner
Program Attorney & Deputy Counsel, TMCEC

Fort Worth is not Dallas. Oklahoma is not Texas. Saccharine is not sugar. A Camero is not a Trans Am. A hamburger is not a steak. A Hyundai is not a Honda. Star Trek is not Star Wars. And as every good Texan knows, Mr. Pibb is not Dr. Pepper.

Similarly, "deferred adjudication"[1] is not "deferred disposition."[2] (More on this in a second).

It has been alleged by non-Texans (hereafter referred to as foreigners) that, when ordering soft drinks, Texans have the habit of referring to everything as a "Coke" (regardless if it is Royal Crown Cola, Pepsi Cola, or even – gasp – Tab Cola). As every person who has ordered a "Coke" only to receive a cold, effervescent glass of Tab Cola can attest, such idiosyncrasies may not matter in the cosmic scheme of things, but they can nevertheless leave a bad taste in your mouth.

The same is true when people inadvertently or unknowingly misuse similar or related terms (see first paragraph). Things can be similar but nonetheless different.

This brings us to our topic. Though similar in the sense that they are both forms of probation and are both contained in the Code of Criminal Procedure, "deferred adjudication" (Article 42.12) is not "deferred disposition" (Article 45.051). In commemoration of the end of the academic year and in response to the numerous evaluations of judges, prosecutors, and clerks who have silently balked at their peers' perpetual misapplication of the two terms, I commend thee and dedicate this article to your noble sentiment.

Certainly to some readers, the topic of this article may seem like a futile exercise in semantics. Other readers may wonder why it even matters if judges, prosecutors, and clerks use the terms synonymously? While it inevitably sounds a tad pedantic, it matters for two reasons. First, words have meaning. This is especially true in the legal system where judges and lawyers are expected to critically and skillfully apply terms of law in their intended manner.[3] Second (and please excuse the infomercial reference), people, especially our peers, judge us based on the words we use. In other words, proper use of legal terminology denotes an education and understanding of the law, while a misapplication of legal terms implies a lack of knowledge and understanding.

If you've been misapplying the two terms, you are in good company. Respected publishers, scholars, jurists, and state agencies unfamiliar with the specifics of municipal and justice courts have misused the two terms for years. Thus, it is not surprising that over the years many municipal judges, attorneys, and key personnel have confused the terms.

During the last three years, we have received numerous requests from court personnel asking that the TMCEC distinguish between the two statutes for readers who do not know the difference. While not complete, deferred adjudication should be distinguished from deferred disposition for the following key observations.

1. The Code Construction Act – Chapter 311 of the Government Code provides rules for understanding statutes. Utilizing the Code Construction Act, judges and attorneys are required to distinguish deferred adjudication and deferred disposition for the following reasons:

A. Legislative Intent – Under Texas law, there is a statutory presumption against redundancy in the law. In other words, though two statutes may be related or similar (such as in the case of deferred adjudication and deferred disposition) readers are legally required to give independent effect to each statute if reasonably possible.[4] In 1979, the Adult Misdemeanor and Probation Law, which created deferred adjudication, expressly limited probation authority to courts of record (in effect, denying probation authority to all justice of the peace courts and most municipal courts.)[5] In response, the 67th Legislature enacted deferred disposition as part of Senate Bill 914.[6] The Bill Analysis prepared for S.B. 914 acknowledges that "the Code of Criminal Procedure did not provide for deferred prosecution of Class C misdemeanors in justice and corporation courts, and the proposed legislation was intended to give this power to these courts."[7]

B. Plain Meaning and the Rule of the Specific - When a statute provides a clear mandate, courts are constitutionally required to comply with the plain meaning of the law.[8] Criminal proceedings in municipal and justice courts must be conducted in compliance with Chapter 45 of the Code of Criminal Procedure.[9] Only if

Chapter 45 does not provide a rule of procedure may a judge apply a general rule provided elsewhere in the Code of Criminal Procedure. Because deferred disposition is specifically contained in Chapter 45, judges are consequentially prohibited from utilizing the deferred adjudication provisions of Chapter 42, regardless of whether the municipal court is a court of record. The corollary is also true. Neither a county nor a district court may utilize deferred disposition in adjudicating fine-only offenses.[10]

II. Notable Structural Differences – For some readers, merely knowing that the law prohibits municipal courts from using deferred adjudication may sufficiently delineate the two laws. However, short of their similar functions, they are distinctly different. Consider the following:

A. Brevity – Many people who erroneously use the term "deferred adjudication" have likely never read Article 42.12. When you put the two statutes side by side, it is really hard to confuse the two distinct laws. The lean, user-friendly, deferred disposition is one page in length and contains exactly 395 words. In contrast, its beleaguered cousin, deferred adjudication is 32 pages long and contains exactly 16,691 words. Comparing deferred disposition to deferred adjudication is tantamount to comparing a family outing of miniature golf to 18 holes of golf at Augusta against Tiger Woods. The differences in structure are so remarkable that they have been the subjects of an Attorney General Opinion.[11]

B. Disposition vs. Adjudication – The distinction between "disposition" and "adjudication" is a likely culprit for confusion. Deferred disposition denotes that on a plea of guilty or *nolo contendere* the court delays further proceedings without entering a judgment.[12] Deferred adjudication, on the other hand, denotes that after conviction or upon a plea of guilty or *nolo contendere* the court suspends the imposition of the sentence (subsequent to making certain findings).[13] Unlike deferred disposition, in deferred adjudication there is a judgment, the court merely suspends the sentence (*i.e.*, punishment). In contrast, with deferred disposition, proceedings can be delayed prior to judgment.[14] It is for this reason that deferred disposition has been characterized as a statutory form of deferred prosecution.[15] Not surprisingly, even the most learned legal scholars or jurists could find this distinction perplexing. Such confusion is understandable. First, as drafted by the Legislature, the terms "disposition" and "adjudication" have debatably been interchanged.[16] This has likely contributed to the inconsistent use of the terms in both legal literature and in case law. Secondly, especially in the context of municipal and justice courts, there is a long history of confusion in regard to what constitutes the "sentence" and what constitutes the "judgment." While the language of Article 42.01, Code of Criminal Procedure suggests that the "judgment" is the formal determination of guilt or innocence and that the "sentence" is the consequence or penalty derived from the finding of guilt in the judgment, case law has caused these terms to have problematic application in municipal courts. In *Ex parte Hayden*,[17] the Court of Criminal Appeals held that judgment and sentence are not the same thing, though in a misdemeanor case, a verdict of guilty is itself a judgment of conviction and no formal sentence is required. Thirty years later, the dissent in *Ex parte Minjares*[18] claimed that the majority left the impression that there was no difference in the two terms. What the dissent in *Minjares* did not note, however, was that *Hayden* was addressing the concepts of judgment and sentence in a different context (namely, whether non-courts of record had probation authority and whether a final judgment was required). *Minjares*, in contrast, dealt with the issues of jail credit and indigence. Thus, while the two terms are not synonymous, Chapter 45 of the Code of Criminal Procedure does little to delineate the two terms. In fact, in Article 45.041, Code of Criminal Procedure, the terms appear to be used collectively.

C. Community Supervision – "Deferred adjudication," formerly called probation, is a type of community supervision.[19] Community supervision entails probation officers. At its conception, there was no apparent need for individuals charged with fine-only offenses to be subject to community supervision. Consequently, deferred disposition contains no similar provisions nor does it provide revocation procedures.[20] Presumably this is due to the assumption that in deferred disposition no one is supervising whether or not the defendant is complying with court imposed terms of probation. This presumption is questionable. Some cities, such as Fort Worth, have court personnel that monitor compliance with deferred disposition orders. Additionally, in 2001 the Legislature passed legislation authorizing municipal and justice courts to hire juvenile case managers.[21] Thus, in limited instances, there appears to be an emerging trend comparable to community supervision in Texas local trial courts of limited jurisdiction. Despite similar functional equivalents, community supervision differentiates deferred adjudication from deferred disposition.

D. Expunction – One final and important distinction between deferred disposition and deferred adjudication entails the possibility of expunging records. Records pertaining to a complaint dismissed upon

successful completion of deferred disposition may be expunged under Article 55.01, Code of Criminal Procedure.[22] Article 55.01 requires a defendant in municipal court to file a petition in the district court in the county in which the defendant was arrested.[23] When a county or district court, even in cases in which the offense has been plea-bargained down to a Class C misdemeanor, imposes deferred adjudication it is done so pursuant to the rules contained in Article 42.12, Code of Criminal Procedure. Section 5 of Article 42.12 specifically governs deferred adjudication in county and district courts, and nowhere in the section is there a provision comparable to that found in Article 45.051(e).[24] This difference is logical and consistent with the legislative scheme in Article 55.01(a)(2)(B), which excludes cases from consideration for expunction where community supervision is granted. Simply stated, in contrast to deferred disposition, individuals in county and district court receiving deferred adjudication, regardless if it's a Class C misdemeanor or a felony, are not entitled to expunction.

Conclusion

Other differences exist (unlike deferred disposition, deferred adjudication often entails a pre-sentence investigation; unlike deferred adjudication, juries do not have the option of recommending deferred disposition). Alas, despite their similarities they are distinct. Granted, out of shear necessity municipal courts may at times have to look to case law to interpret deferred adjudication in construing deferred disposition. Nevertheless, be careful to not go too far in making comparisons. The laws are simply different. Accordingly, beginning with calling the terms by their respective names, such differences should be acknowledged. Just think, by abandoning the incorrect use of the term "deferred adjudication," we may collectively also end the use of the fictional yet highly humorous term "deferred adjudification." Then and only then, as a result of such a collective effort in municipal courts, will those who cringe upon hearing the improper use of both two terms cringe no more.

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[1] Article 42.12, Code of Criminal Procedure.

[2] Article 45.051, Code of Criminal Procedure.

[3] Texas history is filled with instances where a single word (or in one famous instance a semicolon) was the determining factor in a legal action. *Ex parte Rodriquez*, 39 Tex. 705 (1873), the infamous semicolon decision by the Supreme Court of Texas that invalidated a statewide election during the reconstruction era. "The Semicolon Court of Texas," George E. Shelley, *The Southwestern Historical Quarterly*, Vol. XLVIII, No. 4, April, 1945.

[4] *State v. Hardy*, 963 S.W.2d 516 (Tex.Crim.App. 1997).

[5] Thomas E. Baker, Charles P. Bubany, "Probation for Class C Misdemeanors: To Fine or Not to Fine is Now the Question" 22 *South Texas Law Journal* 2 (1982).

[6] Acts 1981, 67th Legislature, Chapter 318, at 894.

[7] Senate Comm. on Jurisprudence, Bill Analysis for S.B. No. 914, 67th Leg. (1981).

The bill analysis and the title to the bill indicate the Legislature's understanding that "justice" refers to a justice of the peace and a municipal judge. *Texas Attorney General Opinion JM-526* (1986).

[8] *Ex parte Jones*, 957 S.W.2d 849 (Tex.Crim.App. 1997).

[9] Article 45.002, Code of Criminal Procedure.

[10] *Carmona v. State*, 1988 WL 71701 (Tex. App-Hous. (1 Dist.) – 1988).

[11] In *Texas Attorney General Opinion JM-307* (1985), it was noted that deferred disposition, in contrast to deferred adjudication, includes no purpose clause or any other provision stating the goals of its procedures for suspending sentences.

[12] Article 45.051(a), Code of Criminal Procedure.

[13] Article 42.12(a), Code of Criminal Procedure.

[14] Alternatively, deferred disposition may also be imposed upon finding of guilt of a fine-only offense. Article 45.051(a), Code of Criminal Procedure.

[15] Senate Comm. on Jurisprudence, Bill Analysis for S.B. No. 914, 67th Leg. (1981); *Texas Attorney General Opinion JM-526* (1986).

[16] *Black's Law Dictionary* (6th Edition) states that in the context of criminal law, "disposition" denotes the sentencing or other final settlement of a criminal case. "Adjudication" on the other hand denotes the formal pronouncement of a judgment.

[17] 215 S.W.2d 620 (Tex.Crim.App. 1948).

[18] 582 S.W.2d 105 (Tex.Crim.App. 1978).

[19] *Davis v. State*, 968 S.W.2d 368 (Tex.Crim.App. 1998).

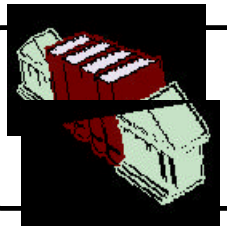
[20] In fact, Article 45.051, Code of Criminal Procedure, only expressly addresses court action "at the conclusion of the deferral period."

[21] Article 45.054, Code of Criminal Procedure.

[22] Article 45.051(c), Code of Criminal Procedure.

[23] *Texas Attorney General Opinion JM-912* (1988). The exception being where specific expunction provisions are contained in Chapter 45 of the Code of Criminal Procedure. Such expunction provisions for certain offenses were added to Chapter 45 by the Legislature in 2001.

[24] *Pickett v. State*, WL 202466 (Tex. App-Dallas 2002) (unpublished opinion).



RESOURCES FOR YOUR COURT

Mediators Achieving Peace

State Bar Program for Middle School Students

Mediators Achieving Peace (MAP) is a State Bar of Texas program that trains volunteer attorneys to teach selected middle school students how to mediate; these students in turn become the mediators for their fellow students' disputes. Municipal judges, clerks and prosecutors might consider recommending the program to their local schools and bar associations.

How does Mediators Achieving Peace or MAP work?

Lawyers who sign up get a two-and-a-half-hour video and a thick notebook that has all the information they need to teach a selected group of 10 to 15 middle school students how to mediate. Once the students are trained, they are asked by counselors, the principal, or the students to mediate student disputes. The mediation is done in private with just the two disputing parties and the one or two student mediators present.

Who selects at which school I would teach?

Jan Miller, Director of the State Bar Law-Related Education Department (512/463-1463), encourages lawyers to approach a school — perhaps their child's middle school, or the middle school they attended — and see if the school is interested. Miller has a flyer that can be given to the principal or counselor describing the MAP program.

Who selects the students who will be the mediators?

The school selects the students, who ideally will be from different interest groups. They will not necessarily be the most popular, nor will they be the Pollyannas, but represent a diverse ethnic, gender, and racial mix.

How many students are in a MAP class?

It can vary from 10 to 15. The group should be small enough so that each student mediator will have a chance to mediate at least a couple of times a month. Meetings should be scheduled once a week for an hour for six to eight weeks. The time depends on the school and attorney.

Specifically, what is taught in the classes?

The lawyer and students discuss what is conflict, how to listen, the importance of neutrality, the role of the mediator, ground rules and steps of mediation, brainstorming solutions, the importance of confidentiality, and how to come to an agreement. How to discuss this information with students is clearly laid out in the manual and in the video.

Does this program really work?

In Austin at Mendez Middle School, counselor Nancy Lewis said the mediations have better than a 90 percent success rate, in that they reach an agreement that both disputing parties sign. Another counselor, Imelda Acosta, said that more than 95 percent of the agreements stick. "Students have a hand in creating the solution and so they buy into it," said Acosta. "Also, most of the students have never signed a contract before; they take this very seriously." Michael Watkins, an eighth-grade mediator at Mendez, explained, "Student mediations work better because kids don't always listen to the principal about how to solve their problems. The principal and counselors don't understand our problems as well as kids do. Kids will listen to other kids."

What if the students cannot reach a solution or an agreement?

The students in the dispute always have the option of going to the counselor, principal, or other school administrator to solve their differences. Most students, however, would rather not face a principal. Also most disputes are the "she said/he said" variety where students just want to be heard and want the problem to end without losing face. Mediation offers a solution.

What if the problem is serious, perhaps involving guns or drugs?

Most schools have a policy that if a dispute involves guns, drugs, or even gangs, the police are called. It is up to the school to define the type of problems they will allow students to mediate. The school administration decides whether to allow students to mediate student-teacher disputes or parent-child disputes.

Why Involve Local Attorneys and the Bar Association?

The program was developed under the leadership of Austin attorney Broadus Spivey who was President of the State Bar of Texas in 2001-2002. "This is the kind of work lawyers should be doing in their communities," said Spivey. "People look to lawyers for conflict resolution and we ought to be training our young people to have skills that can serve them throughout their lives.

The Mediators Achieving Peace Training Manual can be downloaded from the State Bar's web site at www.texasbar.com/MAP/MAP.asp

For more information, and to register and get involved in MAP, contact Jan Miller at (800) 204-2222 or (512) 463-1463, ext. 2120.

Article adapted from article from the web site of the State Bar of Texas that was written by Anita Davis.

"It seems to me that teaching students how to resolve their differences peacefully and within established parameters might prevent some of the horrific acts of violence we have watched students across this country perpetrate on their schools." -- Spivey.

Mark Your Calendar!

The National Center for State Courts (NCSC) has announced three Fall programs.

Advanced Case Flow Management
October 9-11, 2002
Denver, Colorado

E-Court 2002 Conference
December 2-4, 2002
Las Vegas, Nevada

8th Biannual
Court Technology Conference
October 28-30, 2003

Call the registrar at 800/616-6206 for more information or to order a complete course catalog, or write:

NCSC
300 Newport Avenue
Williamsburg, Virginia 23185

Expunction Forms

The TMCEC *2001 Forms Book* has several expunction forms that may be useful to courts:

Official Notice of Expunction Rights: Penal Offenses

Admonishment for Expunction on Acquittal (Chapter 55, CCP)

Application for Expunction

Notice to State of Expunction

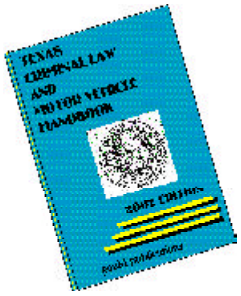
Order for Expunction (Chapter 55, CCP)

Failure to Attend School Notice of Expunction Rights

Order for Expungement of Records (Sec. 106.12, ABC)

All Texas municipal courts received a copy of the TMCEC *2001 Forms Book* in November 2001. A limited number of copies are still available from TMCEC at no charge. Call 800/252-3718 if you are unable to locate your court's copy. The material is also available on CD-ROM or 3.5" diskette form, or it can be accessed on the TMCEC web site [http://www.tmcec.com/forms.html. The *2001 Forms Book* will be update in November 2003 after the 78th Legislative Session.

Free Codebooks!



To any municipal court judge, clerk, prosecutor, or bailiff/warrant officer that completes the online newsletter survey, TMCEC will mail at no charge one complimentary copy of the *Texas Criminal and Motor Vehicle Handbook* (a Gould publication valued at $16). Supplies are limited so log onto the TMCEC web site ASAP: www.tmcec.com/newsletter/evaluation.

2nd Annual Juvenile Law Specialization Intensive Review Course

Sponsored by the Texas Juvenile Probation Commission and Juvenile Law Section
September 9-10, 2002
Renaissance Hotel - Austin, Texas

WHO SHOULD ATTEND

This course is an intensive two-day program designed specifically for attorneys who will be taking the Juvenile Law Legal Specialization exam in October 2002 or who are potential candidates to take the written exam in the future. The course is also intended to assist juvenile justice practitioners with the basic fundamentals and principles of juvenile law. Preference will be given to those individuals who have currently applied for Specialization through the Texas Board of Legal Specialization and State Bar of Texas.

SUPPLEMENTAL TRAINING MATERIALS

Training materials will be provided at the conference. It is suggested however that you bring your *Texas Juvenile Law 5th Edition and Supplement* for reference throughout the course. This reference material will be available for purchase at the course. The price of the two-volume set (including Volume 1, Volume 2, and the 2001 Supplement) is $35. Volume 1 sells for $25, Volume 2 for $10, and the 2001 Supplement for $15. Please bring a check made payable to the Texas Juvenile Probation Commission - no cash will be accepted. You may also download an order form off of the TJPC website at www.tjpc.state.tx.us.

REGISTRATION

Space is limited so you are encouraged to pre-register for this course. Registration fees are $100 if you are a juvenile law section member, judge, associate judge, referee or master. Registration fees for non-section members are $125.

PAYMENT

Method of payment shall be check or money order made payable to the Texas Juvenile Probation Commission. No purchase orders, cash, or credit cards will be accepted. Please mail your registration form along with payment in full to: Texas Juvenile Probation Commission, c/o Kristy Carr, P.O. Box 13547, Austin, TX 78711. On your check or money order, please indicate this is for Event Number TJPC-02-003. No confirmation will be sent. Please pick up your name tag and course materials at the program.

TRAINING INFORMATION & ACCOMMODATIONS

The training will be held at the Renaissance Hotel in Austin. A limited number of hotel rooms were blocked at a discounted rate of $80/single and $140/double. When making accommodations, please contact the hotel directly and specify that you are with the Texas Juvenile Probation Commission. The Renaissance Hotel is located at 9721 Renaissance Blvd., Austin, Texas and can be contacted at 512/343-2626 or online at www.renaissancehotels.com.

PARTICIPANTS MAKING FLIGHT ARRANGEMENTS

For those of you who may be making flight arrangements for the second day, please be aware of the traffic. On a Tuesday afternoon, it will take approximately 45 minutes to get to the airport from the hotel in traffic. Please make your arrangements accordingly. Super Shuttle is available to and from the airport at a rate of $15 per person per trip and may be contacted at 512/385-9100.

ACCREDITATION

This activity has been submitted to the MCLE Committee of the State Bar of Texas and should be accredited for CLE and Judiciary credit for a total of 11.25 hours; and juvenile probation officers will receive 11.25 hours from the Texas Juvenile Probation Commission. For those individuals attempting to complete the required 60 hours of training for the Specialization exam, you may use hours received from this course.

ADDITIONAL INFORMATION

Please visit the TJPC website at www.tjpc.state.tx.us or for additional information, you may contact Kristy Carr at 512/424-6710. For more information regarding the Juvenile Law Specialization Exam, please visit the Texas Board of Legal Specialization's website at www.tbls.org.

TECH CORNER

Jo Dale Bearden
TMCEC Program Coordinator

Improving the Odds of Success

Throughout the year, *Tech Corner* articles have discussed and described court technologies. As jovial as the *Tech Corner* has been, when it is estimated that more than 60 percent of government technology projects fail (Gartner, Inc.), an end of the year article with more rhetoric about how technology can improve the day-to-day functions of the court seems trivial. Instead, a discussion of why technology projects typically go wrong and some tips to increase the odds of success for your court seem more appropriate.

According to Christopher Crawford's article, *Technology Projects – What Goes Wrong and Lessons Learned*, most court technology projects fail because they do not have one or more of the following: top management commitment, adequate user involvement, experienced project management, clear business objectives, minimized scope, firm basic requirements, formal methodology, reliable estimates, or other criteria (small milestones, proper planning, *etc.*). He states that studies of public and private information technology (IT) projects show that "over 31 percent of projects are canceled before completion, more than half of the projects cost 189 percent of the original estimate while containing only 42 percent of the proposed features."

Of course just knowing that there is a chance your project may fail, or even falter is not helpful. In general, there has been little research done in this area, the few technology project studies that have been done focus more on software development than on implementation of technologies. *Technology Projects – What Goes Wrong and Lessons Learned* took the studies available and developed a few questions to ask which, if answered honestly, may increase the technology projects odds for success. The questions are based on six of the 10 reasons that technology projects fail. Below are five reasons for failure most relevant to court technology projects.

Lack of Top Management Commitment

- Is this technology necessary for court operations? If so, the project will fail without commitment from top management. If not, don't invest the time or the money.
- Will internal politics determine the composition of the project team? The choice of project team members may give unspoken clues about top management commitment.
- Are critical tasks out of the project team's control? If so, again intervention will be needed or project will fail.

Inadequate User Involvement

- Will this be the first end user experience with this technology? If so, involve the staff completely so that they will know what to expect when the new system is implemented.
- How severely will end user procedures change? This should be looked at as a direct correlation -- the more to be changed, the more staff involvement needed.
- What can we stop doing as a result of this new system? The staff should have input on ways to streamline the project, doing so will delete duplicated effort.

Unclear Statement of Requirements

- Will the new system depend on other systems? This is important, even at the bidding process, because the systems are going to need to talk to each other. Make sure that the vendors and the equipment are compatible.
- Has process reengineering been done before the system requirements are completed, and is the process correct? In automating procedures, streamline those procedures prior to automation instead of afterwards. Doing so will cut down on changes that may need to be made post-project completion.
- Does this system feed information to or from other agencies? If you are sharing information with other agencies, or sending other agencies information from the new system, make sure that the formats are exchangeable.
- After the court determines that the current processes are correct, has the court determined how the processes will be streamlined and if the new electronic process will be correct? This will help the court establish needed requirements for the new system.
- Before determining the system requirements, has the court developed a flowchart of court

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FROM THE CENTER

Academic Schedule

Watch your mail for the TMCEC FY 03 Academic Schedule! It will contain an outline of all of the 12- and 32-hour programs, as well as descriptions of the programs, the procedures on registering, and a summary of the judicial education requirements. It may also be accessed via the web site: www.tmcec.com.

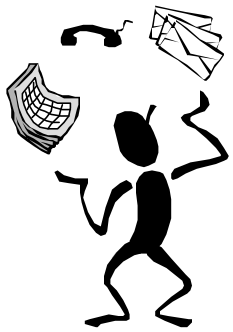
SEMINAR DATES	SEMINAR	LOCATION
September 23-27, 2002	32-Hour New Clerks	Austin
October 14-15, 2002	12-Hour Clerks	Tyler
October 16-17, 2002	12-Hour Judges	Tyler
October 31-November 1, 2002	12-Hour Judges/Clerks	Austin
November 13-14, 2002	12-Hour Low Volume Judges/Clerks	McAllen
December 3-4, 2002	12-Hour Bailiffs/Warrant Officers	Austin
December 3-4, 2002	12-Hour Prosecutors	Austin
December 9-13, 2002	32-Hour New Judges/New Clerks	Austin
January 7-8, 2003	12-Hour Low Volume Judges/Clerks	Waco
January 23-24, 2003	12-Hour Judges/Clerks	San Antonio
February 7-9, 2003	24- Hour Assessment Clinic (Clerks)	Montgomery
February 20-21, 2003	12-Hour Judges/Clerks	Houston
March 3-4, 2003	12-Hour Judges/Clerks	Dallas
March 18-19, 2003	12-Hour Bailiffs/Warrant Officers	Arlington
March 18-19, 2003	12-Hour Court Administrators	Arlington
March 27-28, 2003	12-Hour Low Volume Judges/Clerks	Abilene
April 10-11, 2003	12-Hour Judges/Clerks	Lubbock
May 1-2, 2003	12-Hour Clerks	South Padre Island
May 5-6, 2003	12-Hour Attorney Judges	South Padre Island
May 7-8, 2003	12-Hour Non-Attorney Judges	South Padre Island
May 20-22, 2003	24-Hour Assessment Clinic (Clerks)	Austin
May 21-22, 2003	12-Hour Judges Special Topic: Evidence	Austin
June 5-6, 2003	12-Hour Judges/Clerks	Midland
June 17-18, 2003	12-Hour Court Administrators	Corpus Christi
June 17-18, 2003	12-Hour Judges Special Topic: Juvenile	Corpus Christi
June 17-18, 2003	12-Hour Prosecutors	Corpus Christi
July 21-25, 2003	32-Hour New Judges/Clerks	Austin
August 4, 2003	Legislative Update	Houston
August 8, 2003	Legislative Update	Austin

A Basic 32-Hour Court Support Personnel Seminar

September 23-27, 2002

Only new court clerks or court clerks who have never attended a TMCEC seminar are eligible to attend this program.

The program offers the following topics: *Role of the Clerk, Ethics, Complaints and Docketing, Trial Processes, Appeals, Failure to Appear and Warrants, Juveniles, Non-contested Cases, Records Management, Financial Management, DSC and Deferred, Court Costs,* and *State Reports.*



Many cities are unaware that municipal court clerks are court officers and must observe the same standards of fidelity and diligence that the Code of Judicial Conduct requires of a judge. Since the clerk's actions can and do bear directly on proper court operations, court clerks should understand the differences between judicial and ministerial duties. If a clerk oversteps the bounds of his or her authority, the clerk, judge, and city may be subject to liability.

This program will help clerks perform their jobs properly and more effectively and accurately.

Sponsored by: Texas Municipal Courts Association and Texas Municipal Courts Education Center

Registration Information

SEMINAR: Conducted at the Holiday Inn Northwest Arboretum located at 8901 Business Park Drive, Austin (512/343-0888). It begins Monday, September 23 and concludes Friday, September 27. Registration begins on Monday at 10:00 a.m. Class begins at 1:00 p.m. on Monday and concludes on Friday at 12:00 p.m.

HOTEL REGISTRATION: The Center makes all hotel reservations from the information that you provide on your seminar registration form. The Center pays the entire cost of the room. You are responsible for your incidentals (telephone calls, rooms service, movies, etc.) You must live at least 30 miles from the seminar site to request a room.

MEALS: While you are attending the seminar, the Center provides some of your meals. On Tuesday, Wednesday, and Thursday, breakfast and lunch are provided. On Friday, only breakfast is provided. Guests are not allowed to join seminar participants at TMCEC-sponsored meals or sessions.

CANCELLATION POLICY: You must cancel at least five working days before the seminar starts. If you don't, you will be billed for the first night's lodging costs, meal expense and course material ($120). Cancel by calling the Center.

TO REGISTER: Mail or fax registration form to TMCEC to 1609 Shoal Creek Blvd., Suite 302, Austin, 78701. Fax: 512/435-6118.

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procedures? A flowchart will help the court determine if it has missed any steps in the process.

- When determining new system requirements, was the court researched applicable statutes regarding procedures? Doing this will help ensure that the court is properly stating requirements.
- Before determining system requirements, has the court decided which reports are required by state law and which reports are needed to oversee case flow management? If not, you might not be able to generate needed reports.

Staff Resources

- Is the court staff computer literate? If not, train staff early in the project so that they can contribute in the planning stages, not a week before implementation.
- What has been done about routine work demands? When staff is working on technology project, whether as a part of the planning team or in training on the new technology, discuss early expectations of routine duties and how they are to be completed.
- Are internal IT staff resources adequate to the demands? If a project is out of the court's league, are there city IT staff to assist or should the court contract a project manager?

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ALTERNATIVE JUDICIAL EDUCATION

Experienced municipal judges who have completed two years of TMCEC courses may opt to fulfill the 12-hour mandatory judicial education requirements for 2002-2003 by attending a course offered by an approved continuing legal education provider. The accredited providers are the American Academy of Judicial Education, the ABA Traffic Seminar, the Harvard Law School, the Houston Law School and Foundation, the Juvenile Law Section of the State Bar of Texas, The National Judicial College, South Texas School of Law, the State Bar of Texas Professional Development Programs, the Texas Defense Lawyers Project, the Texas Justice Courts Training Center, the Texas Juvenile Probation Commission, and Texas Municipal Courts Association. Please check with TMCEC for the most up-to-date list of approved providers. The course must relate to the jurisdiction of the municipal courts and be at least 12 hours in length. Videotape programs are ineligible. Judges may "opt-out" only every other year. Judges must complete an intent form prior to April 30, 2003 or they will be required to attend a TMCEC course. If you have questions, please contact Hope Lochridge at the Center (800/252-3718).

TEXAS MUNICIPAL COURTS EDUCATION CENTER
2002-2003 INTENT TO ATTEND AN ALTERNATE PROGRAM
CONTINUING JUDICIAL EDUCATION FOR MUNICIPAL JUDGES

INTENT FORM

(To be completed before you have attended an approved alternative course. This is to ensure that the course meets the requirements. Once reviewed by the TMCEC Executive Director, a letter of approval will be sent to the judge. Upon completion of the approved course, the judge should send an affidavit or certificate documenting attendance.)

Full Name: _____

Appointment Date: _____ Telephone Number: _____

Court Address:

_____

_____

_____

_____

_____ _____

Sponsor Name of Program

_____ _____

Date of Program # of Hours

_____ _____

Date Signature

Deadline to return form to Texas Municipal Courts Education Center: April 30, 2003

Return form to: *TMCEC • 1609 Shoal Creek Blvd., Suite 302 • Austin, TX 78701 • FAX 512/435-6118*

TEXAS MUNICIPAL COURTS EDUCATION CENTER
2002-2003 Registration Form

Seminar Date: _____ **Seminar Site:** _____

Type of Program: ❒ **Judge** ❒ **Clerk** ❒ **Court Administrator** ❒ **Prosecutor** ❒ **Warrant Officer/Bailiff***
❒ **I intend to attend the** *Mock Plea and Mock Trial Workshop* **or the** *Survey of the Rules of Evidence* **Pre-Conference**

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

Last Name: _____ First Name: _____ MI: _____

Names also known by: _____ Male/Female: _____

Position Held: _____

Date Appointed/Elected/Hired: _____ Years Experience: _____

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars: four nights at the 32-hour seminars and two nights at the 12-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

☐ I need a private, single-occupancy room.

☐ I need a room shared with a seminar participant. Please indicate roommate by entering seminar participant's name: _____
(Room will have 2 double beds.)

☐ I need a private, double-occupancy room, but I'll be sharing with a guest. (I will pay additional cost, if any, per night.)
I will require: ☐ 1 king bed ☐ 2 double beds

☐ I do not need a room at the seminar.

Date arriving: _____ Arriving by: ☐ Car ☐ Airplane ☐ Smoker ☐ Non-Smoker

COURT MAILING ADDRESS

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

Municipal Court of: _____ Mailing Address: _____ Zip: _____

Office Phone: _____ Court Phone: _____ FAX : _____

Primary City Served: _____ Other Cities Served: _____

☐ Attorney ☐ Non-Attorney ☐ Full-Time ☐ Part-Time

Status: ☐ Presiding Judge ☐ Associate/Alternate Judge ☐ Justice of the Peace ☐ Mayor
☐ Court Clerk ☐ Deputy Clerk ☐ Court Administrator ☐ Warrant Officer/Bailiff*
☐ Prosecutor
☐ Assessment Clinic **(A program fee of $100 must accompany registration form.)**
☐ Other: _____

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

Judge's Signature _____ Date: _____

Municipal Court of _____

I certify that I am currently serving as municipal judge, city prosecutor, or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. If I have requested a room, I certify that I live at least 30 miles from the seminar site and have read the cancellation and no show policies in the General Seminar Information section located on Pages 17-18. Payment is required ONLY for the assessment clinics and legislative updates; payment is due with registration form. Participants in the assessment clinics and legislative updates must cancel in writing two weeks prior to seminar to receive refund.

Participant Signature **Date**

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Technology is exciting and can be very beneficial to courts. But, as most courts are working on a limited budget, under strict scrutiny, and with no IT guidance every trick of the trade is helpful. It is essential that judges and clerks work collaboratively on IT projects so that the needs of all are met.

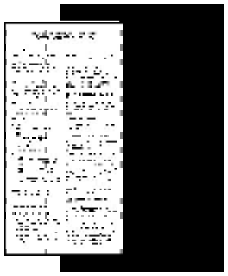
As a final suggestion, visit other courts, do some benchmarking specifically related to the technology project you are interested in implementing. Only through proper planning will a court truly decrease the odds of failure.

Resources:

Crawford, Christopher. *Technology Projects – What Goes Wrong and Lessons Learned.* The Forum on the Advancement of Court Technology, http://fact.ncsc.dni.us

Gartner, Inc. http://insight.Gartner.com

Free Texas Uniform Jury Handbook



TMCEC is making available at no charge, laminated copies of the *Texas Uniform Jury Handbook* in sets of 50. Section 23.302 of the Government Code requires clerks to provide a jury handbook to each juror who is required to read it before jury service begins.

Number of copies requested: _____

Name: _____

Court: _____

Mailing Address: _____

_____

Return order form to TMCEC, 1609 Shoal Creek Boulevard, Suite 302, Austin, Texas 78701 or fax back to 512/435-6118.

TEXAS MUNICIPAL COURTS EDUCATION CENTER
1609 SHOAL CREEK BLVD., SUITE 302
AUSTIN, TX 78701
www.tmcec.com

TMCEC MISSION STATEMENT

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

Change Service Requested