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The Fair Defense Act: Whose Job Is It Anyway?

By James D. Bethke, Task Force on Indigent Defense, Office of Court Administration and Dottie Carmichael, Ph.D., Associate Research Scientist, Public Policy Research Institute (PPRI)

Introduction

This is the first in a three part series of articles describing Texas magistrates' responsibilities under the Fair Defense Act (FDA) passed in 2001. This article provides an overview of the key actors involved in implementing the law, their responsibilities and the timelines within which they must act. The second article will describe the magistrates' role conducting Article 15.17 hearings. The final article will elaborate more specifically on the issues surrounding determining indigence and assigning counsel under the FDA. This series is designed to complement judicial trainings being conducted statewide by the Task Force on Indigent Defense.

Overview of the Fair Defense Act

Texas Code of Criminal Procedure, Article 1.051(c), provides that "an indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation."¹ In 2001, the 77th Texas Legislature modified the State's statutes and codes to reform indigent defense practices through a group of amendments collectively known as "The Fair Defense Act" (FDA).

Prior to the Fair Defense Act, an absence of uniform standards and procedures,

combined with a lack of State oversight, allowed indigent defense rules and the quality of representation to vary widely from county to county and even from courtroom to courtroom.² The accused in Texas were not uniformly assured prompt access to counsel. Furthermore, since the State did not provide funding for indigent defense, the entire financial burden was shifted to counties. By changing the procedures for conducting magistrate hearings, determining indigence and appointing counsel, the legislation addressed practices that had been under scrutiny from both inside and outside the state.³

Though counties continue to retain a great

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Driving Under the Influence of Alcohol and Driver's License Suspension

By Ed Spillane, Presiding Municipal Judge, College Station

Our court in College Station sees approximately 1500 alcohol cases a year, 120 of which are driving under the influence (DUI) cases. We see a lot of alcohol cases yet, in DUI cases, the court is not directly involved in driver's license suspensions upon conviction. DUI has its own section in the Alcoholic Beverage Code—nowhere in §106.041. are driver's license

suspensions discussed, contrasting with the general punishment provisions for other alcohol-related offenses by minors in §106.071. This article will explain the administrative provisions governing driver's license suspensions when a minor receives a driving under the influence of alcohol charge.

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AROUND THE STATE

20+ Years

In the last *Recorder*, TMCEC published the names of judges and court support personnel who had 20 or more years working in municipal courts. We missed a couple and apologize to the individuals listed below:

- Lauren Edgar, Clerk/Groves Municipal Court, 1979
- Bobby G. Smith, Judge/Clute Municipal Court, 1976

Cities in the Certification Program

TMCEC failed to include Richardson and Prosper in our list of cities participating in the Clerks Certification Program. In Richardson, five clerks have progressed to Level II certification. The Town of Prosper has one clerk who has achieved Level I certification. Excuse our oversight, and congratulations to these clerks and their cities.

GOVCAT Annual Conference

The Annual Meeting of the Governmental Collectors Association of Texas (GOVCAT) has been scheduled for July 27-29, 2005 at The Woodlands Waterway Marriott. Watch the GOVCAT website for additional information: www.govcat.net.

TMCEC Legislative Updates

Join us for the six-hour TMCEC Legislative Updates at the sites shown below.

The registration fee is \$50 for municipal judges and court support personnel. Others may attend for \$100 if space is available. Housing and travel are at the individual's or city's expense. Space is limited at each update – register early.

8/8
Legislative Update
Omni Houston Hotel Westside
13210 Katy Freeway - Houston, TX
77079
281/558-8338

8/11
Legislative Update
Holiday Inn Lubbock Hotel & Towers
801 Avenue Q - Lubbock, TX 79401
806/763-1200

8/16
Legislative Update
Hyatt Regency Austin
208 Barton Springs Road - Austin, TX
78704
512/477-1234

Registration closes three weeks prior to each update.



**FROM THE GENERAL COUNSEL
Ryan Kellus Turner**

**In Memory of
Professor
Robert O. Dawson**

While the lives and contributions of some individuals are sometimes only fully recognized after their passing, some people's contributions are so significant that they become inextricably associated with their good deeds and works during their lifetime. Bob Dawson was such a person. His name alone is synonymous with Texas juvenile justice. The six-volume treatise that he co-authored with his University of Texas Law School colleague Professor George Dix (*West's Criminal Practice and Procedure*) stands alone as a definitive guide relied upon by all members of the criminal justice community who make their living utilizing the Code of Criminal Procedure.

On February 26, 2005, after a long, valiant battle with cancer, municipal courts lost one of their advocates.

Over the last six years, and three legislative sessions, I had the privilege to work with Professor Dawson on various projects including the drafting of what has become informally known as the "juvenile omnibus bill." Since 1995, six such bills have been filed by the chairmen of the Juvenile Justice and Family Affairs Committee – Rep. Toby Goodman (1995-1999) and Rep. Harold Dutton (2001-2005). Like many lawyers, I viewed him as a mentor; however, over the years, I also came to know him as a friend.

There are very few law professors in the United States who can rival Bob Dawson's love for the practical application of the law. While most law professors toil in the academic underworld of law reviews and colloquiums, Bob Dawson understood that law was neither made nor

administered in the "ivory tower." When it came to the areas of juvenile and criminal justice, he keenly appreciated that it was the people "in the field" that administered the law. From this perspective, he appreciated that the greatest chance to effectuate meaningful change in the legal system was by reaching out to work with the people who made the system work (often with little recognition or thanks). Sure, Bob Dawson knew influential political figures. However, how many law school professors do you think conclude the preface to their books with an invitation to law enforcement officers, probation officers, judges, educators, prosecutors, and defense lawyers to call with their questions and inquiries? Despite the cynicism (that I honed in law school), I always found something particularly refreshing about the last sentence in the preface to his 1024-page book: "I answer my own phone and return all calls."

If you ever called him, as I did frequently, it was abundantly clear that he truly cared about municipal courts and about the work that we do. Accordingly, now is the time to reflect on Professor Dawson's contribution to municipal and justice courts and what his passing means to the Texas criminal and juvenile justice systems.

Bob Dawson was the first public figure to acknowledge that, in light of legislative changes occurring in 1991, municipal and justice courts (criminal courts) would be adjudicating cases that historically and in most other states fell within the jurisdiction of the juvenile courts (civil courts). He coined the term "shadow courts" to describe the role municipal and justice courts served in relation to the juvenile courts.

While still too many policy makers and public officials fail to appreciate the significant new role that municipal and

justice courts play in the modern juvenile justice system, the significance was not lost on Bob Dawson. During just the last three sessions, Dawson spearheaded efforts to:

- Eliminate the distinction between children and adults accused of traffic offenses.
- Sever, to the degree possible, provisions impacting criminal proceedings in municipal and justice courts from the Family Code. Nearly all of the procedural statutes impacting juveniles in municipal courts now reside in Chapter 45 of the Code of Criminal Procedure. Previously, you had to read Chapter 45 in conjunction with the provisions contained in the Family Code's Juvenile Justice Act.
- Distinguish truancy (civil) from Failure to Attend School (criminal). Because of Bob, we no longer adjudicate "truancy" cases (rather they are now required to be refiled as the crime of Failure to Attend School). Furthermore, we are not regulated by the otherwise inapplicable procedures required when juvenile courts hear truancy cases.
- Provide uniform procedures that make it possible for young adult offenders to be punished in the same manner as adults for criminal behavior that occurred before reaching adulthood.
- Extend the contempt authority of municipal and justice court to indefinitely suspend the driving privileges of juvenile contemnors.
- Create the position of "juvenile case manager" to assist municipal and justice courts in monitoring and managing the growing number of juvenile cases filed in our courts.

Dawson continued on page 14

deal of discretion, the Fair Defense Act sets basic standards for determining whether a defendant is indigent and established minimum requirements for providing court appointed counsel to accused adults and juveniles. The law ensures defense counsel will be appointed promptly following arrest, and attorneys will make contact with detained defendants shortly thereafter. It furthermore establishes minimum qualifications for appointed attorneys, and sets standards for attorney fee schedules.

The Task Force on Indigent Defense (TFID), created by the FDA within the Office of Court Administration, not only provides formula grant assistance for all 254 counties,⁴ but also awards competitive grants to promote innovation in local indigent defense systems. To ensure compliance with the law, counties report their locally developed plan for the provision of indigent defense services to the Task Force each year, along with information about expenditures and the types of cases served.

Responsibilities of Key Actors

To ensure indigent defendants receive counsel within a specified timeframe, the FDA assigns responsibility to actors at each phase of pretrial case processing. Figure 1 illustrates defendant caseflow from arrest to the appointment of counsel. Figure 2 highlights the time available under the FDA to complete each phase of processing. Though procedures may vary from county to county, in every instance magistrates play an essential role in meeting the requirements of the law. Other key stakeholders include the person making the arrest, the district or county judge, the appointed counsel, and the prosecuting attorney.

The Arresting Officer. Pursuant to Article 14.06 of the Texas Code of Criminal Procedure, the arresting officer must ensure that the accused is brought before the magistrate no later than 48 hours after the arrest.⁵ In a warrant arrest, if the magistrate signing the order is unavailable, or if it is necessary to provide the warnings described by Article 15.17 of the Code

more expeditiously, the accused may be brought before a different magistrate in the county where the arrest was made or a magistrate in a bordering county. If the arrest offense is a Class C misdemeanor, the peace officer may issue a citation containing written notice of the time and place the person must appear before a magistrate instead of bringing the accused before the magistrate immediately.

The Magistrate. Magistrates as defined by Article 2.09 of the Texas Code of Criminal Procedure include among others: municipal judges and justices of the peace. All magistrates have co-equal jurisdiction with all other magistrates within the county, and their jurisdiction is coextensive with the limits of the county.⁶ The duties imposed on the magistrate by Article 15.17 must be completed within 48 hours of arrest and can be divided into three broad categories:⁷

- Finding probable cause: In the absence of an arrest warrant, the magistrate must be able to make an independent determination that there is probable cause to detain the arrestee or require bond prior to release. This determination is made based on the sworn facts set forth in testimony or by affidavit.
- Giving warnings: The magistrate is required to inform the accused of the charges brought against them and warn them of their constitutional rights. The warnings should include the right to have an attorney present prior to and during any interviews or questioning, as well as the right to stop participating at any time.
- Setting bail: The magistrate sets bail in

The magistrate must also provide the arrested person with the opportunity to request counsel during this time frame. That request for an attorney must be transmitted to the person responsible for making the appointment within 24 hours of the formal request.⁸

Figure 1. Defendant Case Flow from Arrest to Magistration

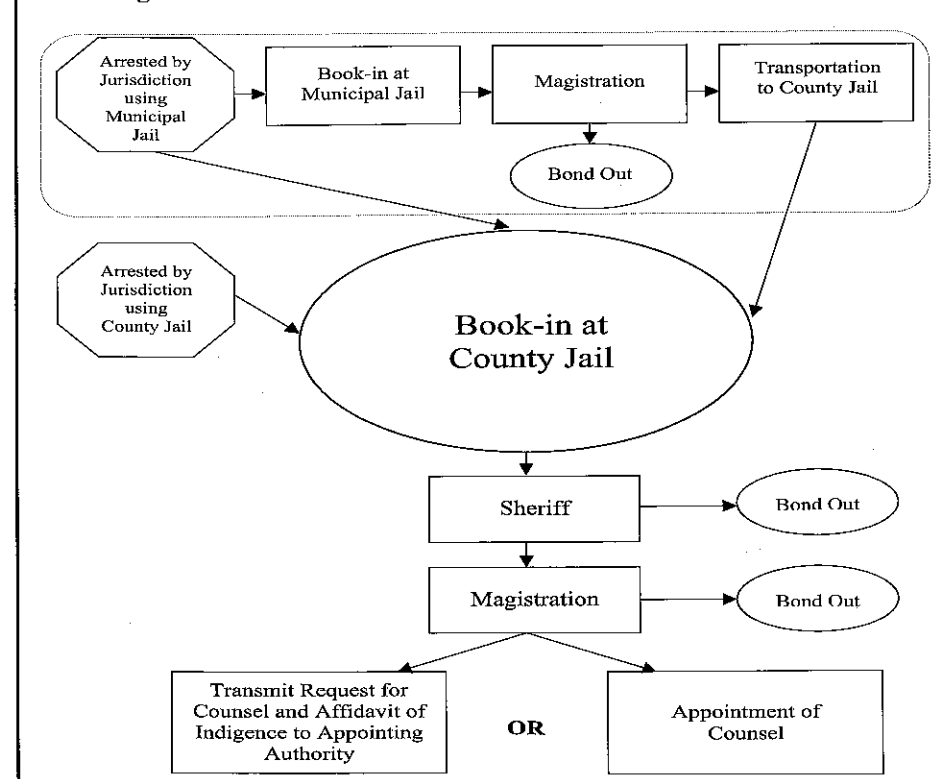
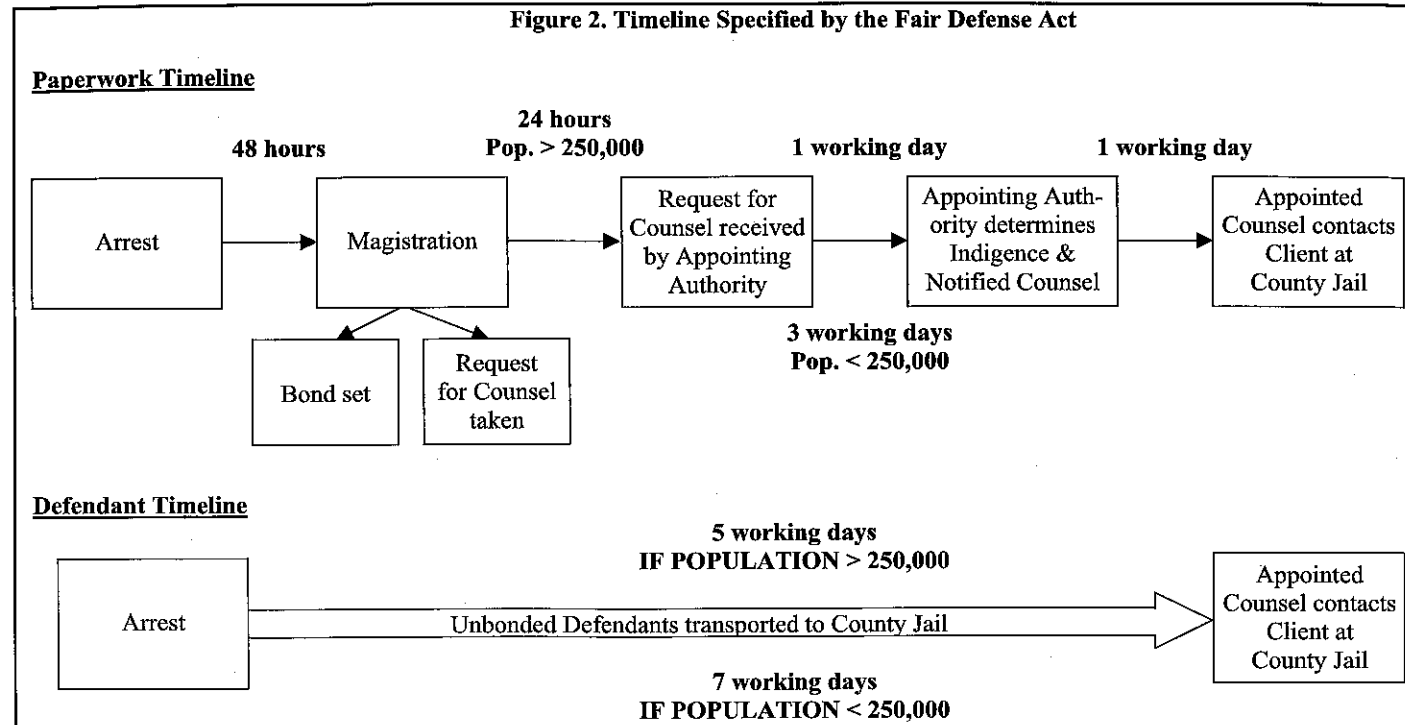


Figure 2. Timeline Specified by the Fair Defense Act



an amount that will ensure the appearance of the defendant for trial, considering criminal history and the nature of the offense. Bail set higher than this standard may result in the unnecessary, unjust and costly detention of defendants who are otherwise eligible for release.

The Appointing Authority. Under Article 26.04 of the Texas Code of Criminal Procedure, the courts must designate an authority to appoint counsel for indigent defendants. Since they take requests for counsel, magistrates are sometimes given responsibility for appointing attorneys. Alternatively, magistrates may be required to transmit defendants' requests for counsel to a different appointing authority such as an indigent defense coordinator or court coordinator. If counsel is not appointed as part of the magistration process, the request must be transferred to the appointing authority within 24 hours in order to meet FDA timelines.

The designated authority is responsible for assigning counsel to defendants in custody before the end of the first or third working day (depending on the population of the county) after the defendant's request for appointed

representation is received.⁹ Generally, working days are Monday through Friday excluding weekends and official holidays.

In a county with a population of 250,000 or more, the court must appoint counsel by the end of the first working day after the day the appointing authority receives the defendant's request for an attorney. In a county with a population of less than 250,000 this timeline is extended to three working days (see Figure 2). If an indigent defendant is released on bond prior to appointment of counsel, then counsel must be appointed at the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.¹⁰

Assigned Defense Counsel. Once appointed, under the Fair Defense Act, the attorney is required to make every reasonable effort to contact the defendant by the end of the first working day after the date he or she was assigned. Though initial contact may be made in person, by telephone, by letter, or by fax, the appointed attorney must follow up with an "interview" of the defendant as soon as possible.

According to Article 1.051(e), assigned counsel has up to 10 days to prepare for a proceeding. The attorney may waive the preparation time with the consent of the defendant. However, this waiver must be recorded in writing or on the record in open court.

The Prosecutor. The prosecuting attorney is responsible for preparing formal criminal charges. If the magistrate does not find probable cause to detain an arrestee, the prosecutor may also file application with the court to postpone the release of a person for up to 72 hours after arrest.

Conclusion

Implementation of the Fair Defense Act requires full participation from a chain of actors involved in criminal justice processing

- Within 48 hours of arrest, the arresting officer must bring the defendant before a magistrate.
- The magistrate must determine whether there is probable cause to detain the defendant, issue constitutional warnings and set bail. Importantly, the magistrate must also give defendants the opportunity to request an appointed attorney, and transfer

this request to authorized appointing authority within 24 hours.

- The appointing authority has from one to three working days (depending on county size) to inform the attorney that the case has been assigned.
- The appointed attorney is then expected to contact the client within one working day and to follow up with an interview as quickly as possible thereafter.

Failure of a single link can potentially create breakdowns that violate the law and threaten the rights of indigent defendants. Each actor must be aware of and attentive to their assigned roles and obligations in protecting and

promoting defendants' right to counsel. Because of their central role in the process, informed magistrates can help provide education and leadership to others, helping to ensure the provisions of the Fair Defense Act are met in every Texas county.

Acknowledgment: The authors would like to acknowledge the contributions of several individuals involved in an ongoing program of research and technical assistance to support the implementation of the Fair Defense Act in Texas. These include Tony Fabelo, Ph.D. and Michael Voloudakis, Ph.D., as well as staff members of the Task Force on Indigent Defense.
¹ Tex. Crim. Proc. Code Article 1.051(c) (Vernon 2003).

Suspension continued from page 1

I know from speaking with minors (defendants under 21 years of age) who receive alcohol violations that having a driver's license suspended is at times more feared than losing a limb by these minors. Often, I receive questions from defendants who receive a DUI charge and have already had their driver's license suspended/taken away by law enforcement. While we are not directly involved in the process of suspending these licenses, having an understanding of the administrative process whereby defendants lose their licenses should help us better understand all the consequences of receiving a DUI.

Chapter 524 of the Transportation Code is where we look to find the first place on the road that the minor faces an administrative license suspension. Let's say our minor is arrested for DUI.¹ The officer may or may not request that the minor submit to the taking of a breath or blood specimen. If the minor submits to a breath or blood specimen at the request of the officer and there is no alcohol concentration greater than .00, the minor will not be arrested for DUI; however, the officer does not

have to request a specimen to arrest a minor for DUI.

Upon the arrest for DUI, the officer will serve notice to the minor that his or her driver's license is suspended. Also, the officer will take possession of the driver's license held by that minor and issue a temporary driving permit to the minor unless the department records show or the officer otherwise determines that the minor doesn't hold a driver's license. The officer will then send to DPS, not later than the fifth business day after the arrest, a copy of the driver's license suspension notice, a copy of the driver's license taken, a copy of the temporary driving permit, and a sworn report of information relevant to the arrest. The temporary driving permit expires on the 41st day after the date of issuance. If the minor was driving a commercial vehicle, the temporary driving permit that allows the minor to drive a commercial motor vehicle is not effective until 24 hours after the time of arrest.²

When a minor appears in our court after being arrested for DUI, the defendant has already had his or her driver's license taken away; and, if 41 days haven't expired, he or she should

² *Texas Appleseed, The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas* (2000).

³ *Id.*

⁴ See Task Force on Indigent Defense website at www.courts.state.tx.us/oca/tfid.

⁵ Tex. Crim. Proc. Code Article 14.06 (Vernon 2003).

⁶ *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973) and *Ex parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978).

⁷ The duties of the magistrate and Article 15.17 "magistration" are described in detail in subsequent sections of this article.

⁸ Tex. Crim. Proc. Code Article 15.17 (Vernon 2003).

⁹ Tex. Crim. Proc. Code Article 1.051(c) (Vernon 2003).

¹⁰ Tex. Crim. Proc. Code Article 1.051(j) (Vernon 2003).

have a temporary driving permit.

Once DPS receives the report from the officer, if the officer didn't serve a notice of suspension of the minor's driver's license, DPS will suspend the minor's driver's license if they determine that the person is a minor and "had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place."³ This determination is civil in nature, is independent of, and cannot legally affect any matter in our court arising over the DUI charge. If DPS determines from the officer's report that the minor did not have any detectable amount of alcohol in his or her system when the minor was arrested, that does not stop the State from prosecuting the minor for DUI in our court.⁴

How long is the suspension? If the minor has not been previously convicted for DUI or driving while intoxicated, intoxication assault or manslaughter, the suspension is 60 days. If the minor has been convicted once of any of those offenses, the suspension is 120 days and if the minor has been convicted twice or more for these offenses, the suspension is 180 days. Deferred

disposition for DUI (or a juvenile adjudication for DWI or intoxication assault/manslaughter) counts as a prior conviction in determining the length of the suspension. To add to the minor's misery, the minor is not eligible for an occupational driver's license the first 30 days of the 60-day suspension, the first 90 days of 120-day suspension, or the entire length of a 180-day suspension.⁵

Upon deciding to suspend the minor's license (if the officer hasn't already given the minor notice at the time of the arrest for DUI), DPS will send notice to the minor by first class mail either to the minor's address on his or her driver's license or to the address on the police officer's report if it is a different address. Of course, if DPS decides not to suspend the driver's license, DPS will send notice to the minor of that decision as well and rescind the notice of suspension given to the minor by the police officer.⁶ This notice will state the reasons for and the effective date of the suspension, how the minor can request a hearing, and the period in which the minor must request a hearing.⁷ The effective date is on the 40th day after the date the person received notice of suspension when arrested for DUI. If the officer didn't serve this notice at the time of arrest, the effective date is the 40th day after the minor is presumed to have received DPS notice by mail. The minor is presumed to have received notice of suspension on the fifth day after the notice was mailed by DPS.⁸

As stated, generally the disposition of the DUI in our court does not affect this driver's license suspension and does not bar any matter in issue at the driver's license suspension proceeding under the Transportation Code and vice-versa. HOWEVER, if the defendant is acquitted of the DUI charge, DPS cannot impose a suspension, or, if one already is imposed, DPS must rescind the suspension and remove any reference

to the suspension from the person's computerized driving record.⁹ Remember, an acquittal differs from a dismissal of a DUI charge by the State. A dismissal of a DUI charge by the State does not halt this administrative suspension. Only if an acquittal of the underlying DUI case stemming from the same arrest is obtained, will any license suspension imposed by DPS be lifted, rescinded and all references of the proceeding removed from the minor's driving record.

Once the suspension is completed, can the minor start driving again? No, first the minor must pay a fee of \$125 to have his or her driver's license reinstated or receive a new driver's license. This fee is only waived if the suspension has been rescinded by DPS or not sustained by an administrative law judge or court.¹⁰

Can the minor in question arrested for a DUI request a hearing and contest any license suspension? The answer is yes; however, this does not involve our courts. All the details of an Administrative License Revocation (ALR) hearing are beyond the scope of this article, but the procedural timelines and requirements are worth noting. Also, beyond the scope of this article are all the procedures (mostly found in DWI cases) in which a defendant refuses the request of a

peace officer to submit to the taking of a breath or blood specimen. These can be found in Transportation Code §§724.031 through 724.064. Arrests for DUI where a breath or blood test is requested by the officer and the minor refuses involve driver's license suspensions from 180 days to up to 2 years.¹¹ Remember though, officers do not need to request a breath or blood test in DUI arrests.

If within 15 days after our minor receives notice, either at the time of the arrest for DUI (which is usually when minors receive notice) or within 15 days after the presumed mail notice from DPS, the minor submits to DPS in Austin in writing a request for a hearing, a hearing will be held not earlier than the 11th day after the notice of suspension and before the effective date of the suspension.¹² The hearing is heard by an administrative law judge.¹³

At the hearing, generally held in the county where the minor was arrested, the State must prove by a preponderance of the evidence that the person is a minor, had any detectable amount of alcohol in his or her system while operating a motor vehicle in a public place, and whether reasonable suspicion to stop or probable cause to arrest the person existed. If the administrative law judge

How Long Is the Suspension?	
Offense	Length of Suspension
Driving under the influence	60 days
Driving while intoxicated	60 days
Intoxication assault or manslaughter	60 days
After first conviction:	
Driving under the influence	120 days
Driving while intoxicated	120 days
Intoxication assault or manslaughter	120 days
After two or more convictions:	
Driving under the influence	180 days
Driving while intoxicated	180 days
Intoxication assault or manslaughter	180 days

finds in the affirmative, the suspension is sustained or if the judge does not find in the affirmative, DPS shall return and reinstate the minor's driver's license, rescinding any order prohibiting the issuance of a driver's license to the minor.¹⁴ A minor has the right to appeal to a county court at law within 30 days after the administrative judge's decision is final.¹⁵

The bottom line is that municipal courts do not suspend drivers' licenses for DUI convictions; the State takes care of that through its own administrative driver's license suspension process. Let's take the case of a first time DUI arrest: the officer

usually will serve notice of the minor's driver's license suspension at the time of the arrest. The minor will have a temporary permit to drive for 40 days after the arrest and has 15 days to request a hearing. The hearing if requested should occur within those 40 days after the arrest. The 60-day driver's license suspension will go into effect on the 40th day after the minor receives the notice (the time the temporary permit expires) and the minor cannot receive an occupational license during the first 30 days of the 60-day suspension.

¹ Section 106.041, Alc. Bev. Code.

² Transportation Code §524.011.

³ Transportation Code §524.012(b).

⁴ Transportation Code §524.012(e)(1)(2)(3).

⁵ Transportation Code §524.022.

⁶ Transportation Code §524.013.

⁷ Transportation Code §524.014.

⁸ Transportation Code §524.021.

⁹ Transportation Code §524.015.

¹⁰ Transportation Code §524.051.

¹¹ Transportation Code §724.035.

¹² Transportation Code §§524.031 and 524.032.

¹³ Transportation Code §524.033.

¹⁴ Transportation Code §524.035.

¹⁵ Transportation Code §524.041.

Dispelling Confusion: Requests for Records Pertaining to Juveniles

By Tiffany Dowling, Program Attorney, TMCEC

The Office of Court Administration (OCA) reported that municipal courts handled 384,779 juvenile cases in fiscal year 2004.¹ Not surprisingly, the OCA also reported that this was a record high for juvenile case activity in municipal courts, replacing fiscal year 2003's record high of 339,945 juvenile cases.² This remarkable increase in juvenile cases heard in municipal courts creates a myriad of problems for judges, clerks and prosecutors. It is time to address one of these dilemmas, namely, requests for records pertaining to juveniles in municipal court.

The confusion surrounding juvenile cases in municipal court is often exacerbated by the vague knowledge that somehow juvenile cases are different. Juvenile cases are different in many ways. However, requests for records pertaining to juveniles in municipal court should not be handled differently than other requests for records held by a municipal court.

One source of the confusion surrounding juvenile records in municipal court is the Attorney General's

November 2003 Open Records Decision Number 680 (ORD 680). In that opinion, the Attorney General was asked to address a very specific question: "Whether the Grand Prairie Municipal Police Department may release to the Grand Prairie Independent School District the name, address and date of citation of each school-age resident of the district who is cited by the department for consuming or possessing alcohol in violation of section 106.04 or 106.05 of the Texas Alcoholic Beverage Code."³ The police department and the school district entered into an agreement whereby the police department provided information to the school district about juveniles charged with certain alcohol offenses.⁴ This exchange of information was part of a cooperative effort to reduce underage drinking in the city.⁵

In ORD 680, the Attorney General stated that Section 58.007(c) of the Texas Family Code prohibited a municipal police department from releasing information about children charged with alcohol violations to the

school district.⁶ The opinion did NOT address the release of such records by a municipal court. A careful reading of Section 58.007 of the Texas Family Code clarifies why the Attorney General did not address the release of juvenile records maintained in municipal courts. Section 58.007(a)(2) states that the section does not apply to records or files maintained by municipal or justice courts.⁷ The confidentiality requirements created by Section 58.007(c) of the Texas Family Code—the specific section discussed in ORD 680—do not apply to records maintained by municipal courts.⁸

It is just that simple. Juvenile records that are held by municipal courts are subject to the common law right of inspection just like the records of adults held by municipal courts. There are many ways to get confused when dealing with juveniles in municipal court. Do not let requests for records pertaining to juveniles confuse you. Read the statute (reprinted below).

¹ Office of Court Administration, Texas

Judicial System Annual Report 2004 (2004) available at <http://courts.state.tx.us/publicinfo/AR2004/muni/index.htm>. The Office of Court Administration's fiscal year 2004 ran from September 1, 2003 through August 31, 2004.

² Office of Court Administration, Texas Judicial System Annual Report 2004 (2004) available at <http://courts.state.tx.us/publicinfo/AR2004/muni/index.htm>.

³ Tex. Att'y Gen. ORD-680 (2003).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ TEX. FAM. CODE ANN. § 58.007 (Vernon 2002).

⁸ See *Id.*

§ 58.007, Texas Family Code – PHYSICAL RECORDS OR FILES

(a) This section applies only to the inspection and maintenance of a physical record or file concerning a child and the storage of information, by electronic means or otherwise, concerning the child from which a physical record or file could be generated and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B. This section does not apply to a record or file relating to a child that is:

- (1) required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;
- (2) maintained by a municipal or justice court; or
- (3) subject to disclosure under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997.

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

(d) The law enforcement files and records of a person who is transferred from the Texas Youth Commission to the institutional division or the pardons and paroles division of the Texas Department of Criminal Justice may be transferred to a central state or federal depository for adult records on or after the date of transfer.

(e) Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

(f) If a child has been reported missing by a parent, guardian, or conservator of that child, information about the child may be forwarded to and disseminated by the Texas Crime Information Center and the National Crime Information Center.

(g) For the purpose of offering a record as evidence in the punishment phase of a criminal proceeding, a prosecuting attorney may obtain the record of a defendant's adjudication that is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, by submitting a request for the record to the juvenile court that made the adjudication. If a court receives a request from a prosecuting attorney under this subsection, the court shall, if the court possesses the requested record of adjudication, certify and provide the prosecuting attorney with a copy of the record.

(h) The juvenile court may disseminate to the public the following information relating to a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located for the purpose of apprehension:

- (1) the child's name, including other names by which the child is known;
- (2) the child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;
- (3) a photograph of the child; and
- (4) a description of the conduct the child is alleged to have committed, including the level and degree of the alleged offense.

(i) In addition to the authority to release information under Subsection (b)(5), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.



RESOURCES FOR YOUR COURT

Electronic Filing of Monthly Reports to the Office of Court Administration

Municipal courts may electronically submit their monthly activity reports to the Office of Court Administration (OCA) in one of the following two ways.

Entering reports online

Approximately 32 percent of municipal courts currently enter their reports directly into OCA's trial court activity database. Online reporting is fast and convenient, saving taxpayers the costs of printed forms, postage, fax transmission and, of course, labor for manual data entry by OCA staff. Moreover, electronic reporting enables you to manage your data entries directly, including editing and verifying your reports online, without having to

telephone, fax or mail materials. All you need is an Internet connection.

OCA's Help Desk will be happy to get you set up for online reporting of municipal court activity. Please call the Help Desk at 512/463-1642 to request a user ID and password.

Electronic file transfer

A number of counties and courts are now submitting their monthly reports via electronic file transfer, which allows the clerk to send the report automatically without having to enter the data online. This option reduces data entry time, expense and errors for the clerks and for OCA. Your information technology personnel or software vendor must program your computer system to generate the required file. Programming specifications for this capability may be obtained at: www.courts.state.tx.us/oca/tcidp/interfaces.asp.

OCA and the Department of Information Resources have developed

statewide contracts for the purchase of case management software. Most vendors who offer software through these contracts either already provide the electronic transfer capability or are in the process of developing the appropriate interfaces within a year. For a current list of software vendors on the statewide contract, see www.dir.state.tx.us/store/busops/softwaresubjects.htm#oca. To obtain additional information, please contact OCA's Help Desk at 512/463-1642.

Marijuana Myths

The Office of National Drug Control Policy has released *Marijuana and Facts: The Truth Behind 10 Popular Misconceptions*, a 39-page booklet. The booklet aims to discredit the notions that: "Marijuana is harmless. Marijuana is not addictive. Marijuana makes you mellow. Marijuana is used to treat cancer and other diseases. If I buy marijuana, I'm not hurting anyone else. There's not much parents can do to stop their kids from experimenting with marijuana. The government sends otherwise innocent people to prison for casual marijuana use."

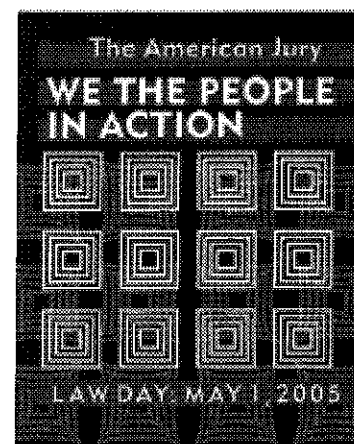
The booklet is intended to clear up topics on which kids receive mixed signals. It is available from the ONDCP Drug Policy Information Clearinghouse (800/666-3332) or on the Internet at www.whitehousedrugpolicy.gov. It may be useful to courts as part of an anti-drug public information project or as required reading for offenders who appear in municipal court on possession of drug paraphernalia charges.

Law Day: May 1, 2005

Law Day 2005 is fast approaching. If you want help publicizing the event, www.lawday.org/art is an Internet link that provides downloadable Law Day art.

You'll find several images related to this year's emphasis on "The American Jury: We the People in Action."

Clipart is available as .jpg files for use in word processing documents, websites and desktop design and as .eps files for graphic designers who work in QuarkXpress, PageMaker and similar programs.



FROM THE CENTER

Survey on 800-line

In its efforts to continually improve, TMCEC asks that you respond to the survey shown below so that we can make sure that our 800-line meets the needs of our constituency. All of the questions, except Question #6, are directed towards our "legal calls" – not those related to registration, ordering materials, etc. Please add your comments or suggestions on our other programs, materials, registration procedures, etc. under Question #6.

Survey on TMCEC 800-line

TMCEC provides the 800-line (800/252-3718) so that judges, clerks and prosecutors can contact the TMCEC legal staff members to ask legal questions about municipal court procedures. If you have called TMCEC for such assistance since January 2005, we would like you to evaluate this service by answering the following questions:

- 1. Responsiveness (length of time it took for us to return the call)**

1 day	2 days	3 days	4 days	5 or more days
-------	--------	--------	--------	----------------
- 2. How would you rate the response to your legal question as to whether it was practical and useful in your work in the municipal court?**

1	2	3	4	5
poor	fair	average	good	excellent
- 3. Before you called the TMCEC 800-line, did you attempt to find the answer in any of these resources? (Circle all that you used.)**
 - a. A codebook, such as the *Texas Criminal Law and Motor Vehicle Handbook*
 - b. TMCEC *Judges Book*
 - c. TMCEC *Bench Book*
 - d. TMCEC *Forms Book*
 - e. TMCEC certification study guides
 - f. TMCEC newsletter
 - g. TMCEC website (www.tmcec.com)
 - h. TMCEC charts
 - i. TMCEC course materials from our seminars
 - j. Your City Attorney
- 4. How many times a month do you call?**

1-2	3-5	6-10	11-15	16+
-----	-----	------	-------	-----
- 5. Please write down any suggestions that you have about our 800-line service.**
- 6. Please write down any other suggestions about our publications, training or programs.**

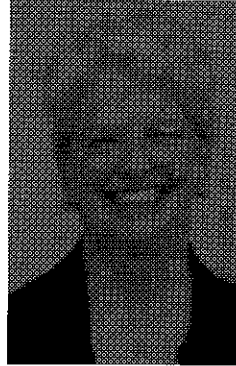
Return to Hope Lochridge, TMCEC, 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701 Fax: 512/435-6118.

1984 - 2004: Appreciation to Our Faculty and 20 Years of Education

On September 10, 2004, TMCEC celebrated the 20th Anniversary of the founding of the Texas Municipal Courts Education Center. The celebration was held in conjunction with the Annual Meeting of the Texas Municipal Courts Association. If you would like to listen to the audiovisual program that outlines the history and organization of TMCEC and TMCA, it can be accessed on the TMCEC website: www.tmcec.com.

Since 1984, TMCEC has offered regional training programs across Texas. These programs would not be possible without the volunteer faculty who leave their homes, offices and courts to join us at the regional programs. Serving without compensation, these individuals give their time to attend the TMCEC faculty development program and the curriculum development meetings, as well as the regional conferences. They agree to be coached by the TMCEC staff and to modify their presentations based on the evaluations of our audience. While some of their travel, lodging and meals are reimbursed by the grant, the grant does not pay for telephone calls to their homes or offices, gratuities and tips at restaurants, babysitters or day care for their children, expenses related to housing pets in kennels, and other incidental expenses. Thus, teaching for TMCEC is definitely a not-for-profit commitment!

TMCEC greatly appreciates the commitment of our outstanding faculty members. We would like to draw your attention to one outstanding member of the faculty: Margaret Robbins. Mrs. Robbins first taught at the April 17-29, 1985 program in San Antonio. Since that first presentation, she has consistently been rated one of the most highly respected faculty members and has taught our entire constituency: judges, clerks, court administrators, prosecutors, bailiffs, and warrant officers. We ask each of you to congratulate Margaret the next time you see her at school or talk to her on the TMCEC 800 line. The TMCEC program would not have reached its levels of excellence without her dedication, and we dedicate this issue of *The Recorder* to Margaret.



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Kim Scofield	Burt Solomons	Lowell Thompson	Angie Warner	Richard Williams
Deanne Cummings	Judy Spalding	Martin Thompson	Mark Warren	Robert Williams
Scott	Ray Speece	Senfronia Thompson	Lory Warton	Steve Williamson
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				Ron Zimmerman

TMCEC Programs (FY05)

5/5-5/6 12-Hour Regional Judges/Clerks

Ambassador Hotel Amarillo
3100 I-40 West - Amarillo, TX 79102

5/13-5/15 Assessment Clinic (Clerks)

TbarM Ranch New Braunfels
2549 Highway 46 West - New Braunfels, TX 78132

6/8-6/9 12-Hour Regional Judges/Clerks

MCM Elegante Odessa
5200 E. University Blvd. - Odessa, TX 79762

6/20-6/21 Court Administrators and Bailiffs/Warrant Officers

Omni San Antonio
9821 Colonnade Blvd. - San Antonio, TX 78230

7/18-7/22 32-Hour New Judges/Clerks

Omni Austin Southpark
4140 Governor's Row - Austin, TX 78744

8/8 Legislative Update

Omni Houston Hotel Westside
13210 Katy Freeway - Houston, TX 77079

8/11 Legislative Update

Holiday Inn Lubbock Hotel & Towers
801 Avenue Q - Lubbock, TX 79401

8/16 Legislative Update

Hyatt Hotel Austin
208 Barton Springs Road - Austin, TX 78704

Dawson continued from page 3

As late as January of this year, despite his illness, Professor Dawson continued to address issues of interest to municipal courts. Further acknowledging the growing role our courts play in the juvenile justice system, Bob decided to take key excerpts from *Texas Juvenile Law (6th Edition)* and to compile a book specifically for our courts. *Texas Juvenile Law for Justice and Municipal Courts* was published by the Texas Juvenile Probation Commission in November 2004. Picking up where he left off during the 78th Legislature, this session's juvenile omnibus bill (HB

1575) authorizes magistrates to review juvenile statements obtained by video in order to determine voluntariness. It also authorizes local governments to adopt optional court costs to supplement the salaries of juvenile case managers.

If the Texas juvenile justice system were a giant wheel, Bob Dawson was the hub. His death creates a void. While all of the participants in the system knew Bob (and Bob knew all of the participants), all of the participants do not know each other. Bob was the critical "middle man." Time will tell the shape of things to come.

Bob was very proud of the improvements that municipal courts had made over the years. He was also optimistic about our future. The last time we spoke, he reminded me that most tasks require equal parts of patience and vigilance. He will be missed.

Related Internet link:

www.utexas.edu/law/news/2005/022605_dawson.html

TEXAS MUNICIPAL COURTS EDUCATION CENTER 2005 REGISTRATION FORM

Seminar Date: _____ Seminar Site: _____

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

Name (please print legibly): Last Name: _____ First Name: _____ MI: _____

Names also known by: _____ Female/Male: _____

Position held: _____

Date appointed/Hired/Elected: _____ Years experience: _____

Emergency contact: _____

HOUSING INFORMATION (Not for Legislative Updates)

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, three nights at the 24-hour seminars/assessment clinics and two nights at the 12-hour and 16-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.

How will you be traveling to seminar? Driving Flying

Arrival date: _____ Smoker Non-Smoker

Municipal Court of: _____ Email Address: _____

Court Mailing Address: _____ City: _____ Zip: _____

Office Telephone #: _____ Court #: _____ FAX: _____

Primary City Served: _____ Other Cities Served: _____

STATUS (Check all that apply):

Full-Time Part-Time

Attorney Non-Atty

Prosecutor

Presiding Judge

Associate/Alternate Judge

Justice of the Peace

Mayor

Court Administrator

Court Clerk

Deputy Court Clerk

Other:

Bailiff/Warrant Officer

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

Judge's Signature: _____ Date: _____

Municipal Court of: _____

*I certify that I am currently serving as a municipal court 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. I will cancel by calling the Center. If I must cancel on the day before the seminar due to an emergency, I will call the TMCEC registration desk at the seminar site. If I am a "no show," TMCEC reserves the right to invoice me or my city for meal expenses, course materials and possibly housing (\$80 plus tax per night). If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the seminar site. *Payment is required ONLY for the Assessment Clinics and the Legislative Updates; payment is due with registration form. Participants in the Assessment Clinics must cancel in writing two weeks prior to the seminar to receive refund.*

Participant Signature _____

Date _____

*PAYMENT INFORMATION:

Check Enclosed (Make checks payable to TMCEC.)

Credit Card (Complete the following; \$2.00 will be added for each registration made with credit card payment.)

Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)

Credit card type:

MasterCard

Visa

Credit Card Number _____

Expiration Date _____

Verification Number
(found on back of card) _____

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

Authorized Signature _____

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701.
Fax registration forms with credit card information to 512.435.6118.

Teen Court and the Aftermath

By Margaret Robbins, Program Director, TMCEC

The teen court program provides the court with another tool to use to rehabilitate juveniles. It is another type of deferral for teen defendants that offers the teen the opportunity to participate in a type of court trial setting under supervision.

Article 45.052, Code of Criminal Procedure (C.C.P.), provides authority for judges to defer proceedings against certain defendants and grant teen court. To be eligible, the defendant must:

- be under age 18 or enrolled full-time in an accredited secondary school working toward a high school diploma;
- not have successfully completed a teen court program in the two years preceding the date of the current alleged offense; and
- be charged with a fine-only offense over which municipal court has jurisdiction.

If a defendant wants to participate in a teen court program, the defendant must appear in open court with a parent, guardian or managing conservator. This means all defendants who want to request the teen court program must have a parent or guardian with them in open court. The statute does not make exceptions for defendants who are 17 years of age or older.

The defendant must plead either guilty or *nolo contendere* and request either orally or in writing to attend the teen court program. If the judge grants the request, the defendant must complete the program "...not later than the 90th day after the date the teen court hearing to determine punishment is

held or the last day of the deferral period, whichever date is earlier." Article 45.052(c), C.C.P.

The defendant must pay applicable court costs unless the judge exempts the defendant from the payment. If a judge exempts a defendant from the payment, the judge should document the exemption. Probably the best place to do so is in the order granting teen court.

The judge may require, but does not have to, the defendant to pay two non-refundable \$10 fees. One \$10 fee is to cover the costs of administering teen court and is deposited in the municipal treasury. The other \$10 fee is to cover the costs of the teen court program. The court must pay the fee to the teen court program. The teen court program must account to the court for the receipt and disbursement of the fee. Every teen court program that receives \$10 fees must document how the fees are used. Courts should establish a policy with the teen court for reporting of the fees. Since most teen courts are through the court and city, there should be periodic audits to determine that the \$10 fees are being properly disbursed by the teen court.

When a defendant completes the teen court program, the teen court coordinator must report to the court or provide the defendant with documentation of completion of the program. After the court receives the documentation, the judge signs a judgment dismissing the case. If the offense is a traffic offense, the court reports the teen court completion date to the Texas Department of Public Safety (DPS).

If the defendant fails to complete the program, the teen court coordinator must report that fact to the court. If the defendant was at least age 17 when the offense occurred, the judge enters a judgment ordering the fine and costs to be paid immediately and issues a *capias pro fine*.

If the defendant was under age 17 when the offense occurred or is still under age 17, the court must set up a contempt hearing as required under Article 45.050, C.C.P. The court must notify the defendant of the hearing and issue a summons for the parent or guardian. If the defendant and his or her parents appear, the judge will listen to the reason why the defendant did not complete the teen court program. If there was a good reason, the judge does not have to find the defendant in contempt. The judge does, however, have to enter judgment on the case and impose the fine and costs. The defendant can pay the fine and costs or appeal.

If there is no good cause, the judge may find the defendant in contempt. The punishment for contempt is a fine of up to \$500 and/or ordering DPS to suspend or deny issuance of a driver's license until the defendant fully complies. The clerk reports to DPS the judge's order of driver's license suspension or denial on the DIC-81 form. At the contempt hearing, the judge enters judgment on the charge for which teen court was granted and orders payment of the fine and costs. The defendant must totally discharge the fine and costs or appeal the case in order to fully comply with the court's order.

Teen Court continued on page 20



Amarillo Municipal Court: A Look at Collections, Compliance and Impact

By Victoria Medley and Laura Prado, Amarillo Municipal Court and Jim Lehman, Collections Specialist, and Don McKinley and Russ Duncan, Assistant Collections Specialists, Office of Court Administration

The Office of Court Administration (OCA) recently sat down with the Amarillo municipal court administrator regarding the challenge and success the court has experienced since implementing its court collections program.

To hear Amarillo municipal court administrator Victoria Medley tell it, her court's collections program is a process that works to instill trust in the court, and hold defendants accountable for their obligations. Medley states, "There was a need for a change, due to a lack of collections, and especially a lack of accountability; you didn't feel the community was getting the correct message." In 2004, the court began exploring various options of how best to handle outstanding citations, warrants and numerous traffic cases.

A new collections program was developed in May 2004. As a result, Medley is exploring possible expansion, hoping to double the collections staff. During the first nine months (May 2004 - January 2005), 46,203 citations were filed, 42,895 cases were disposed, and gross revenues of \$4,494,808 were generated versus 48,347 citations filed, 37,346 cases disposed, and gross revenues of \$3,928,812 during the same nine-month period in the previous year (May 2003 - January 2004). Comparing these figures as percentages, it looks like this: in the

May 2004 - January 2005 period, filings were down 4.4%, dispositions were up 14.9%, and gross revenue was up 14.4%.

When Amarillo's collections program began, the court did not receive any money on the day of sentencing or pleading. The defendant would usually receive a 30-day extension. "The court now averages \$40,000 a month in first-time payments on the day of sentencing or pleading alone," Medley said. "This amount does not include the future payments made on the cases." Medley explained, "Most of the time defendants have money; they just aren't motivated about paying their fines and fees. Is it a fair justice system to have one defendant comply, but not another? We have found that defendants often state they can't pay, but after reviewing their situation they really can. Defendants want the court to believe they can't pay, so the perception may be that the court doesn't expect them to."

Medley worked with collections specialists at OCA to design a court collections program after hearing about such efforts through the Texas Municipal Courts Education Center. She said, "As a court administrator, I thought that would be a good place to start." Together she and OCA developed a plan after OCA reviewed Amarillo's collections process, from the time a citation is filed through final case disposition. Medley realized that

any recommendations presented to Presiding Municipal Judge Donna Clayton and to city leaders must show that the hiring of staff dedicated solely to collections would provide the impact needed to change perceptions, increase compliance with court orders, and increase revenues to the City of Amarillo. OCA explained that the focus of any good collections program is compliance. Courts should not worry about the money. If the focus is on compliance, the revenue will take care of itself. Medley agrees stating, "A collections program must be a compliance driven effort. The true heart of the matter is respect for the judge's orders and respect for the justice system."

Among the highlights of their plan and implementation:

- Standard collections policies and procedures were developed, approved and adopted by the judges;
- A minimum payment schedule was established (see payment schedule on page 18);
- Available office space was maximized. Medley stated, "Before starting our collections program we had to look at moving people around, utilizing our office space and exploring equipment needs. I thought our space was tight, but you really do have room where you don't think you have room";

- Application for extension of time to pay forms, notices and door hangers were developed. The forms and instructions were written in both English and Spanish;
- In Amarillo, as in much of Texas, hiring a collections officer who spoke Spanish as well as English is extremely important. In Amarillo, close to one-third of defendants speak Spanish, according to Medley;
- With the judges' input and cooperation in the planning process, a three-month pilot was launched to demonstrate the benefit of having a collections program. The judges were kept "in the loop" and advised during the entire pilot program; and
- A collections officer was hired, with the judges involved 100% in the hiring process. The collections officer, responsible to Medley, had to have the judges' trust and confidence. That officer had to have extensive knowledge of courts, as well as some collections experience or understanding, and be a self-starter and quick learner. Medley added, "This person is ultimately responsible and accountable for their own success."

Amarillo found that person in Laura Prado, who describes her first three days on the job with one word: volume. She sees more than 20 defendants per day and as many as 50. In some cases, a defendant may have to wait up to an hour before he or she is seen.

Medley recalls that the pilot program's beginning was a little overwhelming. "I didn't know what to expect. During the first 30 days, the judges and four clerks (including myself) worked together on the pilot program. Some of the concerns initially raised were:

How will people respond? Will they show up? Will they even use the program? We found all these concerns actually to be non-issues." Medley adds, "I can tell you that defendants will fill out a four-page affidavit. They will pay or comply with court orders. Most defendants usually meet the court's expectations."

Prado advises defendants that applications must be completed in full. Defendants failing to follow those instructions will usually find themselves back in the waiting area at the end of the line. Another issue faced is defendants who make their first payment on the day of pleading or sentencing, but then will come back

Amarillo's Minimum Payment Schedule

\$1.00-\$200.00—Balance is due within 30 days;

\$200.01-\$550.00—\$55-\$65 every two weeks based upon disposable income;

\$551.01-\$750.00—\$65-\$75 every two weeks based upon disposable income;

\$750.01 & Up—\$75 or higher every two weeks based upon disposable income.

Note: If unable to pay biweekly, a full monthly payment may be offered to the defendant. If the defendant bonds out of jail, one-third to one-half of the balance is due at judgment or sentencing. If a defendant is remanded to jail for failing to comply with orders of the court, once released, any balance of court costs, fees and fines remaining is due to the court in full. An additional payment plan is not an option.

the next month asking for more time. Prado confronts the defendant as to the reason why they are short (usually the money has gone for other reasons or expenses). This situation is handled by fully explaining to the defendant they agreed last month to the payment, which is now due, and the consequences they may face for failing to comply. If the defendant has had

an emergency, or a real life event change, the court will work with that defendant. The focus is on compliance. Medley adds, "Defendants should leave the court with the perception that fines and fees are really important, and these are all things the court can influence. We have found in some cases that the defendant will actually forgo the application process and directly pay the judgment instead."

Amarillo's collections process also relies on the warrant officer assigned to the municipal court. The warrant officer is effective. "Another one of our early fears was that a collections program would simply fill up the jail." Medley added, "Well, it has never happened. Most defendants don't want to go to jail. Many of our misdemeanor offenders have bonded out of jail already, and they don't want to go back."

When asked, what is the one thing you are most proud of, or see as your biggest success with the new collections program, Medley stated, "The collections program looks professional and the community is aware of it. It reflects extremely well on our court, and how serious we take compliance." Prado added, "I am most proud of our Presiding Judge's support and the continued support of the court administrator. Judge Clayton has been very helpful and supportive to me. Trust is the key."

When asked if there would be anything she would do differently, Medley responded, "Yes, I would have fought harder for two collections staff initially, or one full-time and two part-time staff. Next fiscal year, I will definitely be pulling numbers together to get an additional person to expand our program." Medley adds, "At times, we have asked ourselves, why are we doing this? We always come back to the same answer, because it is the right thing to do."



BAILIFFS & WARRANT OFFICERS

Farmers Branch Municipal Court: A Great Place to Work!

By: Nicole Rodriguez-Terrell, Bailiff, Farmers Branch

FROM THE CENTER

TMCEC received this commentary from a bailiff. We hope that all judges and court support personnel will read it and think about what they can do individually and as a team to improve communications in their court. We hope other members of the TMCEC constituency will also take time to write about their successes and submit them for publication in *The Recorder* or on the TMCEC website.

I know, I know...you wonder how a city employee (a court employee to boot!) could write an editorial about working in a well run, yet laid back and enjoyable environment.

Well, I'm here to tell you the who, what, when, where, how, and why. I probably need to start off with a little background about myself so you will know how I ended up with the job I plan to be dragged from, kicking and screaming, when it's my time to leave.

I'm the bailiff for the Farmers Branch Municipal Court of Record #1. Sounds impressive, huh? I've been such since August of 2002. When I started here, it was a part-time position that I eagerly accepted in order to get back into police work. I was an officer with the Dallas Police Department for 10 years when I became pregnant with my second child and decided I no longer wanted to "work the street." So, I had been out of the business of "protecting and serving" for almost two years when I came back. I have since evolved into a full-time bailiff—now working five days a week.

In December 2004, I was invited to participate in a forum with court employees from all over Texas, and I heard a lot of unhappy campers! There

were some happy campers, but we were vastly outnumbered. What I heard often was that the communication between the judge and everyone else was non-existent, and that there was no relationship/communication between the important players in the municipal court.

If you asked me, I would say that the municipal court employee has a very important job. Beginning with the clerks and ending with the judge, we each play an important role in people's lives. (Granted, it may not be a role that they enjoy having us play, but it is important nonetheless!) In order for the municipal court system to run smoothly, there must not only be communication, but good communication. And just who do you think has to be at the center of this wonderful communication? I would say either the court administrator or the judge, depends on how you look at it. I can tell you one thing though, it helps to have a judge that is personable and doesn't mind spending time with his or her fellow employees. Our judge has an open-door policy: if you have a question, you can ask him; if you have a problem, you can discuss it with him; and if you have an idea that you think is beneficial to the betterment of the court, he is happy to listen. He may even be sitting next to you in the break room at lunchtime.

Our court administrator has the same policy. The pattern here is enough to make you realize how important it is to be able to go to your boss with questions, ideas and suggestions. Equally important is her willingness and desire to get input from us when she recognizes it as beneficial. I once told

her that she was so easygoing, and she said that if we are happy, she is happy. I guess that when your employees are content, your job is that much easier.

Now, a good relationship between the judge and the court administrator is important, but don't forget the "little people" who make the machine run!

The deputy court clerks, bailiff, warrant officer and the assistant court administrator are a small family of sorts. Not to exclude the judge and court administrator...they are part of the family, too! We tend to enjoy ourselves at work. We have fun and joke while we work, yet we are able to do what needs to be done. We are quick to celebrate birthdays and holidays with what we call "food days." We all bring food and indulge throughout the day. What better way to enjoy a day at work?

All fun aside, our assistant court administrator enjoys seeing the teamwork in action. She is able to watch a file get handled by each clerk, and then she gets the finished product. "Justice in action" is what we call it! Each day the employees at our court exhibit their ability to come together and solve problems. I asked all of the deputy court clerks what they enjoyed about working for Farmers Branch Municipal Court, and I learned that they all like the group of people that they are working with. That's what makes us want to come to work; that's what makes us do a good job; and that's what makes us take pride in what we do. This great group of people is what makes the Farmers Branch Municipal Court a well-oiled, efficient and yet fun machine!

Another option at the contempt hearing if the defendant is under the age of 17 and the court determines that the defendant is in contempt is to transfer the case to the juvenile court for contempt. The defendant, nevertheless, must still take care of the charge in the municipal court—either pay the fine and costs or appeal.

Handling teens in municipal court is a complex process even when the court grants a teen court program. Municipal courts must ensure that every step is followed. To help courts with the process, the Texas Municipal Courts Education Center provides forms for teen court. They are located in TMCEC's Forms Book on pages 125 through 129. Since handling teens in a teen court program may involve many procedures, clerks may want to review Levels I and II study guides, *Juveniles*.

TMCEC Legislative Update

Houston
August 8, 2005
Omni Houston Westside

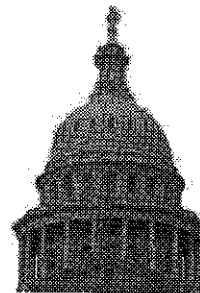
Lubbock
August 11, 2005
Holiday Inn Towers

Austin
August 16, 2005
Hyatt Regency Austin

Registration Fee: \$50*

Register to attend using the Registration Form on page 15. If a hotel reservation is required, you must contact the hotel directly. TMCEC will not pay the cost of lodging.

Registration fee is due with your registration.



**\$100 registration fee for non-municipal court participants. \$2 will be charged per registration if paying with credit card.*

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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.

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