

Post-Trial Procedure

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INTRODUCTION

If a defendant is found guilty at trial or if a defendant pleads guilty or nolo contendere, a judgment of guilty is rendered, punishment is assessed, and the method by which the defendant is to satisfy the judgment is set out. A judgment is the final decision of a court. The judgment may be a dismissal of the charges, an acquittal (meaning the defendant is found not guilty), or an adjudication of guilt and an assessment of punishment if there is a finding of guilty. “Adjudicate” means that the judge makes a final determination of fact and enters a judgment.

The judge makes the determination in the judgment about how the defendant shall satisfy the judgment. A judgment is satisfied when the defendant completes everything the judgment ordered him or her to do, most often by paying the full amount of the assessed fine and costs.

- Q. 1. What is a judgment? _____
- Q. 2. Define adjudication. _____
- Q. 3. How is a judgment satisfied? _____
- Q. 4. Who can make a decision about how a defendant satisfies a judgment? _____

PART 1 SENTENCING AND PUNISHMENT

A. Penalties

When the court enters a judgment of guilty, the penalty may be a fine and costs or, in some cases, other sanctions. Art. 4.14, C.C.P., and Sec. 29.003, G.C. Article 45.041 of the Code of Criminal Procedure provides that the judge may direct the defendant:

- to pay the entire fine and costs when sentence is pronounced, if the defendant is able to pay immediately;
- to pay the entire fine and costs at some later date; or
- to pay a specified portion of the fine and costs at designated intervals.

If the judge determines that the defendant cannot pay the entire fines and costs when sentence is pronounced, the judge must allow the defendant to pay a specified portion of the fine and costs at designated intervals. Art. 45.041(b-2), C.C.P.

The court may also direct the defendant:

- to pay restitution, if applicable, to the victim of the offense (for the offense of issuance of bad check, restitution is limited to \$5,000); and
- to satisfy any other sanction authorized by law.

1. City Ordinances and Joint Airport Board Resolutions, Rules, and Orders

Article 4.14 of the Code of Criminal Procedure and Section 29.003 of the Government Code establish limits on the maximum penalties that municipal governments may set for city ordinance violations and that joint airport boards may set for violations of resolutions, rules, and orders.

Although the city government or joint airport board establishes penalty ranges under state guidelines, it is within the sole discretion of the judge to set fines within the penalty range. Some judges determine the fine on a case-by-case basis, while other judges establish a minimum

suggested fine schedule that may be printed on the back of citations or given to clerks at the window. This schedule is for defendants who do not want to contest the charges filed against them in court and is sometimes referred to as the “window fine.”

When a contested case goes to trial before the judge, the judge bases his or her decision on the facts of the case presented at trial. When a judge sets a fine, the judge looks to the penalty clause of the ordinance, statute, resolution, rule, or order, and sets the fine at an amount within the limits prescribed by the penalty clause.

The penalty limits that can be adopted by the city or joint airport board are:

- a fine not to exceed \$2,000 for offenses involving fire safety, zoning, public health, and sanitation offenses (including dumping of refuse); and
- \$500 on all other city ordinance violations or violations of the rules, resolutions, or orders of a joint board.

Since each city and joint board may decide to establish different penalty ranges within the guidelines established by statute, courts should examine the penalty clauses of ordinances and resolutions, rules, and orders within their own city before setting fines.

2. State Law Offenses

Fine penalties for violations of state law offenses vary. Courts should review specific and general penalty clauses for each state law offense before assessing a fine.

Municipal courts have concurrent jurisdiction with justice of the peace courts in all criminal cases arising under state law that are punishable by fine and such sanctions not consisting of confinement in jail or imprisonment. Convictions of certain offenses may also have as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege. Art. 4.14, C.C.P. and Sec. 29.003, G.C.

3. Class C Misdemeanors

Section 12.23 of the Penal Code provides that an individual found guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500. This definition only governs offenses in the Penal Code. In other codes, Section 12.41 of the Penal Code instructs that *any* fine-only offense is classified as a Class C misdemeanor, but is not bound by the \$500 maximum penalty. An example of an offense that is a fine-only offense outside the Penal Code that has a maximum penalty of more than \$500 is the Transportation Code offense of passing a school bus. The penalty is a minimum fine of \$500 and a maximum fine of \$1,250. This offense is considered a Class C misdemeanor because it is a fine-only offense. Hence, the municipal court has jurisdiction.

If an offense outside of the Penal Code is defined as a Class C misdemeanor, but the code in which the offense is located does not assign a penalty, the court uses the Penal Code definition of Class C misdemeanor, and the \$500 maximum penalty. In some instances, statutes merely state that a particular act is “an offense.” In these cases, if the general penalty clause governing that statute provides for a fine-only penalty, the municipal court has jurisdiction.

For some violations of Class C misdemeanors, the penalty is different depending on the age of the defendant. For example, defendants under the age of 21 charged with the offense of public intoxication are subject to different penalties than are those 21 or older. A person 21 or older

faces a penalty of a fine up to \$500 while a person under the age of 21 is punished in the same manner as a minor charged with an Alcoholic Beverage Code offense. Sec. 49.02(e), P.C. The penalties for those offenses are found in Section 106.071 of the Alcoholic Beverage Code and include a fine of up to \$500, community service, driver's license suspension, and an alcohol awareness course. Sec. 106.071, A.B.C.

Some fine-only offenses can be enhanced because of prior convictions and remain Class C misdemeanors. For example, a person who has been previously convicted of the offense of failure to maintain financial responsibility and is convicted a second or subsequent time faces an increased penalty from a maximum of \$350 to \$1,000 and impoundment of the vehicle. In order for the court to assess the enhanced penalty, the complaint must allege the prior conviction or convictions. Only the prosecutor has the authority to enhance the charge.

For additional information, see the TMCEC "Green Book" (Texas Class C and Fine-Only Misdemeanors). This book contains a comprehensive listing of more than 1,300 offenses defined by state law.

B. Restitution

Article 45.041(b)(2) of the Code of Criminal Procedure permits a municipal court to require a defendant to pay restitution to any victim of an offense. Restitution is the act of making good or giving the equivalent of any loss. The amount of restitution that a municipal court may order is unlimited except in one instance—the offense of issuance of bad check. For that offense, restitution is limited to \$5,000.

When deferred disposition is granted under Article 45.051 of the Code of Criminal Procedure, the judge may require the defendant to pay restitution to the victim of the offense in an amount not to exceed the amount of the fine that could have been assessed as a condition of the deferral. For example, a judge could require a defendant charged with criminal mischief to pay restitution for the property that he or she damaged as long as the restitution does not exceed the amount of the fine (\$500 because criminal mischief is a Class C misdemeanor in the Penal Code).

Section 32.41 of the Penal Code provides that a judge can require a defendant to make restitution upon conviction for the offense of issuing a bad check, which is a Class C misdemeanor. The statute provides that the defendant shall submit restitution through the prosecutor's office if collection and processing were initiated through that office. In other cases, restitution may, with the approval of the court in which the offense is filed, be handled through the court.

When the court requires restitution, the court clerk should keep records of the restitution transactions and coordinate the payment to the victim. The Comptroller may audit municipal court records relating to these payments. Sec. 133.103, L.G.C.

C. Payment of Fine and Costs

1. Jail Time Credit

The judge must credit a defendant for time the defendant served in jail on that charge. Arts. 42.03, Sec. 2, and 45.041, C.C.P. This includes time served in jail from the time of arrest to conviction and time served after conviction. Art. 45.041(c), C.C.P.

The rate of credit is not less than \$50 for a period of time specified in the judgment. "Period of time" is defined as not less than eight hours or more than 24 hours. Arts. 45.041 and 45.048, C.C.P. When a judge enters judgment, he or she must specify the amount of time that the

defendant must serve to receive jail credit (e.g., \$100 per eight hours, or \$50 per 24 hours, whatever rate the judge chooses to set).

As custodian of the records, court clerks should properly record jail-time credit. In some instances, the defendant may have enough jail-time credit to satisfy the total fine and court costs; in other instances, it may be just part of the amount owed. If a defendant does not pay any money to the court because he or she had sufficient jail credit for both fine and court costs, the Comptroller does not require the court to remit court costs that were not collected in money.

2. Payment by Credit Card

If the governing body of a municipality has authorized collection of fines and costs by credit card or electronic means, the court can allow defendants to pay in that manner.

Credit card means a card, plate, or similar device used to make purchases on credit. Payment by electronic means is defined as payment by telephone or computer, but does not include payment in person or by mail. Secs. 132.002(b)-132.004, L.G.C.

Chapter 132 of the Local Government Code also authorizes a municipality to provide, through the internet, access to information or collection of payments for taxes, fines, fees, court costs, or other charges. A fee to recover costs for providing access may be charged only if providing the access through the internet is not feasible without the imposition of the charge. If the city contracts with a vendor to provide the service, any fee charged by the vendor must be approved by the city. Payments collected by a vendor are to be promptly submitted to the city.

Before a court can collect payments by credit card or through the internet, the governing body of a municipality must authorize the collection. If the governing body authorizes the court to collect payments by credit card, the municipality may authorize:

- collection of a fee for processing the payment by credit card; or
- collection without requiring an additional fee.

The governing body of a municipality must set the processing fee in an amount that is reasonably related to the expense incurred by the municipal official in processing the payment by credit card. However, the governing body may not set the processing fee in an amount that exceeds five percent of the amount of the fee, fine, court cost, or other charge being paid.

If, for any reason, a payment by credit card is not honored by the credit card company on which the funds are drawn, the county or municipality may collect a service charge from the person who owes the fee, fine, court costs, or other charge. The service charge is in addition to the original fee, fine, court costs, or other charge and is for the collection of that original amount. The amount of the service charge is the same amount as the fee charged for the collection of a check drawn on an account with insufficient funds.

3. Payment by Community Service

Judges may require defendants who fail to pay previously assessed fines or costs, or who are 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. Art. 45.049, C.C.P.

When a defendant discharges a fine and/or costs by performing community service, the person is satisfying the judgment by means other than cash. The defendant may discharge an obligation to perform community service by paying at any time the fine and costs assessed.

A community supervision and corrections department or a court-related services office may provide administrative duties and other services necessary for placement in community service programs.

The judge is required to specify the number of hours in the community service order that the defendant is required to work. A judge may not order more than 16 hours per week of community service unless the judge determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant's dependents.

The community service work must be for a governmental entity or a nonprofit organization, which provides services to the general public that enhance social welfare and the general well-being of the community. The governmental entity or nonprofit organization that accepts a defendant ordered to perform community service must agree to supervise the defendant's work performance and report on the defendant's work to the judge.

A defendant is considered to have discharged not less than \$50 of fine or costs for each eight hours of community service performed. Judges are not limited in the amount of credit given as long as it is at least \$50 for every eight hours of community service performed.

A municipal judge, officer, or employee of the city is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant if the act or failure to act was:

- performed pursuant to a court order; and
- not intentional, willfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

Generally, court clerks are responsible for coordinating community service. Coordination includes developing a method of keeping track of defendants performing community service and when their service is to be completed, making certain that the defendant returns proper documentation showing completion of their community service, and properly recording community service orders and completion of the service.

Note that the laws pertaining to community service for children differ. Under Article 45.0492 of the Code of Criminal Procedure, a judge can allow a defendant to discharge any fine and costs through community service, or tutoring in some instances, without having to first determine that the defendant has defaulted in the payment of the fine and costs.

4. Installment Payments

When a judge orders the defendant to pay any part of the fine and costs through installments or at some later date, clerks should make note of the date of judgment. The court must collect a \$25 time payment fee from a defendant convicted and ordered to pay a fine, court costs, or restitution who pays any part of the fine, costs, or restitution on or after the 31st day after the date of the judgment. The Comptroller may audit municipal court records relating to these fees. Sec. 133.103, L.G.C.

5. Waiver of Fine and Costs

A municipal court may only waive payment of a fine or costs when a defendant defaults on payment of the fine and/or costs if the court determines that the defendant is indigent and discharging the fine and costs under Article 45.049 of the Code of Criminal Procedure would

impose an undue hardship on the defendant. Art. 45.0491, C.C.P. Article 45.049 provides for the court to require a defendant to perform community service to discharge a fine if a defendant defaults in payment of a fine or is unable to pay a fine. Note that judges have the discretion to waive the payment of the fine and/or costs owed by a child defendant if performing community service or discharging through tutoring would impose an undue hardship.

True or False

- Q. 5. When a judge enters a judgment, the penalty is the fine and costs and in some cases, other sanctions. ____
- Q. 6. Municipal courts may not require restitution. ____
- Q. 7. Statutes do not establish limits on the amount of maximum possible penalties that municipalities may create in their ordinances. ____
- Q. 8. If a judge believes that the maximum fine is not high enough, the judge may assess a higher fine. ____
- Q. 9. Fine penalties for violations of state law offenses vary. ____
- Q. 10. The maximum possible fine for a Class C Penal Code offense is \$500. ____
- Q. 11. Offenses outside of the Penal Code that are fine-only, regardless of the amount of the fine, are Class C misdemeanors. ____
- Q. 12. When a municipal court orders restitution upon convictions, it may be in an amount up to the amount of the fine assessed, except for the offense of issuance of bad check. ____
- Q. 13. The maximum restitution that municipal courts may require for the issuance of a bad check is \$5,000. ____
- Q. 14. Clerks should keep records of restitution payments and coordinate payments to victims. ____
- Q. 15. Judges who know that a defendant has had a prior conviction can impose a higher fine regardless of how the offense was charged by the officer or prosecutor. ____
- Q. 16. What are judges required to do when a defendant is arrested, placed in jail, and later convicted? _____

- Q. 17. What constitutes a “period of time” for determining jail credit? _____

- Q. 18. What is the clerk’s responsibility regarding records of defendants who have been in jail and later convicted? _____
- Q. 19. When may a court collect fines, fees, and bonds by credit card? _____
- Q. 20. What amount may the processing fee not exceed? _____
- Q. 21. What happens if a credit card is not honored by the credit card company? _____

- Q. 22. If a service charge is assessed, at what amount may it be set? _____

True or False

- Q. 23. When a defendant fails to pay a previously assessed fine, the court may require a defendant to perform community service to discharge the fine. ____
- Q. 24. Judges must specify in a community service order the amount of hours to be worked. ____
- Q. 25. Community service may only be performed for a governmental entity or a nonprofit organization. ____
- Q. 26. If a judge determines that working more than 16 hours a week will not be a hardship, the court may order more time. ____
- Q. 27. A judge is not liable for damages arising from an act or failure to act in connection with manual labor if the failure to act was performed under a court order and not intentional, willfully, or wantonly negligent. ____
- Q. 28. When a defendant defaults in payment of a fine and the court determines that the defendant is indigent, the court must waive payment of the fine and court costs. ____
- Q. 29. The time payment fee is required to be paid by a defendant who pays any part of a fine, costs, or restitution on or after the 31st day after a judgment is rendered. ____

PART 2 REPORT OF CONVICTION

When a judge enters a judgment of guilty, that constitutes a conviction. Courts are required to report convictions in certain cases to the Texas Department of Public Safety (DPS) and may be required to report others to the Texas Commission on Alcohol and Drug Abuse (TCADA) or the Texas Parks and Wildlife Department (PWD). A discussion of those offenses that are required to be reported is included in the *State and City Reports* chapter of this Study Guide.

Courts are required to report to DPS traffic convictions and forfeitures of bail in cases involving a law regulating the operation of a vehicle on a highway. The report is to be submitted by the magistrate, judge, or clerk of the court. Sec. 543.203, T.C. As this statute requires reporting if the offense was a law regulating the operation of a motor vehicle, courts are also required to report final convictions or forfeitures of bail on all city ordinance traffic offenses. Because clerks are the custodians of the records, they usually prepare this report and submit it to DPS. Failure of a judge or clerk to properly and timely report final convictions of traffic offenses may constitute misconduct in office and be grounds for removal. Sec. 543.206, T.C. Courts may not submit a record of a traffic offense when the court defers disposition of the case under Article 45.051 of the Code of Criminal Procedure if the defendant completes the terms of the deferral and the case is dismissed. Sec. 543.204, T.C.

The report must be submitted not later than the seventh day after the date of conviction or forfeiture of bail. Sec. 543.203, T.C. This is because the DPS has just 10 days to submit certain convictions pertaining to commercial driver's license holders to the federal government.

True or False

- Q. 30. Courts are required to report to the Department of Public Safety all convictions for violations of laws regulating the operation of a vehicle on a highway. ____

- Q. 31. When a defendant posts a bond and fails to appear for traffic offenses, the court must report the bond forfeiture to the Department of Public Safety when there is a final judgment on the forfeiture. ____
- Q. 32. If a court fails to properly report traffic convictions to the Department of Public Safety, the judge or clerk may be removed for misconduct in office. ____
- Q. 33. Courts are required to report to the Department of Public Safety within 30 days of the date of conviction. ____

PART 3 FINE ENFORCEMENT AND COLLECTION

A. Default in Payments

1. Capias Pro Fine

A *capias pro fine* is a writ issued by a court (meaning the judge) having jurisdiction of a case *after* judgment and sentence for unpaid fines and costs that is directed to any peace officer and commands the officer to arrest a person convicted of the offense and bring him or her immediately before the court. Art. 43.015, C.C.P. Article 45.045 of the Code of Criminal Procedure provides that if the defendant is not in custody when judgment is rendered or if the defendant fails to satisfy the judgment, the court may issue a *capias pro fine* for the defendant's arrest. Thus, a *capias pro fine* may be issued when an adult defendant fails to satisfy the terms of a judgment, including when a defendant has made arrangements to pay and does not pay, when a defendant fails to perform community service, or when a defendant pays a judgment with a check that does not have sufficient funds in the bank.

The case of *Jones v. State*, 119 S.W.3d 766 (Tex. Crim. App. 2003) points out the importance of judgments and the significance of probable cause when issuing a *capias pro fine*. In *Jones*, the Court stated that judgments on traffic violations are based on a finding "beyond a reasonable doubt, thus, a judgment for a traffic violation, together with a finding by the court that the defendant has failed to satisfy its terms, will comprise sufficient probable cause to support issuance of the *capias pro fine*."

The *capias pro fine* for a defendant's arrest shall state the amount of the judgment and sentence and command a peace officer to bring the defendant before the court or place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately. Art. 45.045, C.C.P.

When a defendant fails to make a court-ordered payment, court clerks should research court records to ensure that an error in recordkeeping has not occurred, that the court has a signed judgment, and that the defendant has defaulted in payment of the fine. After gathering the required information, the clerks should present that information to the judge so that the judge may issue the *capias pro fine*. Only a judge may issue a *capias pro fine*. After a *capias pro fine* is issued, clerks should give it to the police department to be served.

A significant change by the 84th Legislature authorizes courts to adopt alternative means to collect *capias pro fines*, potentially including "side of the road" collections during traffic stops. Art. 103.0025, C.C.P. This only applies, however, if *both* a *capias pro fine* has been issued and the court has adopted the alternate procedure for its collection under the article. A court is not

required to adopt the procedure. It should also be noted that police *may not* collect these “side of the road” payments under Article 103.0025 if the court has not adopted the procedures.

Once the *capias pro fine* is otherwise served, the defendant should be brought before the court (the judge) for a commitment hearing. As municipal courts have jurisdiction over fine-only offenses, defendants convicted of a fine-only offense cannot automatically be committed to jail even after defaulting in the payment of the fine and costs. The court must first conduct a commitment hearing. Some courts will, at this point, allow the defendant an opportunity to pay off the fine and costs, perhaps enter into a new payment plan, or allow the defendant an opportunity to discharge the fine and costs through community service.

At the commitment hearing, the judge must make the following findings before being able to sign a commitment order committing the defendant to jail to satisfy the payment of the fine and costs. The judge must, at a hearing, make a written determination that:

- the defendant is not indigent and has failed to make a good faith effort to discharge the fine and costs; or
- the defendant is indigent, and
 - has failed to make a good faith effort to discharge the fine and costs under Article 45.049 [community service], and
 - could have discharged the fine and costs through community service without experiencing any undue hardship. Art. 45.046, C.C.P.

This commitment hearing can be done over an electronic broadcast system, meaning a two-way electronic communication of image and sound between the defendant and the court, and includes secure internet videoconferencing.

Once the judge has made the above determination, the judge can commit the defendant to jail to earn jail credit to satisfy the judgment. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. Art. 45.046, C.C.P.

2. Indigency Hearings

“Indigent” is a term used to describe an individual who cannot pay. Though there is no definite definition of “indigent,” most courts define the term to mean someone who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines. Sec. 133.002(2), L.G.C. The court has a duty to inquire into reasons for non-payment to avoid jailing indigent defendants who are unable to pay. *Doe v. Angelina County*, 733 F. Supp. 245 (E.D. Tex. 1990). If a defendant is indigent, the court may not jail the defendant or order the defendant to pay the entirety of the costs and fines immediately. Instead, the court must allow the defendant to first discharge the fine by community service or on a time payment plan. The court can also waive the fine and costs assessed against an indigent defendant. Art. 45.0491, C.C.P.

3. The Case of Preston Tate

Court clerks should be aware that “pay or lay,” automatically converting a fine to jail time for an indigent defendant in municipal court, violates the law. In the seminal case on the matter, a Houston man named Preston Tate amassed fines totaling \$425 from nine traffic convictions. Tate earned between \$25 to \$60 a week and supported a wife and two children. When Tate was

unable to pay the fine, the Houston Municipal Court ordered him imprisoned for 85 days. The United States Supreme Court ruled that imprisonment solely because of Tate's indigency was unconstitutional and violated the Equal Protection Clause of the 14th Amendment. *Tate v. Short*, 401 U.S. 395 (1971).

4. Civil Collection of Fines

Article 45.047 of the Code of Criminal Procedure provides authority for municipal courts to collect fines and costs by civil process. One means is by execution, which is a civil process where a defendant's property may be seized and sold to pay the fine and costs. Section 6.002 of the Civil Practice and Remedies Code, provides that a municipality may initiate and prosecute suits without giving security for costs and may appeal from a judgment without giving a supersedeas or costs bond. A supersedeas bond is a bond that is required to set aside a judgment or execution and from which the other party in the lawsuit may be made whole if the action is unsuccessful. A cost bond is a bond that is given by a party to an action to secure eventual payment of such costs as may be required of an appealing party in a civil case. The purpose of the bond is to cover the appellee's (the party in a cause against whom an appeal is taken) costs in the event that the judgment is affirmed, or confirmed, by the court.

The rules governing execution of property are complicated, and clerks should discuss the process with the city attorney. The prosecutor must be involved in most of these processes.

B. Contracts

1. With the Department of Public Safety

A city may contract with the Texas Department of Public Safety (DPS) to deny renewal of a person's driver's license if he or she fails to appear for the prosecution of any fine-only offense or fails to pay or satisfy a judgment ordering the payment of a fine or costs. Ch. 706, T.C.

When a city contracts with DPS, a peace officer issuing a citation for a violation of a traffic law must provide a written warning that tells a violator that if he or she fails to appear for the prosecution of the offense or fails to pay or satisfy a judgment ordering the payment of a fine and costs in the manner ordered by the court, he or she may be denied renewal of his or her driver's license. The warning is in addition to any other warning required by law and may be printed on the citation.

If the defendant fails to appear as required or fails to pay or satisfy a judgment of the court, the court can send a notice to OmniBase, the vendor contracted with DPS to operate the program. OmniBase will notify DPS to flag the defendant's driver's license, prohibiting the defendant from renewing his or her license until the defendant pays an administrative fee and does one of several things. Before a court can send a clearance report to remove the flag, defendants must pay a \$30 administrative fee *and* do one of the following:

- perfect (complete) an appeal of the case for which the warrant of arrest was issued or judgment arose;
- post bond or give other security to reinstate the charge for which the warrant was issued; or
- pay or discharge the fine and costs owed on the outstanding judgment, or make suitable arrangements to pay the fine and costs within the court's discretion.

If the case is dismissed, the defendant must still pay the \$30 fee before the court can submit a clearance report. If the defendant is acquitted at trial, or provides proof of financial responsibility or a valid driver's license in response to those violations, no fee is required.

Two additional grounds for discharge without payment of the \$30 fee include a report that the original submission was made in error or that the file was destroyed in accordance with a records retention policy. Sec. 706.002-706.006, T.C.

The \$30 fee is accounted for in the following manner:

- the fee is deposited into the city treasury;
- the account may be interest-bearing (city may keep the interest);
- the city must report yearly to the Comptroller and to DPS the amount of funds received and disbursed;
- the city must remit \$20 to the Comptroller on the quarterly report; and
- the city retains \$10 locally, \$6 of which is remitted to OmniBase Services, Inc.

2. With the Texas Department of Motor Vehicles

A city may contract with the county assessor-collector or the Texas Department of Motor Vehicles (TxDMV) to deny motor vehicle registration to an owner who has an outstanding warrant for failure to appear or failure to pay a fine involving a traffic offense that has a possible maximum fine of \$200. Ch. 702, T.C. This program is referred to as "Scofflaw," and is used much less by cities than the OmniBase program.

Prior to 2011, only home-rule cities could enter into these agreements. In 2011, the authority was extended to general-law cities.

The denial of the vehicle registration is permissive, meaning the county tax-assessor must agree to participate. Cities may collect a \$20 fee from defendants who are referred to the Scofflaw program, but the fee can only be used to reimburse the county for its services.

3. With Public and Private Vendors

Article 103.0031 of the Code of Criminal Procedure provides cities the authority to enter into contracts with private attorneys or vendors for third party collection services. The city may contract for the collection of the following when they are 60 days past due:

- debts and accounts receivable such as fines, fees, restitution, and other debts or costs;
- forfeited bonds (however, bonds filed by commercial bail bondsmen may not be included in a contract for collection services; only personal bonds and surety bonds not filed by a commercial bail bondsman may be included);
- fines and fees assessed by a hearings officer for administrative parking citations; and
- amounts in cases where the accused failed to appear in compliance with a lawful summons; a lawful order of the court; or as specified in a citation, summons, or other notice for administrative parking. In these cases, the amounts must remain unpaid on the 61st day after the defendant failed to appear.

Vendors and attorneys sending a communication to an accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case, must include a notice of the person's right to enter a plea or go to trial on any offense charged.

Article 103.0031(b) provides that a city that enters into a contract with a private attorney or vendor may authorize the addition of a collection fee in the amount of 30 percent on each item that has been referred for collection. Article 103.0031(i) allows cities to enter into a contract to collect a debt incurred on an offense that was committed before June 18, 2003, but no collection fee may be added to those amounts.

Q. 34. What is a *capias pro fine*? _____

Q. 35. What is the clerk's responsibility when a defendant defaults on payment of a fine and costs? _____

Q. 36. Who has authority to issue a *capias pro fine*? _____

Q. 37. When a defendant is arrested for default in payment of fine, who must conduct the indigency hearing? _____

Q. 38. If a defendant is indigent, what must the court do? _____

Q. 39. What is the process called that may be used to sell a defendant's property to satisfy a fine? _____

Q. 40. A contract with DPS ("OmniBase") for denial of driver's license renewal applies to what offenses? _____

Q. 41. When a city contracts with DPS, when is the \$30 fee required? _____

Q. 42. What kind of city may contract with the county and the Texas Department of Motor Vehicles for the denial of vehicle registration? _____

Q. 43. Vehicle registration may be denied for what offenses? _____

Q. 44. What authority does the city have to contract with a vendor for collection of fines? _____

Q. 45. When a city contracts with a private or public vendor, how old must the debt or failure to appear be before the court can require the defendant to pay 30 percent of the debt owed? _____

PART 4 ALTERNATIVE SENTENCING

Alternative sentencing is discussed here because the judge has the discretion to defer imposition of the sentence and allow the defendant to complete some form of "probation" after a finding of guilt. The judge can also order the defendant to complete one of these forms of alternative sentencing upon a plea of guilty or *nolo contendere* prior to any trial or judgment being entered.

A. Driving Safety Courses (DSC) / Motorcycle Operator Courses (MOC)

Defendants charged with traffic offenses, with some exceptions, may request to take a driving safety course or motorcycle operator training course to have the charge dismissed. Art. 45.0511, C.C.P.

1. Offenses to Which DSC/MOC Applies

Article 45.0511 of the Code of Criminal Procedure is entitled “Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures.” These remedial courses are applicable to dismiss offenses that are in the jurisdiction of the justice or municipal court and involve the operation of a motor vehicle defined by Section 472.022, Subtitle C of Title 7, or Section 729.001(a)(3) of the Transportation Code. For defendants younger than 25 years of age, the article applies to any alleged offense that is within the jurisdiction of the justice or municipal court, involves the operation of a motor vehicle, and is classified as a moving violation. Art. 45.0511(a-1), C.C.P.

2. Exceptions

Defendants eligible for driving safety or motorcycle operator courses have the right to take one course in each 12-month period to dismiss certain types of traffic offenses. Subsections (b)(5), (p), and (s) prohibit the following offenses from being dismissed through DSC/MOC:

- speeding 25 mph or more over the speed limit;
- driving 95 miles per hour or more;
- offense committed in a construction or maintenance zone when workers are present;
- passing a school bus loading or unloading children;
- leaving the scene of a collision after causing damage to a vehicle that is driven or attended;
- leaving the scene of a collision and failing to give information and/or render aid;
- serious traffic violation; and
- offense committed by a person who held a commercial driver’s license at the time of the offense or holds a CDL at the time of the request for DSC, including when the person is driving his or her own personal vehicle.

3. Eligibility and Requirements

To be eligible for a DSC or a MOC, the defendant:

- may not have completed an approved driving safety course or motorcycle operator course, as appropriate, within the 12 months preceding the date of the offense (see exception below for specialized safety belt course);
- must enter a plea of guilty or nolo contendere on or before the answer date on the citation and present the request to take the course to the court in person, by counsel, or by certified mail (postmarked on or before due date);
- must present to the court a valid Texas driver’s license or permit or proof of active military duty status or be the spouse or dependent child of a person on active military duty; and
- must provide the court evidence of financial responsibility.

Defendants who are otherwise ineligible because they do not enter a plea of guilty or nolo contendere on or before their answer date, or because they have taken a course within the 12 months preceding the request, may still request to take the course. It is then in the judge's discretion to grant the defendant the opportunity to complete the course following the same procedures. Defendants must still meet the other eligibility requirements outlined above. Art. 45.0511(d), C.C.P.

4. Costs

a. Mandatory

Court cost statutes require the defendant to pay all applicable court costs when the court grants the request for a driving safety course. Sec. 133.101, L.G.C.

b. Administrative Fees

The court may require a \$10 administrative fee if the request is made on or before the answer date on the citation. Art. 45.0511(f), C.C.P.

If someone has taken a DSC or MOC in the last 12 months or fails to timely submit their request for a DSC/MOC, and the judge nonetheless grants the course, the judge may require an administrative fee in an amount not to exceed the maximum amount of the fine that could be imposed for the offense.

c. Optional Driving Record Fee

The court may require the defendant to pay a \$17 fee for obtaining a copy of the defendant's driving record from DPS. Secs. 521.047, T.C. and 521.048, T.C. The court must keep a record of the fees, which must be remitted to the State Comptroller quarterly. The Comptroller then credits the fees to DPS. Art. 45.0511(c-1), C.C.P.

5. When Course Granted

After the defendant enters a plea and makes the request for the course, the court enters judgment on the plea at the time the plea is made, defers imposition of the judgment, and allows the defendant 90 days to successfully complete an approved course and present required evidence of course completion to the court.

6. Course Requirements

a. DSC

If the offense was committed in a passenger car or a pickup truck, the judge must require the defendant to complete a driving safety course approved by the Texas Education Agency.

b. MOC

If the offense was committed on a motorcycle, the judge must require a motorcycle operator course under the motorcycle operator training and safety program approved by the Texas Department of Public Safety.

c. Special Safety Belt Course

If the offense charged is either Section 545.412 or 545.413(b) of the Transportation Code involving securing children in child safety seat systems or safety belts, defendants have a right to request a driving safety course. The court, after determining if the defendant is eligible, must

require a driving safety course that contains four hours of instruction on the effectiveness and safety of using a child safety seat systems and safety belts. Secs. 545.412(g) and 545.413(i), T.C. If the defendant completes the course, the court must dismiss the case and report the completion date of the driving safety course for inclusion in the defendant's driving record.

A defendant may take a specialized driving safety course for failing to keep a child secured in a child passenger safety seat system or a safety belt even though he or she has taken a regular driving safety course in the last 12 months. The defendant's driving record and affidavit must show that the specialized driving safety course was not taken in the last 12 months. The Texas Education Agency refers to this specialized DSC as "Seat Belt School." Art. 45.0511(u), C.C.P.

7. Requirements for Dismissal

For dismissal of the case, the defendant must present to the court on or before the 90th day after permission was granted to take the DSC or MOC:

- a certificate of completion of the DSC or MOC;
- the defendant's driving record as maintained by the Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense; or
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course at the time of the request nor has the defendant taken a course in the preceding 12 months from the date of the offense (members of active military duty must swear that they have not taken a course in another state in the preceding 12 months from the date of the offense).

8. Satisfactory Completion

When the defendant presents all the evidence required, the court shall remove the judgment and dismiss the charge.

9. Failure to Submit Required Evidence

If a person fails to present the court with the required evidence of course completion, the copy of the driving record as maintained by the DPS, and the affidavit, the court shall set a show cause hearing and notify the defendant by mail of the hearing. If the defendant fails to appear for the show cause hearing, the court shall enter judgment and impose the fine. If the person appears and can show good cause for the failure to furnish evidence to the court, the court may allow an extension of time during which the defendant may present the evidence of course completion and other required evidence.

10. Appeal

If a defendant fails to complete the course or fails to submit all the required evidence and the judge subsequently adjudicates the defendant's guilt, the defendant may appeal the conviction.

11. Payment of Fine

If the person does not complete the course or present the other required evidence and the fine is imposed, the person is not entitled to a refund of the administrative fee under the mandatory or permissive provisions.

Defendants who do not complete the driving safety course and do not appeal must pay the fine. The judge, after a show cause hearing, enters judgment, which may be appealed or paid. When the defendant decides not to appeal, the payment becomes due. If the defendant is unable to pay in full and is placed on a time payment plan, the court will count days from the final judgment (after the expiration of the 90 day period) to determine the 31st day for the time payment fee to be added if necessary.

12. Report to the Texas Department of Public Safety

If the defendant completes the DSC or MOC and presents satisfactory evidence of the other requirements and the charge is dismissed, the court reports the date of successful completion to DPS. Art. 45.0511, C.C.P.

If the defendant fails to complete the course and does not appeal, the court reports the conviction to the DPS.

B. Deferred Disposition

When a court grants deferred disposition, the court defers further proceedings in the case without entering an adjudication of guilt and places the defendant on a period of “probation.” Art. 45.051, C.C.P. Only judges have discretion to grant deferred disposition. The clerk’s role is to maintain the court’s order and keep track of the probationary time period.

Deferred disposition applies to misdemeanor offenses punishable by fine only, with a few exceptions. The following offenses *are not eligible* for deferred disposition.

- Offenses committed in a construction work zone when workers are present. Sec. 542.404, T.C.
- A minor charged with the offense of consuming an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.04, A.B.C.
- A minor charged with the offense of driving under the influence of an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.041, A.B.C.
- A minor who is at least 17 and has previously been convicted two or more times of an offense to which Section 106.071 of the Alcoholic Beverage Code applies (purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor). Sec. 106.071(i), A.B.C.
- A defendant charged with an offense relating to motor vehicle control who holds or held a commercial driver’s license.

1. Deferral of Proceedings for Fine-Only Offenses

The following information outlines the steps for deferred disposition under Article 45.051, C.C.P.

a. Plea

A defendant must enter a plea of guilty or nolo contendere, or there must be a finding of guilt before deferred disposition may be granted. Art. 45.051(a), C.C.P. This means the judge could grant a deferred disposition prior to trial, or after trial.

b. Court Costs

After a plea or finding of guilt, the judge may require the defendant to pay court costs before deferring proceedings. Art. 45.051(a), C.C.P.

As an alternative, the judge may allow a defendant to enter into an agreement for payment of court costs in installments during the defendant's period of probation, require the defendant to discharge the payment of the court costs by performing community service, or through a combination of both. Art. 45.051(a-1), C.C.P.

Pursuant to the definition of "conviction" for most court costs, courts are required to collect costs on cases that are deferred. Sec. 133.101, L.G.C.

c. Fine

The judge sets the fine and does not enter judgment, but rather, defers further proceedings in the case. Art. 45.051(a), C.C.P.

d. Alcoholic Beverage Code Offenses

If the offense being deferred involves a minor being charged with an offense from the Alcoholic Beverage Code, the court must report to the DPS the deferred disposition when it is granted.

e. Time Period

The judge may place a defendant on probation under deferred disposition for a period not to exceed 180 days. Art. 45.051(a), C.C.P.

f. Discretionary Terms

The judge *may* require the defendant to do any of the following as conditions of probation under deferred disposition (Art. 45.051(b), C.C.P.):

- payment of a special expense fee to be paid by the end of the probationary period;
- pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
- submit to professional counseling;
- submit to diagnostic testing for alcohol or a controlled substance or drug;
- submit to a psychosocial assessment;
- participate in an alcohol or drug abuse treatment or education program;
- pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;
- complete a driving safety course approved by the Texas Education Agency;
- present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and
- comply with any other reasonable condition.

g. Mandatory Terms

Under certain circumstances, the judge *must* order certain terms as conditions of the deferred. Art. 45.051(b-1), C.C.P. The following is a list of those circumstances.

- If the defendant is under the age of 25 and charged with a moving traffic violation, the court *shall* require as a term of deferred disposition, a driving safety course. The defendant must submit proof of taking the course. See the *Traffic Law* chapter of this Study Guide for a list of moving violations as defined by DPS. In addition, the judge may order the defendant to complete another driving safety course geared towards drivers under 25, and commonly known as “Alive @ 25.”
- If the defendant has a provisional driver’s license and is charged with a moving violation, the court shall require as a term of deferred disposition that the defendant be examined by DPS as required by Section 521.161(b)(2) of the Transportation Code, which requires DPS to test a person’s ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the person will be licensed to operate. The person must pay DPS a \$10 fee for the examination. Note: Persons under the age of 18 have provisional driver’s licenses. Sec. 521.123, T.C. The defendant must submit proof of being examined by DPS.
- If the offense is an Alcoholic Beverage Code offense or the Penal Code offense of public intoxication and the defendant is younger than 21 years of age, as a term of the deferral, the court must require the defendant to take an alcohol awareness course. Sec. 106.115, A.B.C.
- The court must require community service as a term of probation when granting deferred if the offense is one of the following:
 - purchase of alcohol by a minor;
 - attempt to purchase alcohol by a minor;
 - consumption of alcohol by a minor;
 - possession of alcohol by a minor;
 - misrepresentation of age by a minor; or
 - public intoxication.

For a first offense, the court must require not less than eight or more than 12 hours community service. For a subsequent offense, the court must require not less than 20 or more than 40 hours of community service. Sec. 106.071(d)(1), A.B.C.

h. Satisfactory Completion

At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he or she has complied with the requirements imposed in the deferred disposition order, the judge shall:

- dismiss the complaint; and
- clearly note on the docket that the complaint is dismissed and that there is not a final conviction. Art. 45.051(c), C.C.P.

When the complaint is dismissed and there is not a final conviction, the complaint may not be used against the person for any purpose. Art. 45.051(e), C.C.P.

i. Special Expense Fee

The judge may impose a special expense fee in an amount not to exceed the amount of the fine assessed, but deferred. Art. 45.051(c), C.C.P. This special expense fee can be paid at any time

prior to the end of the probationary period. The defendant is not required to also pay the fine. The special expense fee is in lieu of the fine.

j. Failure to Comply with the Terms

When a defendant fails to present satisfactory evidence of compliance of the terms of the deferral within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to appear to show cause why the court should not revoke the defendant's probation. Art. 45.051(c-1), C.C.P.

Article 45.051(d) provides that on a showing of good cause for the failure to present satisfactory evidence of compliance with the requirements, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the requirements. If at the conclusion of this period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or impose a lesser fine, which results in a final conviction of the defendant. Subsection (d) does not apply to a defendant under age 25 required to complete a driving safety course or retake the driving test. If the defendant does not complete the driving safety course or the driving test, on the date of the show cause hearing, the judge shall impose the fine. The imposition of the fine constitutes a final conviction of the defendant.

If an adult defendant is not in custody when the court imposes the fine, the court may issue a *capias pro fine*, which orders a peace officer to bring the defendant before the court. Art. 45.045, C.C.P.

If a defendant under the age of 17 fails to comply, the court must set the defendant for a contempt hearing under Article 45.050 of the Code of Criminal Procedure. The court may then issue a non-secure custody order for the juvenile defendant to compel his or her appearance.

If a defendant fails to complete the terms of deferred disposition and the judge subsequently adjudicates the defendant's guilt, the defendant may appeal the conviction. Any monies paid towards the special expense fee are converted into payment towards the fine. Art. 45.051(a), C.C.P.

k. Docket Entries

When a judge grants deferred disposition, the clerk should note the following information in the docket:

- the date the judge granted the deferred disposition;
- the deferral period;
- the court costs paid and the amount of any special expense fee imposed;
- the fine assessed (though not yet imposed); and
- whether there was a plea of guilty or *nolo contendere*, or a finding of guilt after a trial.

At the end of the deferral period, the clerk should note in the docket:

- the final judgment—whether the case was dismissed or there was a conviction;
- any special expense fee paid, method of payment, and receipt number of payment;
- show cause hearing date, if any;

- fine imposed, method of payment, and receipt number, if any; and
- appeal made, if any.

I. Reports to Department of Public Safety

- Traffic offenses – If a defendant charged with a traffic offense is granted deferred disposition, the court may not report to DPS that the defendant has been placed on deferred disposition. However, if the defendant fails to complete the terms of deferred disposition and the judge enters a finding of guilt and imposes the fine on the traffic offense, the court is required to notify DPS of the conviction. Sec. 543.204, T.C. The court must submit the report not later than the seventh day after the date on which the judge adjudicates guilt. Sec. 543.203, T.C.
- Alcoholic Beverage Code offenses – Courts must report to DPS the order of deferred disposition for all minors charged with offenses under the Alcoholic Beverage Code. The report is made at the time the deferred disposition is granted. Sec. 106.117, A.B.C.

2. Deferral of Proceedings for Chemically Dependent Persons

Deferral of proceedings for a chemically dependent person is similar to deferred disposition. The judge may grant a person, charged with an offense that may be related to chemical dependency, deferred disposition under Article 45.053 of the Code of Criminal Procedure.

The following information outlines the steps involved with deferred disposition for a chemically dependent person.

a. Plea

A defendant must enter a plea of guilty or nolo contendere, or the court must make a finding of guilt. The court does not enter an adjudication of guilt on the plea, assesses a fine, but defers imposition of the fine and further proceedings. Art. 45.053(a), C.C.P.

b. Court Costs

Court costs are required to be collected when this type of deferred is granted.

c. Time Period

The court may defer proceedings for 90 days. Art. 45.053(a), C.C.P.

d. Application for Treatment

The court must determine if an application for court-ordered treatment of the defendant is filed in accordance with Chapter 462 of the Health and Safety Code. Art. 45.053(a)(2), C.C.P.

e. Satisfactory Completion

Satisfactory evidence of completion would show that a defendant was committed for and completed a court-ordered treatment in accordance with Chapter 462 of the Health and Safety Code. Art. 45.053(b), C.C.P. If satisfactory evidence is presented at the end of the deferral period, the judge shall dismiss the case. The statute, unlike deferred disposition under Article 45.051 does not provide for a special expense fee.

f. Expunction

If a complaint is dismissed, there is not a final conviction and the complaint may not be used against the person for any purpose. Records relating to a dismissed complaint may be expunged under Article 55.01 of the Code of Criminal Procedure.

g. Failure to Complete

If evidence of completion is not determined to be satisfactory to the court, the court may:

- impose the fine assessed; or
- impose a lesser fine.

The imposition of a fine constitutes a final conviction of the defendant. Art. 45.053(c), C.C.P.

If a defendant fails to complete the terms of probation and the judge subsequently adjudicates the defendant’s guilt, the defendant may appeal the conviction.

h. Docket Entries

The clerk should note the following information in the docket:

- the date the judge ordered the sentence to be suspended and the disposition deferred;
- the deferral period;
- the court costs paid;
- the fine assessed (although not yet imposed);
- whether there was a plea of guilty or nolo contendere, or whether there was a finding of guilt after a trial; and
- the final disposition of the case.

At the end of the deferral period, the clerk should note in the docket:

- the final disposition—whether there was a dismissal or a conviction;
- fine imposed, method of payment, and receipt number, if any; and
- appeal, if any.

Q. 46. What offenses are not eligible to be dismissed by completing a driving safety course?

Q. 47. When must a defendant enter a plea to be eligible to take a driving safety course?

True or False

Q. 48. The defendant must be allowed to take a driving safety course if he or she requests one after being found guilty at trial. _____

Q. 49. A defendant who took a driving safety course four months earlier cannot take a driving safety course for ticket dismissal. _____

Q. 50. A defendant must provide a valid Texas driver's license (or be military) and proof of financial responsibility to be eligible for a DSC. _____

Q. 51. Defendants completing a driving safety course do not have to pay court costs. _____

Q. 52. A defendant who is not entitled to take a driving safety course must pay an administrative fee equal to the amount of the fine that could have been imposed. _____

Q. 53. For what offenses must the court order a specialized safety belt course?

Q. 54. How long does a defendant have to take a driving safety course and present evidence of course completion to the court? _____

Q. 55. What evidence must a defendant present the court before a court can dismiss a charge for which a driving safety course was granted? _____

Q. 56. Who has authority to grant deferred disposition? _____

Q. 57. List offenses for which a judge has no authority to grant deferred disposition. _____

Q. 58. How may a court require a defendant to pay court costs when granting a defendant deferred disposition? _____

Q. 59. What is the maximum amount of time that a judge may place a defendant on probation under deferred disposition? _____

True or False

Q. 60. The judge may require a defendant who successfully completes his or her deferred to pay the fine. _____

Q. 61. A judge may assess a defendant a special expense fee when granting deferred. _____

Q. 62. A judge may impose both a fine and a special expense fee when granting deferred. _____

Q. 63. When a judge grants deferred disposition to a defendant charged with an Alcoholic Beverage Code offense, the judge must require attendance at an alcohol awareness program. _____

Q. 64. When a defendant under the age of 25 charged with a moving violation is granted deferred, the judge must make the defendant take a driving safety course as a term of the deferred disposition. _____

Q. 65. When a defendant with a provisional driver's license charged with a moving violation is granted deferred, the only mandatory requirement is to take a driving safety course.

Q. 66. List the information a clerk should document in the docket when a judge grants a defendant deferred disposition. _____

Q. 67. When a defendant complies with all the terms of deferred disposition, what is the judge required to do? _____

Q. 68. What information should be entered in the docket when a defendant completes the terms of deferred disposition? _____

Q. 69. When deferred disposition is granted, when may the court impose the special expense fee? _____

Q. 70. What is the amount of the special expense fee? _____

Q. 71. What must a judge do if a defendant fails to present evidence of completion of the terms of deferred disposition? _____

Q. 72. When is a judge required to submit to the Department of Public Safety a report of a conviction in a traffic case if deferred disposition has been granted? _____

Q. 73. For what offenses is the court required to report an order of deferred disposition? _____

Q. 74. When may a defendant appeal his or her case after being granted deferred disposition? _____

PART 5 APPEALS

A. Right to Appeal

A defendant in any criminal action has the right to appeal. Art. 44.02, C.C.P. The right to appeal shall in no way be abridged. Art. 44.07, C.C.P. In certain pre-trial matters, the State may also appeal. Art. 44.01, C.C.P.

B. Appellate Courts

1. Appeals from Municipal Courts

Appeals from a municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court. In cases where the county court has no jurisdiction, appeals shall be heard by whatever is deemed the proper court. Art. 45.042, C.C.P.

a. When Appellate Court Does Not Have Jurisdiction

When an appeal bond is not timely filed, the appellate court does not have jurisdiction over the case and shall remand (send back) the case to the justice or municipal court for execution of the sentence. Art. 45.0426(b), C.C.P. When a defendant fails to file an appeal bond within the required time, the court must send the case to the county court so that they may determine jurisdiction.

b. When Appellate Court Refuses Jurisdiction

A writ of procedendo is a motion submitted by the prosecutor, allowing the county court to declare its lack of jurisdiction and return jurisdiction back to the municipal court to proceed to collect the judgment. If a defendant is not in custody, the court may issue a *capias pro fine*.

2. Appeals to a Municipal Court

Under Section 707.016 of the Transportation Code, the owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to the municipal judge by filing an appeal petition with the clerk of the court. The petition must be:

- filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty; and
- accompanied by payment of the costs required by law for the court.

The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the appropriate department, agency, or office of the date, time, and place of the hearing.

The appeal stops the enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. The owner is required to file a notarized statement of personal financial obligation to perfect the appeal.

This appeal is a trial *de novo* (new trial) in the municipal court.

C. Appeals from Non-Record Municipal Courts

If an appeal is from a non-record court, the trial in the appellate court shall be *de novo*, the same as if the prosecution had originally commenced in that court. Art. 45.042(b), C.C.P.

D. Appeals from Municipal Courts of Record

An appeal to the county court from a municipal court of record may be based only on errors reflected in the record. Art. 45.042(b), C.C.P. Refer to Chapter 30 of the Government Code for specific provisions regarding appeals from municipal courts of record.

E. Bond Pending Appeal

Pending the determination of any motion for new trial or the appeal from any misdemeanor conviction, the defendant is entitled to be released on reasonable bail. If a defendant on bail is

convicted and appeals, the bond is not discharged until he or she files an appeal bond as required by the Code of Criminal Procedure for appeal from the conviction. Art. 44.04, C.C.P.

F. Appeal Bonds

1. Rules

The rules respecting bail in Chapter 17 of the Code of Criminal Procedure are applicable to all undertakings entered into in the course of a criminal action whether before or after indictment, in every case where authority is given to any court, judge, magistrate, or other officer to require bail of a person accused of an offense, or a witness in a criminal action. Art. 17.38, C.C.P.

The rules governing the taking and forfeiture of bail shall govern appeal bonds, and the forfeiture and collection of such appeal bonds shall be in the court to which such appeal is taken. Art. 44.20, C.C.P.

2. Types of Appeal Bonds

Defendants may post either a cash bond or a surety bond with the court. The court may not require cash, but the defendant may post a cash bond in lieu of sureties. Art. 17.02, C.C.P. If the defendant posts cash, it must be accompanied with the bond. It is best to have the defendant present the court with a money order or cashier's check made payable to the appellate court. If a defendant presents the court with a surety bond, he or she may have one or two sureties on the bond. A judge may permit the defendant to post a personal appeal bond.

3. Amount of Appeal Bond

When the court from whose judgment and sentence the appeal is taken is in session, the court must approve the bail. The amount of a bail bond may not be less than two times the amount of fine and costs adjudged against the defendant and may not in any case be for less than \$50. The bond must be made payable to the State of Texas. Art. 45.0425, C.C.P.

G. Appearance Not Required to Post Appeal Bond

A defendant may mail or deliver in person to the court a plea of guilty or a plea of nolo contendere and a waiver of jury trial. The defendant may also request in writing that the court notify the defendant at the address stated in the request of the amount of the appeal bond that the court will approve. If the court receives a plea and waiver before the defendant is scheduled to appear in court or after the defendant is scheduled to appear but at least five days prior to any scheduled trial, the court shall dispose of the case without requiring a court appearance by the defendant. The court shall notify the defendant either in person or by certified mail, return receipt requested, of the amount of fine assessed in the case and, if requested, the amount of an appeal bond that the court will approve. The defendant shall pay the fine assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving notice. Art. 27.14(b), C.C.P.

Article 45.0425 of the Code of Criminal Procedure provides that without requiring a court appearance by the defendant, the court shall approve an appeal bond in an amount that the court, under Article 27.14(b) notified the defendant would be approved if it otherwise meets the requirements of the Code of Criminal Procedure.

H. Time to Present Court with Bond

When a defendant enters a plea of guilty or nolo contendere by mail or delivers the plea and waiver to the court facility, the court shall notify the defendant either in person or by certified mail, return receipt requested, of the fine assessed in the case and, if requested by the defendant, the appeal bond that the court will approve. The defendant must pay the fine assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice. Art. 27.14, C.C.P.

If the defendant appeared in open court, the defendant must give the appeal bond within 10 days after the court rendered judgment. Art. 45.0426, C.C.P.

1. Computing Time

The standard formula for calculating time is to exclude the first day and include the last day. If the last day falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Sec. 311.014, G.C.

2. Mailbox Rule

A bond is considered timely filed if it is mailed in a first class postage prepaid envelope and is properly addressed to the clerk on or before the date that it is required to be filed and the clerk receives it not later than the 10th day after the date that it is required to be filed. Art. 45.013(a), C.C.P. The legible postmark affixed by the U.S. Postal Service is prima facie evidence of the date the document is deposited with the U.S. Postal Service. Art. 45.013(b), C.C.P. Clerks should file stamp the envelope and send it with the transcript on the appeal.

Under the mailbox rule, a “day” does not include Saturday, Sunday, or a legal holiday. Art. 45.013(c), C.C.P.

I. Perfection of Appeal

When the appeal bond has been filed with the court that tried the case, the appeal is held to be perfected. Art. 45.0426(a), C.C.P.

J. Notice of Appeal

No appeal shall be dismissed because the defendant failed to give notice of it in open court.

K. When a Defendant Pays the Fine

Voluntary payment of the fine in a misdemeanor case renders the appeal from a judgment in the case moot. *Fouke v. State*, 529 S.W.2d 772 (Tex. Crim. App. 1975). When a fine was paid under duress, the appellant has not waived his or her right to an appeal. *Hogan v. Turland*, 430 S.W.2d 720 (Tex. Civ. App.—Austin 1967).

L. Effect of Appeal

When a defendant files the appeal bond required by law with the judge, all further proceedings in the case in the municipal court shall cease. Art. 45.043, C.C.P. When an appeal bond is filed with the court, the municipal court forfeits jurisdiction to the appellate court.

M. Role of the Clerk

1. Ministerial Duty

“The courts typically characterize the powers and duties of the district clerks as ministerial functions.” Tex. Atty. Gen. Op. JM-694 (1987). The Texas Court of Criminal Appeals has also characterized the role of the court clerk in the appellate process. The forwarding of appeals is a mandatory ministerial duty and not discretionary for the clerk or the judge for that matter. *Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986). See *Appendix A* for a Checklist for handling appeals—for both non-record courts and record courts.

When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it with the date it was filed in the court, and then give it to the judge who will decide whether or not to approve the bond. Even if the judge does not approve the bond, the clerk has a mandatory ministerial duty to send the case to the appellate court. The appellate court will make the decision whether it has jurisdiction of the case.

2. Sending Case to Appellate Court

In appeals from justice and municipal courts, all the original papers in the case, any appeal bond, and the certified transcript of all the proceedings had before the court shall be delivered without delay to the clerk of the court to which the appeal is taken, who shall file the same and docket the same. Art. 44.18, C.C.P.

When a clerk certifies a transcript, the clerk authenticates it by attesting that the information contained in the transcript is true. An appeal by the defendant or the State may not be dismissed on account of any defect in the transcript. Art. 45.0426(c), C.C.P.

N. Conviction or Affirmance of Judgment on Appeal

In a trial de novo on appeal, when there is a conviction, the fine stays with the county. There is no requirement for the county to return the fine money to the municipal court.

When an appeal is taken from a municipal court of record and the judgment is affirmed on appeal, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant and paid into the municipal treasury. Art. 44.281, C.C.P.

O. Withdrawal of Appeal

In non-record courts there is no way to withdraw or dismiss an appeal. In record courts, a defendant or his or her attorney is required to file a motion to withdraw the appeal.

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| <p>Q. 75. Does someone charged with a city ordinance violation have the right to appeal his or her conviction? _____</p> <p>Q. 76. Does someone who fails to appear and is later arrested and convicted have a right to appeal his or her conviction? _____</p> <p>Q. 77. Which court has jurisdiction over municipal court appeals? _____</p> <p>Q. 78. When a defendant fails to file his or her bond with the municipal court timely, what happens to the appeal? _____</p> <p>Q. 79. What happens when an appellate court determines that it does not have jurisdiction to hear a case? _____</p> |
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Q. 80. What happens to a case appealed from a non-record court? _____

Q. 81. What is the appeal based upon from a record municipal court? _____

Q. 82. List types of appeal bonds. _____

Q. 83. What must the amount of an appeal bond be? _____

True or False

Q. 84. In a municipal court, a defendant can mail to the court a plea of guilty or nolo contendere and appeal his or her conviction without making a personal appearance in court. _____

Q. 85. When a defendant makes an appearance by mail and requests the amount of the appeal bond, the court may send the information by regular mail. _____

Q. 86. A defendant who pleads guilty by mail has 31 days from the date the judgment is entered to file an appeal bond with the court. _____

Q. 87. When a defendant appears in open court, how long does he or she have to file the appeal bond with the court? _____

Q. 88. When calculating when a defendant is to file an appeal bond, does the court count the day judgment was entered? _____

Q. 89. When calculating time to present the court with an appeal bond, does the court count the 10th day? _____

Q. 90. When calculating time to present the court with an appeal bond, does the court count the 10th day if it falls on a Saturday? _____

Q. 91. Explain the mailbox rule. _____

Q. 92. When is a defendant's appeal completed? _____

Q. 93. When can a defendant who has paid a judgment still appeal? _____

Q. 94. What is the role of a clerk in the appellate process? _____

Q. 95. If a clerk makes a mistake on the transcript, does this cause the appeal to be dismissed? _____

Q. 96. When a case is appealed, what does a non-record municipal court send to the appellate court? _____

Q. 97. What happens to municipal court proceedings when an appeal bond is filed with the court? _____

Q. 98. What happens to the fine assessed in the county court against a municipal court defendant who has appealed his or her case from a non-record municipal court? _____

Q. 99. May a defendant withdraw an appeal and pay the fine in a non-record municipal court?

Q. 100. If an appeal is from a court of record, can a defendant withdraw an appeal? _____

APPENDIX A: CHECKLIST FOR HANDLING APPEALS
APPEALS CHECKLIST
FOR NON-RECORD MUNICIPAL COURTS

- All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.
- Defendant is not required to go to trial in order to appeal.
- Judgment is entered (conviction). Art. 45.041, C.C.P.
 - Defendant can plead guilty or nolo contendere and appeal.
 - If defendant does not complete a driving safety course or the terms of deferred disposition, after the court enters final judgment, the defendant may still appeal.
- Defendant gives notice of appeal (but is not required to do so). Art. 45.0426(c), C.C.P.
- Defendant appeared at trial or in open court – 10 days from date of judgment to file appeal bond. Arts. 44.16 and 45.0426(a), C.C.P.
 - Mailbox Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed. (Keep envelope) Art. 45.013, C.C.P.
 - If the appeal bond is not timely, the municipal court must still send it to the appellate court.
- Defendant appears by mail or in person at the clerk’s window – court must either personally deliver notice of the amount of fine and appeal bond or notify the defendant by certified mail, return receipt requested. Defendant has up to 31 days from the date of receiving the notice to file an appeal bond. Art. 27.14(b), C.C.P.
 - If appeal bond is not timely filed, the municipal court must still send it to the appellate court.
- Appeal appearance bond must be at least two times the amount of the fine and court costs, but in no case less than \$50. Art. 45.0425(a), C.C.P.
- Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond. Arts 17.38, 44.20, C.C.P.
 - Conditions of the appeal bond – Must recite that the defendant has been convicted and appealed and will make a personal appearance before the court to which the appeal is taken instanter, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the appealed case before the appellate court. Art. 45.0425(b), C.C.P.
- When court receives bond, clerk should date stamp day received.
 - Bond filed with court perfects appeal. Art. 45.0426(a), C.C.P.
- Give bond to judge to make a determination if the surety is sufficient. Art. 44.04(e), C.C.P. If appeal bond otherwise meets the requirements of the Code of Criminal Procedure, the court must approve the bond. Art. 45.0425, C.C.P.

- Clerk makes copies of all original papers in the case file.
- Clerk sends the case with all original papers and the bond with a certified transcript to the appellate court (usually county court). Art. 44.18, C.C.P.
- Case is tried de novo (new trial) in county court. Arts. 44.17 and 45.042(b), C.C.P.
- If defendant is convicted in appellate court, appellate court collects fine and deposits it in the county treasury.
- Withdrawal of appeal
 - Defendant may not withdraw appeal from a non-record municipal court.
- If bond filed after deadline, the appellate court shall remand the case to the municipal court to collect judgment. (If the court receives the case back, the court should notify the defendant that the fine and costs are due in the municipal court. If the defendant fails to pay the fine and costs, the municipal court can issue a capias pro fine for collection of the judgment.)
- If the bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.

CHECKLIST FOR APPEALS FROM MUNICIPAL COURT OF RECORD

- All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.
- Defendant is required to go to trial and a record of the trial must be made.
- Judgment is entered (conviction). Art. 45.014, C.C.P.
- Defendant makes a written motion for a new trial not later than 10th day after date on which judgment is rendered. Sec. 30.00014(c), G.C.
 - The motion may be amended with permission of the court not later than the 20th day after the date on which the original motion is filed.
 - The court may extend the time for filing or amending not to exceed 90 days from the original filing deadline.
 - If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.
- If the motion for new trial is denied, the defendant must give notice of the appeal not later than the 10th day after the date on which the motion for new trial was overruled. Section 30.00014(d), G.C.
 - The notice of appeal may be given orally in open court, if the defendant requested a hearing on the motion for new trial.
 - If there is no hearing on the motion for new trial, the notice of appeal must be in writing and must be filed with the court not later than the 10th day after the motion for new trial is overruled. The court may extend the time period not to exceed 90 days from the original filing deadline for good cause.
- The appeal bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. Sec. 30.00015(a), G.C.
- The appeal bond must be in the amount of \$100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater. Sec. 30.00015(b), G.C.
 - Conditions of appeal bond – Must state that the defendant was convicted in the case and has appealed; and be conditioned on the defendant’s immediate and daily personal appearance in the court to which the appeal is taken. Sec. 30.00015(c), G.C.
- Defendant must pay a \$25 fee for the preparation of the clerk’s record. City must establish the fee by ordinance. The clerk shall note the payment of the fee on the docket of the court. The fee will be refunded to the defendant if the case is reversed and dismissed on appeal. Secs. 30.00014(f) and 30.00017, G.C.
- Defendant must pay a fee for an actual transcription of the proceedings. Sec. 30.00014(g), G.C.
- Defendant must pay for a reporter’s record. Sec. 30.00019(b), G.C.

- Record on appeal – must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00016, G.C.
 - The clerk’s record must conform to the provision in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00017, G.C.
 - The bills of exception must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Sec. 30.00018, G.C.) (A formal statement in writing of the objections or exceptions taken by a party during the trial of a cause to the decisions, rulings, or instruction of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and, in order to attest its accuracy, signed by the judge.)
 - The reporter’s record must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00019, G.C.
- Transfer of the record – Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file the reporter’s record, a written description of material to be included in the clerk’s record in addition to the required material, and any material to be included in the clerk’s record that is not in the custody of the clerk. Sec. 30.00020(a), G.C.
 - On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals. Sec. 30.00020(b), G.C.
 - After the judge approves the record, the clerk shall promptly send the record to the appellate court clerk for filing. Sec. 30.00020 (c), G.C. The appellate court clerk notifies the defendant and prosecutor that the record has been filed.
 - The appellate court determines appeals from the municipal court of record on the basis of errors that are set forth in the appellant’s motion for new trial and presented in the transcript and statement of facts. Sec. 30.00014(b), G.C.
- Brief on appeal
 - Appellant must file a brief with the appellate court clerk not later than the 15th day after the date on which the clerk’s record and reporter’s record are filed with the appellate court clerk.
 - The appellee must file the appellee’s brief with appellate court clerk not later than the 15th day after the date on which the appellant’s brief is filed.
 - Each party, on filing the party’s brief with appellate court clerk, shall deliver a copy of the brief to the opposing party and to the municipal judge. Sec. 30.0021, G.C.
- Withdrawal of appeal
 - Defendant may submit a written motion to withdraw appeal.
- If bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.
- The appellate court clerk shall mail copies of the decision to the parties and to the municipal judge as soon as the decision is rendered.

- Disposition on appeal – Appellate court may:
 - Affirm the judgment of the municipal court of record;
 - Reverse and remand for a new trial;
 - Reverse and dismiss the case; or
 - Reform and correct the judgment.
- If appellate court reverses and dismisses the case, the court must refund the \$25 fee for the preparation of the clerk’s record to the defendant. Sec. 30.00014(f), G.C.
- If appellate court grants a new trial, it is as if the municipal court of record granted the new trial. The new trial is conducted by the municipal court of record. Sec. 30.00026, G.C.
- If the judgment is affirmed, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant, and the fine of the municipal court when collected shall be paid into the municipal treasury. Art. 44.281, C.C.P.

ANSWERS TO QUESTIONS

INTRODUCTION

- Q. 1. It is the final decision of a court and includes a dismissal if there is an acquittal or an adjudication of guilt and an assessment of punishment.
- Q. 2. It is the formal pronouncement of the judgment. Adjudicate means that the judge makes a final determination of fact and enters a judgment. Generally, the judge renders judgment, which means that the judge pronounces judgment, and then enters a judgment. This is a judicial act that only a judge may perform.
- Q. 3. A judgment is satisfied when the defendant has completed everything the judgment ordered him or her to do, most often by paying the fine and costs in full.
- Q. 4. Only the judge.

PART 1

- Q. 5. True.
- Q. 6. False.
- Q. 7. False.
- Q. 8. False.
- Q. 9. True.
- Q. 10. True.
- Q. 11. True.
- Q. 12. False (there is no cap on restitution, except on the offense of issuance of bad check, when ordered as part of the sentence upon conviction; when ordered as a condition of deferred, restitution can be in an amount up to the fine that could have been assessed).
- Q. 13. True.
- Q. 14. True.
- Q. 15. False.
- Q. 16. The court is required to give the defendant credit on his or her sentence for the time that the defendant spent in jail from the time of his or her arrest and confinement until his or her sentence by the trial court.
- Q. 17. “Period of time” is defined as not less than 8 hours or more than 24 hours as specified in the judgment of a case.
- Q. 18. As custodian of the records, clerks should properly record jail-time credit on a defendant’s case file and in the docket.
- Q. 19. Only after the governing body (city council) has authorized payment of fees, fines, court costs, or other charges by credit card.
- Q. 20. The processing fee may not exceed five percent of the amount of the fee, fine, court costs, or other charge being paid.
- Q. 21. If a defendant’s credit card is not honored by the credit card company, the city may collect a service charge from the person who owes the fee, fine, court costs, or other charge. (Note: The municipal court may also issue a *capias pro fine*.)

- Q. 22. The amount of the service charge is the same as the fee charged for the collection of a check drawn on an account with insufficient funds.
- Q. 23. True.
- Q. 24. True.
- Q. 25. True.
- Q. 26. True.
- Q. 27. True.
- Q. 28. False (if the court determines, after a defendant has defaulted in payment of fine and or costs, that the defendant is indigent, and that each alternative method of discharging a fine or cost under Article 45.049 of the Code of Criminal Procedure would impose a hardship on the defendant, then the court may waive the fine and costs).
- Q. 29. True.

PART 2

- Q. 30. True.
- Q. 31. True.
- Q. 32. True.
- Q. 33. False (must be reported not later than the seventh day).

PART 3

- Q. 34. A *capias pro fine* is a writ issued by a court having jurisdiction of a case after judgment and sentence for unpaid fines and costs. If the defendant is not in custody when judgment is rendered or if the defendant fails to satisfy the judgment, the court may issue a *capias pro fine*.
- Q. 35. Court clerks should research court records to be certain that an error in recordkeeping has not occurred. Then clerks should present the judge with information that the defendant still owes a fine and costs or part of a fine and costs and that the judgment has not been satisfied.
- Q. 36. Only the judge.
- Q. 37. The judge who has jurisdiction over the case.
- Q. 38. The court has a duty to inquire into reasons for non-payment to avoid jailing indigent defendants and if the defendant is indigent allow the defendant to first discharge the fine through community service or through a time payment plan. However, if the court determines that an alternative method of discharging the fine under Article 45.049 of the Code of Criminal Procedure would impose an undue hardship, the court may waive the fine and costs.
- Q. 39. Execution.
- Q. 40. Any fine-only offense.
- Q. 41. When a defendant perfects an appeal of the case for which the warrant of arrest was issued or judgment arose; when a defendant posts bond or gives other security to reinstate the charge for which the warrant was issued; when the defendant pays the

fine and costs owed on the outstanding judgment or makes suitable arrangement to pay the fine and costs within the court's discretion; when the case is dismissed.

- Q. 42. Any city may contract.
- Q. 43. Vehicle registration may be denied for certain traffic offenses that have a maximum possible penalty of \$200.
- Q. 44. Article 103.0031 of the Code of Criminal Procedure provides authority for a city to contract with a private attorney or vendor to collect fines, fees, restitution, and other debts or costs.
- Q. 45. The debt or failure to appear must be owed on the 61st day after the defendant was ordered to pay or failed to appear.

PART 4

- Q. 46. The following offenses cannot be dismissed through a driving safety course:
- Speeding 25 mph or more over the speed limit
 - Driving 95 mph or more
 - Offense committed in a construction or maintenance zone when workers are present
 - Passing a school bus loading or unloading children
 - Leaving the scene of a collision after causing damage to a vehicle that is driven or attended
 - Leaving the scene of a collision and failing to give information and/or render aid
 - Serious traffic violation
 - Offense committed by a person who held a commercial driver's license at the time of the offense or holds a CDL at the time of the request for DSC, including when the person is driving his or her own vehicle
- Q. 47. On or before the answer date on the citation.
- Q. 48. False (the defendant must enter a plea on or before his appearance date; after trial, it is within the judge's discretion to grant).
- Q. 49. False (the judge can grant a DSC in his or her discretion).
- Q. 50. True.
- Q. 51. False.
- Q. 52. False (defendants entitled to take a DSC may be required to pay an administrative fee of up to \$10; those granted a DSC under the court's discretionary power may be required to pay an administrative fee up to the amount of the fine that could have been imposed).
- Q. 53. Violation of the child safety seat offense under Section 545.412 or failure to secure a child in a safety belt under Section 545.413 of the Transportation Code.
- Q. 54. 90 days.
- Q. 55. Evidence of completing the course (uniform certificate); a certified copy of his or her driving record as maintained by the Department of Public Safety; and an affidavit.

(Note: If the defendant is on active military duty, the court most likely will not have the defendant's driving record from DPS.)

- Q. 56. Only the judge.
- Q. 57. The following offenses are not eligible for deferred disposition:
- Offenses committed in a construction work zone when workers are present.
 - A minor charged with the offense of consuming an alcoholic beverage if the minor has been previously convicted twice or more of this offense.
 - A minor charged with the offense of driving under the influence of an alcoholic beverage if the minor has been previously convicted twice or more of this offense.
 - A minor who is not a child (under age 17) and who has been previously convicted at least twice of an offense to which Section 106.071 of the Alcoholic Beverage Code applies.
 - A defendant charged with a traffic offense that has a commercial driver's license or had one at the time the traffic offense was committed.
- Q. 58. The judge can require the defendant to pay court costs before granting deferred disposition, or allow the defendant to pay in installments; by performing community service; or by both installments and community service during the probation.
- Q. 59. 180 days.
- Q. 60. False (fines are only imposed upon conviction).
- Q. 61. True.
- Q. 62. False.
- Q. 63. True.
- Q. 64. True.
- Q. 65. False (the defendant must also take a driving safety course).
- Q. 66. The following information should be entered in the docket when a judge grants deferred disposition: (1) the date the judge ordered the sentence to be suspended and the disposition deferred; (2) the deferral period; (3) the court costs paid; (4) the fine assessed; (5) whether there was a plea of guilty or nolo contendere, or whether there was a finding of guilt after a trial.
- Q. 67. Dismiss the case.
- Q. 68. The clerk should note in the docket that the complaint is dismissed (after the judge signs the dismissal judgment).
- Q. 69. The court may assess a special expense fee to be paid before the end of the deferral period.
- Q. 70. The special expense fee may not exceed the amount of the fine that could be imposed.
- Q. 71. When a defendant fails to present satisfactory evidence of compliance of the terms of the deferral within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to appear to show cause why the order of deferral should not be revoked.
- Q. 72. The court does not submit to DPS a record of a traffic case where deferred disposition has been granted unless the defendant fails to complete the terms of deferred

disposition and the judge enters a final judgment of guilty. Then the judge reports a conviction to DPS.

- Q. 73. The court is required to report an order of deferred disposition for all minor Alcoholic Beverage Code offenses.
- Q. 74. If a defendant fails to comply with the terms of deferred disposition and the court enters a final judgment against the defendant, the defendant may appeal the case.

PART 5

- Q. 75. Yes.
- Q. 76. Yes.
- Q. 77. The county court.
- Q. 78. If the defendant fails to file an appeal bond within the required time limit, the municipal court sends the appeal to the county court. The county court has to make the decision whether or not to take jurisdiction of the case. If the county court decides that it does not have jurisdiction, it sends the case back to municipal court.
- Q. 79. The appellate court sends the case back to municipal court, which can then collect its judgment.
- Q. 80. The trial in the appellate court is de novo, a new trial as if the case had originally commenced in that court.
- Q. 81. The appeal is based upon errors reflected in the record of the trial.
- Q. 82. The types of appeal bonds are: cash appeal bond, surety appeal bond, and personal appeal bond.
- Q. 83. An appeal bond may not be less than two times the amount of the fine and court costs, but it may be more. In no case can it be less than \$50.
- Q. 84. True.
- Q. 85. False (must be sent certified mail return receipt requested).
- Q. 86. False (defendant has 31 days from the date defendant receives notice of the amount of the appeal bond).
- Q. 87. If the defendant appears in open court, the defendant has 10 days after the judgment is entered to present the court with an appeal bond.
- Q. 88. No (the court counts the following day as day one).
- Q. 89. Yes.
- Q. 90. No.
- Q. 91. The mailbox rule provides that a document may be filed with the court by mailing it in a first class postage prepaid envelope, properly addressed to the clerk, on or before the date the document is required to be filed. It is considered timely filed if the clerk receives it not later than the 10th day after the date that it is required to be filed. Hence, an appeal bond is timely filed if it is received timely under the mailbox rule.
- Q. 92. A defendant's appeal is completed when the defendant presents the court with an appeal bond in the required time period.

- Q. 93. When the defendant was under duress to plead guilty or nolo contendere or to pay the fine. *Hogan v. Turland*, 430 S.W.2d 720 (Tex. Crim. App.—Austin 1967).
- Q. 94. The clerk's role is characterized as ministerial. When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it with the date it was filed with the court and then give it to the judge. The clerk has a mandatory ministerial duty to send the appeal to the appellate court.
- Q. 95. No.
- Q. 96. Along with the transcript, the court is required to send all the original documents in the case. The court keeps copies for its file.
- Q. 97. All proceedings in municipal court cease.
- Q. 98. If there is a conviction in the county court, the county keeps the fine money and reports the court costs to the State.
- Q. 99. No, not without a writ of procedendo.
- Q. 100. Yes.