THE RECORDER
THE JOURNAL OF TEXAS MUNICIPAL COURTS
July 2025

INSIDE THIS ISSUE

Open Courts

TEXAS MUNICIPAL COURTS EDUCATION CENTER

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

STAFF

Tayler Adams, Meeting Planner and Program Coordinator
Elizabeth De La Garza, TxDOT Grant Administrator
Crystal Ferguson, Executive Assistant
Mark Goodner, General Counsel & Director of Education
Antaris Jackson, TxDOT Administrative Assistant
Matthew Kelling, Multimedia Specialist & Logistics Coordinator
Regan Metteauer, Deputy Director
Ned Minevitz, Program Attorney & Senior TxDOT Grant Administrator
Madison Mondragon, Program Attorney & Deputy Counsel
Dina Powell, Financial & Administrative Specialist
Leandra Quick, Program Director
Elaine Riot, Publications Coordinator
Adrianne Schroeder, Program Coordinator
Deadra Stark, Administrative Director/Controller
Ryan Kellus Turner, Executive Director
Brandi Valentine, Registration Coordinator

Managing Editor: Regan Metteauer

FY25 TMCEC OFFICERS

President, Hon. Bonnie Townsend, City of Luling
President Elect, Hon. Teresa Weaver Evans, City of Arlington
First Vice President, Hon. Michael Acuña, City of Irving
Second Vice President, Hon. Kathleen Person, City of Temple
Secretary, Hon. Hilda P. Cuthbertson, City of Snook
Treasurer, Ms. Landra Solansky, City of Seguin
Immediate Past President, Vacamt

DIRECTORS

Region I Director, Hon. Janet Blacklock Matthews, City of Wilson
Region II Director, Hon. Melanie Houston, City of Fort Worth
Region III Director, Hon. Hyattye Simmons, City of Combine
Region IV Director, Ms. Donna Mathis, City of Log Cabin
Region V Director, Hon. Wayne Frost, City of Midland
Region VI Director, Hon. Robert Garcia, City of Waco
Region VII Director, Hon. Edward Spillane, City of College Station
Region VIII Director, Ms. Tammy Odom, City of Texas City
Region IX Director, Hon. Robert Barfield, City of El Lago
Region X Director, Hon. Jacqueline Del Llano Chapa, City of Corpus Christi

The Texas Municipal Courts Education Center is funded by a grant from the Texas Court of Criminal Appeals.

AROUND THE STATE

TMCEC extends heartfelt thanks to the following supporters who have contributed so far to our $40 for 40 campaign.

We are deeply grateful for your generosity and inspired by the incredible outpouring of support. Your contributions help sustain TMCEC's mission and ensure the continued delivery of exceptional judicial education.

Katie Andries
Tiffany Bagwell
Teresa Ballard
James Barklow
Thomas Beall, Jr.
Shelley Becker
Debbie Biscarro
Jennifer Bozorgnia
Sandra Bray
Jason Burden
Donna Carney
Dianney Ceron
Gilland Chenault
Jennifer Chiang
Grantham Coleman
Cynthia Cooper
Hilda Cuthbertson
Law Office of Edmund Cyganiewicz
Christopher Cypert
Yaneth De La Cruz
Arturo DeLeon
Diane Dockery
Sally Dodd
Gordon Dudley, Jr.
Mara Dudley
Gary Ellsworth
Teresa Evans
Stephen Fagen
Michelle Fischer
Robert Galbreaith
Caprice Garcia
Benjamin Gibbs
Valarie Glover
Robert Gradel
Peter Graham
Pat Gruner
Ana Guillot
Andy Helms
Kirby Hewett
Detra Hill
Donna Holden
Melanie Houston
Tali Jackson
Alissa Janke
Melissa Johnson
Lynn Jones
Aaron and Marilyn Kaufman
Carla Kelman
Kimberly Kierce
Felicia King
Ted Krenek
Kris Krishna
Dallari Landry
Katie Leininger
Elizabeth Lewis
Glenn Lewis
Taylor Light
Sherry Lott
Britney Macchiaverna
C. L. McGill
Michelle Maese
City of Marble Falls
James Marshall
Stacy Martin
Robert Martinez
Janet Matthews
Belinda McCall
Harold McCall
Susanna Meringola
Marilyn Miller
Jim Minter
Denise Mitrano
Gerald Monks
Lawrence Morales
City of Mount Enterprise
Michelle Nance
Charles Noll
Tammy Odom
Ricardo Perez
Jannett Pieper
Sally Poteet
Kristine Primrose
Sonia Robles
Rodriguez Lucio Law Group
Marvin Rotenberry
Walter Schroeder
James Schweitzer
Farren Sheehan
City of Shepherd
Hyattye Simmons
Laurie Stiteler
Patricia Summers
George Thomas
Bonnie Townsend
Carolyn Vallejo
Herbert Vaughan
Chris Ventura
Deidra Voigt
David Walsh
Stan Warfield
Jacob Wetzel
Gary Whitley
Kim Wingard
Christina Zelenak

Public Access and the Texas Judiciary: Lessons from *Texas Tribune v. Caldwell County*

**Mark Goodner,
General Counsel and
Director of Education, TMCEC**

Article 15.17 of the Texas Code of Criminal Procedure requires that a person arrested without a warrant or under a warrant be taken "without unnecessary delay" before a magistrate.[1] This process is commonly referred to as *presentment before a magistrate* or *magistration*. At this appearance, the magistrate informs the accused of the charges against them and their rights, including the right to remain silent, to retain counsel, to terminate any interview at any time, and to have an attorney present during questioning. The magistrate also determines whether probable cause exists for the arrest and sets bail, if appropriate. If the person cannot afford an attorney, the magistrate initiates the process for appointing counsel.

The constitutional significance of this stage is clear. For example, the U.S. Supreme Court has held that the Sixth Amendment right to counsel attaches at this initial appearance, underscoring the importance of procedural safeguards at magistration.[2]

Against this backdrop, First Amendment challenges to Caldwell County's closed-door magistration policy brought into sharp focus the right of access by the public and the press to criminal proceedings. While the Fifth Circuit ultimately affirmed that this right extends to magistrations, the impact on courts and jails in Texas is limited in scope. This article explores *Texas Tribune v. Caldwell County*,[3] its First Amendment implications, and the competing concerns that could shape the future of public access in early-stage judicial proceedings.

I. Case Overview

Caldwell County, Texas implemented a policy that kept magistration proceedings closed to everyone except the judge and the arrestee, including the public, press, and even counsel.[4] Several organizations, including the Texas Tribune, the Caldwell/Hays Examiner, and Mano Amiga, sought but were denied access to these proceedings.[5] In response, the organizations filed a lawsuit, arguing that the County's policy violated the First Amendment right of access to judicial proceedings.

The U.S. District Court for the Western District of Texas granted a preliminary injunction, finding that the closure of magistration violated the First Amendment, and ordered that the hearings be open to the public and press, subject to reasonable conditions. The Fifth Circuit Court of Appeals upheld this decision, ruling that the First Amendment guarantees access to certain judicial proceedings, including magistrations, and that Caldwell County's policy of categorical exclusion was unconstitutional. The courts' rulings underscore the growing

concern for transparency in judicial proceedings and the importance of ensuring public access, particularly where First Amendment rights are at issue.

II. First Amendment and Public Access

The First Amendment guarantees the most far-reaching and frequently invoked rights in American constitutional law: freedom of speech, freedom of the press, freedom of religion, the right to petition the government, and the right to peaceable assembly. While many associate these protections with political speech or religious liberty, their intersection with the criminal justice system—particularly the concept of open courts—is vital and often overlooked.

In the context of criminal proceedings, the First Amendment's protections are not merely abstract ideals. They form the legal basis for public and press access to court proceedings. The U.S. Supreme Court has recognized this principle as central to the legitimacy of the judiciary.[6] In *Richmond Newspapers, Inc. v. Virginia*, the Court noted that "[a] trial courtroom also is a public place where the people generally—and representatives of the media—have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place."[7]

This right of access was at the core of *Texas Tribune v. Caldwell County*, which challenged a magistration policy that categorically excluded third-party observers from the proceedings. The plaintiffs argued that this blanket exclusion violated their First Amendment right of access to judicial proceedings.

The federal courts agreed. Courts apply an "experience and logic" test, established in *Press-Enterprise Co. v. Superior Court of California for Riverside County*, to determine whether there is a presumptive First Amendment right of the press and the public in any particular proceeding.[8] The court must determine "whether the proceeding has historically been open to the public and press" and "whether public access plays a significant positive role in the functioning of the particular process in question."[9]

Applying the "experience and logic" test, the Fifth Circuit found that magistration proceedings satisfy both prongs:

- **Experience**: While there is no direct precedent establishing a tradition of openness for magistration proceedings, courts have historically allowed public access to analogous pretrial hearings—such as bail hearings and bond modifications.[10]

- **Logic**: Public access to these early-stage proceedings enhances the transparency, accountability, and legitimacy of the judicial process.[11] Further, bail hearings take into consideration community safety when determining if and under what circumstances the arrestee may be released pending trial.

Finding the First Amendment right of access extends to magistrations, the court emphasized that while reasonable limitations may be permissible, a categorical closure policy such as Caldwell County's fails to satisfy constitutional scrutiny.

This ruling underscores how First Amendment protections are not limited to expression—they also function as a safeguard against closed-door justice. In reaffirming that the public and the press cannot be shut out of critical early-stage hearings, the court reinforced a broader principle that transparency is essential to public trust in the judicial system.

III. The Sixth Amendment and Open Courts

While the *Texas Tribune* case was litigated under the First Amendment, the Sixth Amendment's guarantee of a public trial also plays a critical—sometimes overlapping—role in supporting open courts. Unlike the First Amendment, which protects the rights of *the public and press*, the Sixth Amendment focuses on *the*

defendant's right to be seen, heard, and judged in a transparent forum. Courts have long held that this right reinforces public confidence in the judiciary and serves as a check against judicial misconduct.[12]

The U.S. Supreme Court has recognized that these two constitutional protections, though distinct, often converge on the same principle that justice must be visible. In *Presley v. Georgia*, the Court reiterated that the public trial right applies even during voir dire, noting that the point is well settled that this right is no less protective of the public than it is of the accused.[13] In this way, the First and Sixth Amendments can be seen as two paths to the same destination—both supporting the idea that courtroom transparency is a structural safeguard in the American legal system.

For court professionals, this convergence can raise questions about what "public trial" and "court access" truly require. The Constitution does not mandate that all proceedings be open in all circumstances. Instead, the right to access is generally triggered by a request—whether by the defendant, the press, or the public. What the Constitution prohibits is the kind of categorical closure made by Caldwell County, which excluded everyone by default. The Fifth Circuit did not order that hearings be livestreamed or open at all hours—it simply rejected a blanket policy that presumed closure.

Understanding the difference between presumptive openness and absolute openness is critical for judges and court administrators. The law does not require public access to be constant or unrestricted, but it does require that access cannot be denied without a specific and compelling reason. And any limitation must be narrowly tailored to serve that reason.[14]

IV. Impact of *Texas Tribune*

The *Texas Tribune v. Caldwell County* decision represents a significant moment in the evolving conversation about transparency and judicial accountability in Texas courts—but its scope has limits. The Court did not create a statewide mandate requiring courts and jails to livestream proceedings or operate with unrestricted public access. Instead, it struck down a blanket closure policy that barred all third-party observers from magistration hearings without any opportunity for public or press access.[15]

In this sense, the case can be read more narrowly: it does not require universal openness at all times. It reaffirms a presumptive right of access that must be honored unless a court can point to a specific, compelling justification for closure—and even then, the restriction must be narrowly tailored.[16] It was the county's *categorical exclusion*, not its discretion, that failed constitutional scrutiny.

Although the decision is binding on federal courts within the Fifth Circuit's jurisdiction—which includes Texas, Louisiana, and Mississippi—it is not a nationwide directive. State courts and federal courts outside the Fifth Circuit may find the ruling persuasive, but they are not compelled to follow it. Nonetheless, the case contributes meaningfully to the national conversation on courtroom transparency.

What makes *Texas Tribune* especially impactful is that it aligns First Amendment doctrine with principles of procedural justice. Courts are not simply processing legal claims—they are performing public functions that must be observable to maintain legitimacy. Transparency encourages fairness and discourages abuse. As courts consider the ruling's implications, the question is not whether they must open every door at every moment, but whether they are creating opportunities for public observation where appropriate—and avoiding the kind of rigid, across-the-board denial of access that the Fifth Circuit rejected.

For judicial professionals, the decision serves as a constitutional guardrail, not a strict blueprint. It does not obligate counties to implement livestreaming or maintain a standing public presence in every hearing. It does, however, signal that any policy excluding the public—especially in its entirety—will be closely scrutinized. In this way, the ruling may influence how courts across Texas evaluate their magistration procedures, particularly as they relate to early-stage transparency, bail decisions, and pretrial justice.

V. Limitations of the Holding

Despite its constitutional clarity, *Texas Tribune* should not be read as a blanket endorsement of unrestricted access to all criminal proceedings. Rather, it establishes a presumptive right, not an absolute one. Courts may still limit public or press access when specific, compelling interests are at stake—such as protecting minor victims, preserving trial integrity, or preventing witness intimidation. What the Fifth Circuit rejected was categorical closure—a policy that excluded all third parties without individualized justification.

Context matters. One of the key takeaways for court professionals in Texas Tribune is that the right of public access is not absolute—it depends on circumstances. Access is not required in the abstract; it is triggered when someone actually seeks it. The Constitution calls for courts to be prepared with a framework—not ad hoc reaction. Courts should weigh alternative measures and tailor restrictions to minimize intrusion while preserving openness. A hearing room without observers is not unconstitutional, however, a policy that ensures no observers can ever be present likely is.

Notably, the Fifth Circuit did not define who qualifies as a journalist or member of the press. While the plaintiffs included recognized media organizations, the court did not distinguish between traditional outlets and newer forms of media. This leaves open important questions about whether—and to what extent—independent journalists, bloggers, or social media creators may claim the same constitutional protections. Although courts have generally avoided strict definitions of "the press," this ambiguity may create practical challenges for courts seeking to balance access rights with security and administrative realities.

It is also worth noting that Texas Tribune does not resolve potential tensions between the First and Sixth Amendments. For example, there may be scenarios where a defendant's Sixth Amendment right to a fair trial supports a more restricted environment, while the public's First Amendment right favors openness. These constitutional values—though often aligned—can occasionally conflict. The court in Texas Tribune does not address this issue directly, leaving open how such competing rights should be balanced in future cases.

Finally, courts must resist the temptation to conflate procedural transparency with logistical obligation. The ruling does not require streaming, nor does it suggest a one-size-fits-all solution. It reaffirms the constitutional floor.

VI. Avoiding Confusion

While the First and Sixth Amendments both promote open courtrooms, they protect different interests—and misunderstanding their scope can lead to real-world missteps. Courts that treat these rights as interchangeable may fail to properly apply access standards. A defendant's waiver of a public trial, for example, does not eliminate the public's right to observe under the First Amendment.

The Supreme Court has acknowledged that these rights are sometimes intertwined. In *Presley v. Georgia*, the Court held that the public trial right extended to voir dire and emphasized that courtroom closures must meet a high standard, whether challenged under the First or Sixth Amendment.[20] Yet the purposes remain distinct: the Sixth Amendment is about ensuring the defendant is treated fairly in a forum visible to the public; the First Amendment is about ensuring the public and press can monitor government conduct, including judicial proceedings.

The risk of conflation is not merely academic. In practical terms, it may lead courts to misunderstand when and why access is constitutionally required. While a defendant may waive the Sixth Amendment right to a public trial, that waiver does not extinguish the public's independent First Amendment right of access—just as the presence of the press does not satisfy a defendant's Sixth Amendment guarantee. In *Texas Tribune*, the court evaluated only the First Amendment claim. There was no Sixth Amendment claim at issue—no

defendant asserting a right to openness. But the court's analysis nonetheless reinforces a shared principle: **justice must be open unless closure is justified**. For court professionals, keeping the two doctrines distinct ensures clarity in how access decisions are made and whose rights are being protected.

Conclusion

Texas Tribune underscores the enduring tension between transparency and discretion in the judicial process. While grounded firmly in the First Amendment, the case affirms a broader truth: courtrooms in our legal system are meant to be open—not by default, but by design. The Sixth Amendment offers a complementary but distinct protection, centered on the defendant's right to a public trial. Together, these constitutional provisions serve overlapping but independent purposes, both aimed at ensuring fairness and legitimacy in the administration of justice.

For court professionals, the ruling is not a call for a universal mandate, nor does it demand blanket policies of public access. Rather, it serves as a reminder that openness is the constitutional starting point; any restriction must be both justified and narrowly drawn. Courts are not required to livestream, pre-announce every hearing, or invite the public to observe proceedings that no one has sought to attend. But they are prohibited from enacting policies that close the courtroom entirely and categorically—especially at critical stages like magistration.

The distinctions between the First and Sixth Amendments are not merely theoretical; they shape how courts navigate access requests, safeguard defendants' rights, and sustain public trust. Misunderstanding these rights or treating them as interchangeable can lead to unintended consequences, including the erosion of constitutional protections. As this article and others in this issue demonstrate, transparency is not absolute, but it is essential.

Ultimately, *Texas Tribune* is not a mandate for maximal openness—it is a directive against absolute closure. During the 89th Texas Legislative Session, proposals aimed at greater transparency in magistration—such as mandatory public livestreaming—were introduced but ultimately failed to pass.[21] Their failure underscores that courts are left without legislative direction on these questions. For Texas courts, the takeaway is not only constitutional, but cultural: access must be approached with structure, not reflex; with restraint, not avoidance; and with an understanding that public trust is earned, not assumed.

---

1 Tex. Code Crim. Proc. Ann. § 15.17(a).
2 *Rothgery v. Gillespie Cty*., 554 U.S. 191, 194 (2008) (citing *Brewer v. Williams*, 430 U.S. 387, 398–99, (1977); *Michigan v. Jackson*, 475 U.S. 625, 629, n. 3, (1986)) *See* Ryan Kellus Turner, "Jail House Pleas: Is *Rothgery* a tap on the shoulder or a 'Fly in the Ointment' of Local Trial Court Expediency?," *The Recorder* (August 2010).
3 *Texas Tribune v. Caldwell Cty.*, 121 F.4th 520 (5th Cir. 2024).
4 In Caldwell County, a person under arrest is magistrated via videoconference by the on-duty magistrate without any other person present—no counsel, family, friends, or press—with the arrestee appearing from the county jail and the magistrate located somewhere else. *Texas Tribune v. Caldwell Cty*., No. 1:21-CV-1041-LY, 2022 WL 3714289 (W.D. Tex. Aug. 29, 2022), rev'd, 121 F.4th 520 (5th Cir. 2024).
5 *Id*.
6 *See generally Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555 (1980); *Globe Newspaper Co. v. Sup. Ct. for Norfolk Cty.*, 457 U.S. 596 (1982).
7 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 578 (1980).
8 *Press-Enter. Co. v. Sup. Ct. of California for Riverside Cty.*, 478 U.S. 1 (1986).
9 *Press-Enter.*, 478 U.S. at 8.
10 *Id.* (recognizing a right of public access where a proceeding has "historically been open to the press and general public"); *Texas Tribune v. Caldwell Cty.*, 121 F.4th 520, 528 (5th Cir. 2024) (analogizing magistration to historically open pretrial proceedings like bail and bond hearings).
11 *Texas Tribune,* 121 F.4th at 533; *Press-Enter.*, 478 U.S. at 13.
12 *See, e.g., Waller v. Georgia*, 467 U.S. 39, 46 (1984).
13 *Presley v. Georgia*, 558 U.S. 209, 212 (2010).
14 *Globe Newspaper Co. v. Sup. Ct. for Norfolk Cty.,* 457 U.S. 596, 607–08 (1982).
15 *Texas Tribune v. Caldwell Cty.,* 121 F.4th 520 (5th Cir. 2024) (Caldwell County's policy categorically excludes the press and the public from magistration proceedings).
16 *See Globe Newspaper Co.*, 457 U.S. at 607–08 (1982) (requiring compelling interest and narrow tailoring for courtroom closures).
17 *Id.* at 607 ("It must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.").

18 *Waller v. Georgia*, 467 U.S. 39, 48 (1984) (articulating the four-part test for permissible courtroom closures).
19 *See Branzburg v. Hayes*, 408 U.S. 665, 703-04 (1972) ("[T]he administration of a constitutional newsman's privilege would present practical and conceptual difficulties of a high order."); *Obsidian Fin. Grp., LLC v. Cox*, 740 F.3d 1284, 1291 (9th Cir. 2014) ("[T]he protections of the First Amendment do not turn on whether the claimant is a trained journalist, formally affiliated with traditional news entities…"); *see* also Sonja R. West, *Press Exceptionalism*, 127 Harv. L. Rev. 2434, 2439–45 (2014) (noting courts' reluctance to define "press" under the First Amendment).
20 *Presley v. Georgia*, 558 U.S. 209, 212–13 (2010) (reiterating that both the public and the accused have rights to open proceedings, and that closures must meet constitutional standards).
21 *See, e.g.*, H.B. 4333, 89th Leg., Reg. Sess. (Tex. 2025) (proposing required livestreaming and archiving of magistration proceedings; bill did not advance out of committee).

Prosecutor Professionalism Program

The Texas Municipal Courts Education Center (TMCEC) is proud to celebrate the TMCEC Prosecutor Professionalism Program, a major effort to support and elevate the standard of municipal prosecution across Texas. In 2024, 17 lawyers participated in the the inaugural class of the Prosecutor Professionalism Program—a group of dedicated professionals who have demonstrated a commitment to excellence in their field.

Launched to enhance the proficiency and professionalism of municipal prosecutors, the TMCEC Prosecutor Professionalism Program certifies those who have completed 20 hours of TMCEC specialized education within two consecutive academic years, including one 16-hour Prosecutors Seminar and an additional 4 hours via TMCEC webinars or in-person or virtual training.

We hope to attract more prosecutors who demonstrate a strong commitment to ongoing education and the pursuit of excellence in municipal prosecution. When prosecuting attorneys perform at a high standard, justice in municipal courts is not only upheld but delivered with the utmost competence and ethical integrity.

Prosecutors Professionalism Program

Congratulations to the inaugural class of 2024:

Floyd M. Akers, Hearne
Carlos L. Armendariz, El Paso
Gary F. Beauchamp, Panorama Village
Andrew W. Hagen, Big Spring
Donald Kubicek, Portland
Pamela Liston, Decatur
Craig A. Magnuson, Lake Worth
William M. Mason, Odessa
Tracy A. Middleton, Meadows Place
David Overcash, Anna and Fate
Eric A. Robicheaux, Odessa
William L. Tatsch, Kerrville
Amar Thakrar, Grand Prairie
Tiffany L. Thomas, Bryan
Timothy Wells, Grand Prairie
Adam L. West, Victoria
Ashley P. Yates, Longview

When Can You Close Your Court? Understanding Open Courts and the Right to a Public Trial

Madison Mondragon
Program Attorney and
Deputy Counsel, TMCEC

Ned Minevitz
Program Attorney and Senior TxDOT
Grant Administrator, TMCEC

Why are municipal court proceedings, even in cases involving children, open to the public? Are there circumstances under state or federal law where criminal trial courts may close proceedings to the public? Yes, but they are very limited. Determining if a criminal court proceeding may be closed to the public requires a case-by-case analysis. Efforts to categorically close certain criminal proceedings through state law have failed to satisfy constitutional tests. For municipal judges and court staff, understanding the narrow circumstances under which court proceedings may be closed to the public is essential to balancing transparency with confidentiality.

I. The Right to a Public Trial

The United States Constitution, Texas Constitution, and the Code of Criminal Procedure all firmly establish the notion of open and public criminal proceedings.[1] Under the First Amendment of the United States Constitution, the press and the public have a right of access to attend criminal proceedings. Under the Sixth Amendment, "in all criminal prosecutions, the accused shall enjoy the right to a…public trial."[2] The Fourteenth Amendment further enshrines this right, applying the right to a public trial to the states.[3] The Texas Constitution similarly provides defendants the right to a public trial in criminal prosecutions.[4] Finally, the Texas Code of Criminal Procedure states that "[i]n all criminal prosecutions the accused shall have a… public trial" and "the proceedings and trials in all courts shall be public."[5]

The Supreme Court of the United States has consistently conveyed the importance of public criminal trials.[6] Public trials limit judicial abuse and ensure that judges, prosecutors, witnesses, and jury members faithfully perform their respective duties during a criminal proceeding.[7] Nonetheless, the Supreme Court has stated that the right to a public trial, although fundamental, has exceptions.[8] Criminal courts may be closed to the public in limited circumstances. The following cases illustrate when a criminal court may close proceedings.

II. Case Law

A. *Globe Newspaper Co. v. Superior Court for Norfolk County* (1982)

In *Globe*, the Supreme Court held a Massachusetts law with a blanket closure of all criminal court proceedings involving testimony of certain witnesses to be unconstitutional.[9] The law required *all* criminal

proceedings involving certain sexual offenses with minor victims to be closed to the public during the minor's testimony. The Supreme Court struck down the statute stating that criminal court closures must (1) serve a compelling state interest and (2) be narrowly tailored to serve that interest. In this case, the law admirably sought to protect minor victims. Yet, by closing proceedings in *all* cases without considering the specifics of each case, the statute failed to satisfy the test. The Court wrote: "…compelling as [the] interest is, it does not justify a *mandatory* closure rule, for it is clear that the circumstances of the particular case affect the significance of the interest. A trial court can determine on a case-by-case basis whether closure is necessary to protect the welfare of a minor victim." Here, the Court made clear that criminal court closures should be made on an individualized basis.

B. *Long v. State* (1987)

In 1987, the Texas Court of Criminal Appeals applied the logic of *Globe*, writing "what makes [*Globe*] instructive to the present issue is the recognition by the Courts that each case had to be judged on its own merits, otherwise the statute would be unconstitutional."[10] This shows that Texas has espoused the idea that to justify a criminal court closure, an individualized assessment of the circumstances surrounding each case must be made. Mandatory closures are highly unlikely to pass constitutional muster.

C. *Waller v. Georgia* (1984)

Two years after *Globe*, the Supreme Court expanded the understanding of the right to public trials—this time under the Sixth Amendment.[11] In *Waller*, a Georgia court closed a pretrial suppression hearing on the State's motion because the evidence in question also related to a separate case and may have become tainted if viewed by the public. The Supreme Court applied a four-part test in its analysis of the court closure: (1) the party seeking to rebut the presumption of open court must show an "overriding interest" that is likely to be prejudiced, (2) the closure must be no broader than necessary to protect that interest, (3) the trial court must consider reasonable alternatives to closing the proceeding, and (4) the court must make findings adequate to support the closure.[12] Here, the suppression hearing's closure was not justified because no specifics were provided as to how exactly the evidence in question would have been tainted and the court did not consider a partial closure of the hearing.

D. *United States v. Osborne* (1995)

The United States Court of Appeals for the Fifth Circuit has provided insight when court closures do not violate the right to a public trial. In *Osborne*, the Court found that a "partial" closure was justified.[13] During a 12-year-old's testimony, a district court allowed members of the public in the courtroom but excluded one person whom the Court believed might intimidate the young witness. The Fifth Circuit Court of Appeals concluded that because there had not been a full closure of the court,

the *Waller* test did not apply. Instead, the Court applied a substantial reason test and found that there was substantial enough reason in this particular case to prevent the intimidation of a 12-year-old witness.

III. Is there a relationship between a public trial and public information? Under federal and Texas law, is there any time when a criminal court may limit information conveyed to the public about a defendant during court?

Other than in case-by-case instances and general restrictions on disclosing information such as social security numbers, no authority has been identified that would allow a criminal court to limit the information conveyed to the public about a defendant during court. There is likewise no authority identified that would allow courts to protect the identity of a criminal defendant on any posted dockets. This is consistent with the press and public's First Amendment right of access to criminal proceedings. It also reflects the fact that proving a defendant's identity is an essential element in any criminal case. The only statutory authority for criminal courts to use a pseudonym to protect a person's identity is for victims—not defendants.[14] There may also be times when, to facilitate timely filing, a defendant may be named Jane or John Doe in a charging instrument if their real name is unknown.[15] Despite this, there are limits on the types of *records* that a court may disclose to the public. For example, Article 45A.462 of the Code of Criminal Procedure makes all records of children in municipal courts confidential. Records confidentiality, however, is distinct from the open court doctrine and constitutional right to public trials. Record confidentiality laws have no bearing on the right to public criminal trials.

Conclusion

Determining whether a criminal court proceeding may be closed to the public requires a case-by-case analysis. State laws and court procedures that categorically close certain types of criminal proceedings to the public are likely unconstitutional. Because public criminal trials are so deeply enshrined in the United States Constitution, Texas Constitution, and the Code of Criminal Procedure, the bar to close all or even part of a criminal court proceeding is a high one.

---

1 *Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555 (1980).
2 U.S. Const. amend. VI.
3 U.S. Const. amend. XIV, §1.
4 Tex. Const. art. I, §10.
5 Tex. Code Crim. Proc. Ann. §§ 1.05; 1.24.
6 *In re Oliver*, 333 U.S. 257 (1948); *Presley v. Georgia*, 558 U.S. 2009 (2010).
7 *Waller v. Georgia*, 467 U.S. 39, 46 (1984); *In re Oliver*, 333 U.S. 257, 270 (1948).
8 *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596 (1982).
9 *Id.*
10 *Long v. State*, 742 S.W.2d 302, 318 (Tex. Crim. App. 1987).
11 *Waller v. Georgia*, 467 U.S. 39, 46 (1984); First Amendment rights protect the public and press whereas Sixth Amendment rights protect defendants. Despite this distinction, appellate court holdings related to each have effectively been the same when explaining limitations on the open court doctrine.
12 *Supra note* 7.
13 *United States v. Osborne*, 68 F.3d 94 (5th Cir. 1995).
14 Tex. Code Crim. Proc. Ann. § 58.102.
15 Eugene Volokh, *If Pseudonyms, Then What Kind?*, Judicature, Bolch Judicial Institute at Duke Law, Vol. 107 No. 1, 2023, https://judicature.duke.edu/articles/if-pseudonyms-then-what-kind.

Bridging the Gap Between Municipal Courts and Schools to Promote Traffic Safety

An Interview with TxDOT Grant Administrator Elizabeth De La Garza

Elizabeth De La Garza sat down with her colleague, Ned Minevitz, to discuss municipal courts partnering with local schools to proactively promote traffic safety. Elizabeth brings 32 years of experience teaching in Texas public schools to TMCEC, where she has served as Grant Administrator for Municipal Traffic Safety Initiatives (MTSI) since 2015.

NM: Good afternoon, Liz! What advice would you give a municipal court representative if they knew nobody at a local school but wanted to, for example, visit the school and educate the students on safe driving?

ED: And good afternoon to you, Ned! This is a great question! One thing courts should know is that schools are always looking for opportunities to reach out to their communities and cultivate relationships that will benefit their students!

I always tell courts wanting to do school outreach to see if anyone from the court knows and likes their children's teacher. Talking to an individual teacher is always the best way to feel out who you should speak to at their school. Each school, while having the usual standardized leadership group—such as a principal and vice-principal—might have a person who has been tasked with vetting and arranging outside speakers.

If no one at the court has a contact, just call the main number of the school and ask to speak to the counselor or school/public liaison. But not every school has a person like this. The person answering the phone may ask you questions so they can best direct your call. Be ready to provide information about who you are and what kind of outreach you are envisioning.

Usually, the best person to talk to about a school presentation is the school counselor—these folks know the individual academic standards for each grade level and can probably provide recommendations about which grade and class would benefit most from a speaker from your court. Counselors are also highly aware of the school calendar and which days could accommodate a speaker. There are days on the

school calendar that are off limits, such as state testing days. Counselors might then direct you to a social studies lead teacher or a grade level lead teacher. Again, be ready to give information about you, your vision, and when you would be ready to engage with the students.

If you are thinking about doing outreach to an entire district, I would contact the social studies coordinator. The coordinator might be interested in having you speak at several different schools, so be ready to convey any time limitations or you might be asked to present more than once!

A few years ago, a municipal judge talked to a 5th grade teacher and arranged to present to one 5th grade class about municipal court, the rule of law, and how students could stay safe. Once that teacher told her other 5th grade teachers, they asked to come to the presentation. What started as a single one-hour presentation to 25 students turned into three separate ones to the 3rd, 4th, and 5th grades—about 200 kids! The judge was surprised (and terrified) when asked to do this, but we walked him through what he could do with each group and the presentations were a great success! In fact, they asked this judge back the very next year and the presentations have become a yearly event!

NM: Wait…you give TMCEC constituents personalized assistance?!

ED: That is our bread and butter! If a court is trying to plan a visit to a school or have students visit their court, I would welcome a call to walk through initiating the visit and what to do once it happens. TMCEC, through its MTSI grant, has online resources to help teach students what municipal courts do, why they do it, and how to stay safe when on or near roads. These are great for school outreach. Let us help! I can be reached at elizabeth@tmcec.com or (512) 320-8274.

NM: Last question—and it is a two-parter. In your opinion, what area of traffic safety do you think is most important for young Texans to focus on in 2025? Where can courts go to get resources and information on this topic if they want to help bring it to students' attention?

ED: Pedestrian safety is showing the most frightening negative trends. Pedestrian incidents are the fifth leading cause of injury and fatalities in the United States for children ages 5 to 19. Teens are at the greatest risk. In Texas, pedestrian traffic fatalities increased 22% from 2019 to 2023. Safe Kids Worldwide [SafeKids.org] is a great place to get tips on keeping kids safe while walking on Texas roads.

There are many places to get traffic safety education resources. The best and most effective resource isW TxDOT Traffic Safety Specialists (TSS). Each county has a dedicated TSS tasked with educating their district on traffic safety. They are usually willing and able to partner with municipal courts to get this information across to children. They can also help host traffic safety booths or speak to parents and kids during school programs. And they have the most up-to-date traffic safety materials. Their entire job is saving lives!

TMCEC also has contacts with Texas A&M AgriLife Extension Service, Texas AAA, and Texas MADD—all amazing resources to help you educate your community on staying safe while on Texas roads. Consider us a traffic safety resource clearinghouse! To get contact information for their local TSS or any of our other traffic safety partners, court representatives can shoot me an email or call, and we can help secure the right partnership.

Thanks for talking with me about this Ned! I am always ready to talk about traffic safety and our municipal courts!

Register Today!

TMCEC Legislative Update

Location: Austin Southpark Hotel

Date: Thursday, August 28, 2025

Registration Fee: $150

CLE Reporting Fee: $100

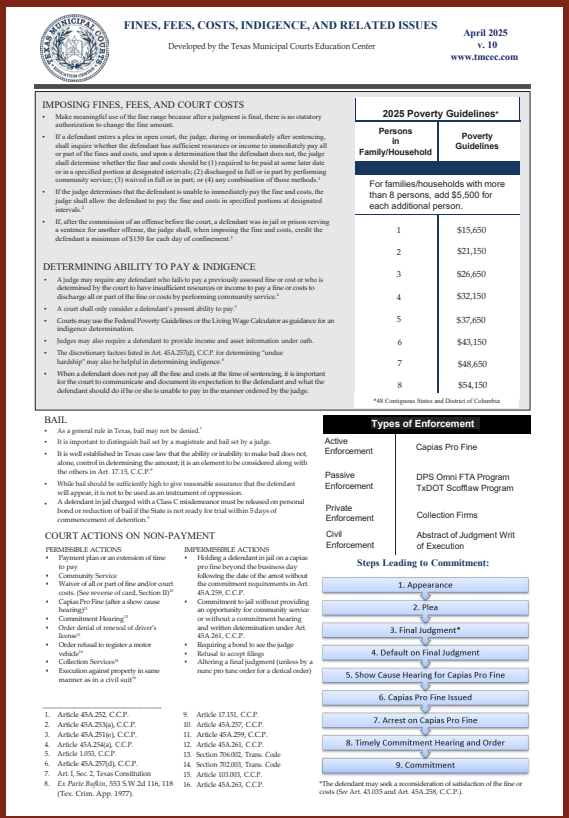
- **Take advantage of discounted hotel rooms available during registration**
- **Be part of TMCEC's only in-person Legislative Update of the summer**
- **Immerse yourself in our fast-paced pick-and-roll speaker format**
- **Enjoy TMCEC's unique theme — "Back 2 the Movies"**
- **Network with judges and court professionals from across the state**

Indigence Bench Card

Two-sided, 8.5"x14" laminated sheet featuring information on fines, fees, costs, and indigence updated with references to Chapter 45A and the 2025 Federal Poverty Guidelines

Quantity	Price per chart	S&H
1	$10	$4.87
2 - 4	$8	$4.87
5 or more	$6	$4.87

TMCEC Online Store



FINES, FEES, COSTS, INDIGENCE, AND RELATED ISSUES

Developed by the Texas Municipal Courts Education Center

April 2025
v. 10
www.tmcec.com

IMPOSING FINES, FEES, AND COURT COSTS

- Make meaningful use of the fine range because after a judgment is final, there is no statutory authorization to change the fine amount.
- If a defendant enters a plea in open court, the judge, during or immediately after sentencing, shall inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fines and costs, and upon a determination that the defendant does not, the judge shall determine whether the fine and costs should be (1) required to be paid at some later date or in a specified portion at designated intervals; (2) discharged in full or in part by performing community service; (3) waived in full or in part; or (4) any combination of those methods.[1]
- If the judge determines that the defendant is unable to immediately pay the fine and costs, the judge shall allow the defendant to pay the fine and costs in specified portions at designated intervals.[2]
- If, after the commission of an offense before the court, a defendant was in jail or prison serving a sentence for another offense, the judge shall, when imposing the fine and costs, credit the defendant a minimum of $150 for each day of confinement.[3]

DETERMINING ABILITY TO PAY & INDIGENCE

- A judge may require any defendant who fails to pay a previously assessed fine or cost or who is determined by the court to have insufficient resources or income to pay a fine or costs to discharge all or part of the fine or costs by performing community service.[4]
- A court shall only consider a defendant's present ability to pay.[5]
- Courts may use the Federal Poverty Guidelines or the Living Wage Calculator as guidance for an indigence determination.
- Judges may also require a defendant to provide income and asset information under oath.
- The discretionary factors listed in Art. 45A.257(d), C.C.P. for determining "undue hardship" may also be helpful in determining indigence.[6]
- When a defendant does not pay all the fine and costs at the time of sentencing, it is important for the court to communicate and document its expectation to the defendant and what the defendant should do if he or she is unable to pay in the manner ordered by the judge.

2025 Poverty Guidelines*

Persons in Family/Household	Poverty Guidelines
For families/households with more than 8 persons, add $5,500 for each additional person.	
1	$15,650
2	$21,150
3	$26,650
4	$32,150
5	$37,650
6	$43,150
7	$48,650
8	$54,150

*48 Contiguous States and District of Columbia

BAIL

- As a general rule in Texas, bail may not be denied.[7]
- It is important to distinguish bail set by a magistrate and bail set by a judge.
- It is well established in Texas case law that the ability or inability to make bail does not, alone, control in determining the amount; it is an element to be considered along with the others in Art. 17.15, C.C.P.[8]
- While bail should be sufficiently high to give reasonable assurance that the defendant will appear, it is not to be used as an instrument of oppression.
- A defendant in jail charged with a Class C misdemeanor must be released on personal bond or reduction of bail if the State is not ready for trial within 5 days of commencement of detention.[9]

COURT ACTIONS ON NON-PAYMENT

PERMISSIBLE ACTIONS

- Payment plan or an extension of time to pay
- Community Service
- Waiver of all or part of fine and/or court costs. (See reverse of card, Section II)[10]
- Capias Pro Fine (after a show cause hearing)[11]
- Commitment Hearing[12]
- Order denial of renewal of driver's license[13]
- Order refusal to register a motor vehicle[14]
- Collection Services[15]
- Execution against property in same manner as in a civil suit[16]

IMPERMISSIBLE ACTIONS

- Holding a defendant in jail on a capias pro fine beyond the business day following the date of the arrest without the commitment requirements in Art. 45A.259, C.C.P.
- Commitment to jail without providing an opportunity for community service or without a commitment hearing and written determination under Art. 45A.261, C.C.P.
- Requiring a bond to see the judge
- Refusal to accept filings
- Altering a final judgment (unless by a nunc pro tunc order for a clerical order)

1. Article 45A.252, C.C.P.
2. Article 45A.253(a), C.C.P.
3. Article 45A.251(c), C.C.P.
4. Article 45A.254(a), C.C.P.
5. Article 1.053, C.C.P.
6. Article 45A.257(d), C.C.P.
7. Art. I, Sec. 2, Texas Constitution
8. *Ex Parte Rufkin*, 553 S.W.2d 116, 118 (Tex. Crim. App. 1977).
9. Article 17.151, C.C.P.
10. Article 45A.257, C.C.P.
11. Article 45A.259, C.C.P.
12. Article 45A.261, C.C.P.
13. Section 706.002, Trans. Code
14. Section 702.003, Trans. Code
15. Article 103.003, C.C.P.
16. Article 45A.263, C.C.P.

Types of Enforcement

Active Enforcement	Capias Pro Fine
Passive Enforcement	DPS Omni FTA Program TxDOT Scofflaw Program
Private Enforcement	Collection Firms
Civil Enforcement	Abstract of Judgment Writ of Execution

Steps Leading to Commitment:

1. Appearance
2. Plea
3. Final Judgment*
4. Default on Final Judgment
5. Show Cause Hearing for Capias Pro Fine
6. Capias Pro Fine Issued
7. Arrest on Capias Pro Fine
8. Timely Commitment Hearing and Order
9. Commitment

*The defendant may seek a reconsideration of satisfaction of the fine or costs (See Art. 43.035 and Art. 45A.258, C.C.P.).

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

Change Service Requested

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

MISSION STATEMENT

TMCEC

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

Get Your Copy of *The Anxious Generation*

At many TMCEC events this year, the session The Rewiring of the Adolescent Mind and Mental Illness examined how parents, educators, tech companies, and policymakers can help reverse the decline in adolescent mental health. The session drew heavily from Jonathan Haidt's book *The Anxious Generation*, which sparked strong interest among participants.

As part of TMCEC's mental health outreach, the book is available through Amazon. As an Amazon Associate, TMCEC earns from qualifying purchases. To learn more or purchase, scan the QR code.