



2017 LEGISLATIVE UPDATE **THE ROAD AHEAD**



CHARTS

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(85th Regular Legislative Session)**

EXPUNCTIONS JUVENILES AND MINORS



	Alcoholic Beverage Code Sec. 106.12	Health & Safety Code Sec. 161.255	Code of Criminal Procedure Art. 45.0541	Code of Criminal Procedure Art. 45.0216
Offenses	<ul style="list-style-type: none"> • Purchase of Alcohol by a Minor (Section 106.02); • Attempt to Purchase Alcohol by a Minor (Section 106.25); • Consumption of Alcohol by a Minor (Section 106.04); • Driving or Operating Watercraft Under the Influence of Alcohol by Minor (DUI) (Section 106.041); • Possession of Alcohol by a Minor (Section 106.05); and • Misrepresentation of Age by a Minor (Section 106.07). 	Possession, Purchase, Consumption, Or Receipt of Cigarettes Or Tobacco Products By Minors Prohibited (Section 161.252).	Failure to Attend School (Section 25.094, E.C.) <i>*This offense was repealed with the passage of HB 2398 in 2015. Prior convictions or dismissed charges are to be expunged under the new Art. 45.0541.</i>	All Penal Offenses as described by Section 8.07(a)(4) or (5), P.C.: <ul style="list-style-type: none"> • Misdemeanors punishable by fine only (Section 8.07(a)(4)) • Violations of penal ordinances of political subdivisions (Section 8.07(a)(5)) This article applies to any fine-only misdemeanor conviction (other than traffic) that is not covered by a separate expunction provision (i.e., A.B.C. offenses, tobacco offenses, or Failure to Attend School as outlined in the three columns to the left). This will include the following: <ul style="list-style-type: none"> • Penal Code-Class C misdemeanors • Education Code offenses (other than Failure to Attend School) • Health & Safety Code offenses (other than tobacco offenses) • City ordinance violations <i>Court must inform of right to expunction in open court and give copy of law to child and parent.</i>
Age to Apply	At least age 21.	No age requirement.	No application required.	At least age 17.
Requirements	Must have had only one conviction under A.B.C. while a minor for an expunction of the conviction records under 106.12(c), A.B.C. Must have had only one custodial or noncustodial arrest if not convicted for an expunction of the arrest records under 106.12(d), A.B.C.	Multiple convictions may be expunged, but must have completed tobacco awareness program or tobacco related community service.	Defendant must have been convicted of Failure to Attend School, OR Failure to Attend School charges must have been dismissed.	Only one conviction of any penal fine-only offense described in Section 8.07 (a)(4) or (5), P.C., while person was a child or only one conviction under Section 43.261, P.C. Also applies to dismissals of penal offenses under Article 45.052, C.C.P. (Teen Court) or Article 45.051, C.C.P. (Deferred Disposition).
Court Petitioned	Municipal court in which charged or convicted.	Municipal court in which convicted.	Petition not required.	Municipal court in which convicted.
Affidavit or Proof	Sworn statement that they have had only one conviction if seeking an expunction of conviction records. Sworn statement that applicant was not arrested for a violation of the A.B.C. other than one seeking expunged if not convicted and seeking an expunction of arrest records.	Sworn statement that they have completed tobacco awareness program or tobacco-related community service.	No proof required. Courts are responsible for expunging records related to convictions and dismissals of Failure to Attend School.	Sworn statement that they were not convicted of any additional offense; or for expunction of a sexting offense, found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7), F.C.
Hearing	Optional	Optional	N/A	Optional
Fee	\$30 fee required	\$30 fee required	None	\$30 fee required

Comparison of Current Law to H.B. 351 and S.B. 1913 (85th Regular Legislative Session)

Under Current Law	Section (H.B. 351 / S.B. 1913)	Under Amended Law	Statute
NOTICE OF ALTERNATIVES TO FULL PAYMENT: A citation must contain (1) written notice of the time and place the person must appear before a magistrate; (2) the name and address of the person charged; (3) the offense charged; and (4) a domestic violence admonishment.	SECTION 1 / 1	A citation must also contain information regarding the alternatives to full payment of any fine or costs assessed, if the person is convicted of the offense and is unable to pay that amount.	Art. 14.06(b), CCP
Upon receiving a plea and a waiver of jury trial by mail, the court is required to notify the defendant either in person or by <i>certified mail, return receipt requested</i> , of the fine and costs assessed, and if requested by the defendant, the amount of an appeal bond the court will approve.	SECTION 3 / 3	Upon receiving a plea and a waiver of jury trial by mail, the court shall notify the defendant either in person or by <i>regular mail</i> of the amount of any fine or costs assessed in the case, information regarding the alternatives to the full payment of any fine or costs assessed against the defendant, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond the court will approve.	Art. 27.14(b), CCP
A communication to the accused person from a third-party vendor as part of its services under a collections contract regarding the amount of payment that is acceptable to the court must include a notice of the person's right to enter a plea or go to trial on any offense charged.	SECTION 24 / 22	A communication to the accused person from a third-party vendor as part of its services under a collections contract regarding the amount of payment that is acceptable to the court must include: (1) a notice of the person's right to enter a plea or go to trial on any offense charged; and (2) a statement that, if the person is unable to pay the full amount of payment that is acceptable to the court, the person should contact the court regarding the alternatives to full payment that are available to resolve the case.	Art. 103.0031(j), CCP
PERSONAL BOND FEES: Article 17.42, Section 4(a) authorizes a court that requires a defendant to give a personal bond to assess a personal bond fee.	SECTION 2 / 2	A court that requires a defendant to give a personal bond under Article 45.016 may not assess a personal bond fee under this subsection.	Art. 17.42, Sec. 4(a), CCP
BAIL: A judge may require the defendant to give bail to secure the defendant's appearance in accordance with the Code of Criminal Procedure. If the defendant fails to give bail, the defendant may be held in custody.	SECTION 10 / 9	A judge is authorized to require a defendant to give a personal bond to secure appearance. The judge may not require a defendant to give a bail bond unless: (1) the defendant fails to appear with respect to the applicable offense; and (2) the judge determines that the defendant has sufficient resources/income to give a bail bond and a bail bond is necessary to secure appearance. If the defendant refuses to give a personal bond or, refuses or otherwise fails to give a bail bond, the defendant may be held in custody (subject to a reconsideration requirement after 48 hours, discussed below).	Art. 45.016, CCP
		H.B. 351: If a defendant required to give a bail bond remains in custody, without giving the bond, for more than 48 hours, the judge shall reconsider the requirement for the defendant to give the bond.	
		S.B. 1913: If a defendant required to give a bail bond remains in custody, without giving the bond, for more than 48 hours, the judge shall reconsider the requirement for the defendant to give the bond and presume that the defendant does not have sufficient resources/income to give the bond (may require a personal bond).	
Warrant of Arrest: When a sworn complaint or affidavit based on probable cause has been filed before the municipal court, the judge may issue a warrant for the arrest of the accused. No special rules exist for defendants who fail to appear at an initial court setting.	SECTION 9 / 8	H.B. 351: A justice or judge may not issue an arrest warrant for the defendant's failure to appear at the initial court setting, unless: (1) the judge provides by telephone or regular mail notice that includes: (A) a date and time when the defendant must appear before the judge (defendant may request an alternative date); (B) the name and address of the court with jurisdiction in the case; (C) information regarding alternatives to the full payment of any fine or costs, if the defendant is unable to pay that amount; and (D) an explanation of the consequences if the defendant fails to appear; and (2) the defendant fails to appear. S.B. 1913: Identical to H.B. 351 except that the date and time when the defendant must appear before the judge must be set within the 30-day period following the date notice is provided.	Art. 45.014(e)-(f), CCP

Comparison of Current Law to H.B. 351 and S.B. 1913 (85th Regular Legislative Session)

Under Current Law	Section (H.B. 351 / S.B. 1913)	Under Amended Law	Statute
<p>“SAFE HARBOR”: Currently, there is no requirement to recall an arrest warrant for failure to appear if the defendant voluntarily appears to resolve the warrant and resolves it.</p>	<p>SECTION 9 / 8</p>	<p>H.B. 351: The judge shall recall an arrest warrant for the defendant’s failure to appear if, before the arrest warrant is executed: (1) the defendant voluntarily appears to resolve the arrest warrant; and (2) the arrest warrant is resolved in any manner authorized by this code.</p>	<p>Art. 45.014(g), CCP</p>
		<p>S.B. 1913: The judge shall recall an arrest warrant for the defendant’s failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.</p>	
<p>ABILITY TO PAY INQUIRIES IN OPEN COURT: When imposing a fine and costs, a judge may, but is not required to, determine whether a defendant is unable to immediately pay the fine and costs.</p>	<p>SECTION 11 / 10</p>	<p>During or immediately after imposing a sentence in a case in which the defendant entered a plea in open court, the judge shall inquire whether the defendant has sufficient resources/income to immediately pay all or part of the fine and costs. If the judge determines that the defendant does not, the judge shall determine whether the fine and costs should be: (1) required to be paid at some later date or in installments; (2) discharged by performing community service; (3) waived in full or in part; or (4) satisfied through any combination of those methods.</p>	<p>Art. 45.041, CCP</p>
<p>CAPIAS PRO FINE SHOW CAUSE HEARINGS: If the defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according to its terms, the court may order a capias pro fine, issued for the defendant’s arrest. The Code of Criminal Procedure does not require that a defendant be given an opportunity to show cause for failure to satisfy the judgment according to its terms prior to the issuance of a capias pro fine.</p>	<p>SECTION 13 / 12</p>	<p>H.B. 351: Before a court may issue a capias pro fine for the defendant’s failure to satisfy the judgment, (1) the court must provide notice by regular mail that includes a statement that the defendant has failed to satisfy the judgment and the date and time of the show cause hearing; and (2) either the defendant fails to appear at the hearing or based on evidence presented at the hearing, the court determines that the capias pro fine should be issued.</p>	<p>Art. 45.045 (a-2), CCP</p>
		<p>S.B. 1913: The court may not issue a capias pro fine for the defendant’s failure to satisfy the judgment unless (1) the court holds a hearing on the defendant’s ability to satisfy the judgment and (2) the defendant fails to appear at the hearing or based on evidence presented at the hearing, the court determines that the capias pro fine should be issued.</p>	
<p>CAPIAS PRO FINE “SAFE HARBOR:” A court is not required to recall a capias pro fine if, before the capias pro fine is executed, the defendant voluntarily appears to resolve the amount owed and the amount owed is resolved in any manner authorized by Chapter 45.</p>	<p>SECTION 13 / 12</p>	<p>The court shall recall a capias pro fine if, before the capias pro fine is executed, the defendant voluntarily appears to resolve the amount owed and the amount owed is resolved in any manner authorized by Chapter 45.</p>	<p>Art. 45.045 (a-3), CCP</p>
<p>COMMITMENT HEARING: As part of the commitment hearing, the judge must make a written determination that (1) the defendant is not indigent and has failed to make a good faith effort to discharge the fine and costs; or (2) the defendant is indigent and has failed to make a good faith effort to discharge the fines <u>and</u> costs under Article 45.049; and could have done so without experiencing any undue hardship.</p>	<p>SECTION 14 / 13</p>	<p>As part of the commitment hearing, the judge must make a written determination that (1) the defendant is not indigent and has failed to make a good faith effort to discharge the fine or costs; or (2) the defendant is indigent and has failed to make a good faith effort to discharge the fine <u>or</u> costs under Article 45.049; and could have done so without experiencing any undue hardship.</p>	<p>Art. 45.046(a), CCP</p>
<p>CAPIAS PRO FINE JAIL CREDIT: The jail credit rate for defendants placed in jail on a capias pro fine is not less than \$50 for each period of time served, as specified by the convicting court in the judgment.</p>	<p>SECTION 15 / 14</p>	<p>The jail credit rate for defendants placed in jail on a capias pro fine is not less than \$100 for each period served, as specified by the convicting court in the judgment.</p>	<p>Art. 45.048, CCP.</p>

Comparison of Current Law to H.B. 351 and S.B. 1913 (85th Regular Legislative Session)

Under Current Law	Section (H.B. 351 / S.B. 1913)	Under Amended Law	Statute
COMMUNITY SERVICE: A court's community service order must specify the number of hours the defendant is required to <i>work</i> .	SECTION 16 / 15	A court's community service order must specify the required number of hours of community service the defendant is required to <i>perform</i> and the due date for submitting to the court documentation verifying completion of the community service.	Art. 45.049(b), CCP
The judge may order community service to be performed only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community.		H.B. 351: The judge may order community service to be performed (1) by attending a work and job skills training program, a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, an alcohol or drug abuse program, a rehabilitation program, a counseling program, including a self-improvement program, a mentoring program, or any similar activity; or (2) for a governmental entity, a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the judge, or an educational institution. SB 1913: The judge may order community service to be performed (1) by attending a work and job skills training program, a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, or similar activity; or (2) for a governmental entity, a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the judge, or an educational institution.	Art. 45.049(c), CCP
A governmental entity or nonprofit organization that accepts a defendant to perform community service must agree to supervise and report on the defendant's work to the judge who ordered it.		An entity that accepts a defendant to perform community service must agree to supervise, <i>either on-site or remotely</i> , the defendant's community service and report on it to the judge who ordered it.	Art. 45.049(c-1), CCP
A defendant is considered to have discharged not less than \$50 of fines or costs for each eight hours of community service performed under Article 45.049, Code of Criminal Procedure.		A defendant is considered to have discharged not less than \$100 of fines or costs for each eight hours of community service performed under Article 45.049, Code of Criminal Procedure.	Art. 45.049(e), CCP
A judge may require a defendant younger than 17 assessed a fine or costs for a Class C misdemeanor occurring on school grounds to discharge all or part of the costs by performing community service or attending a tutoring program.	SECTIONS 18-20 / 17-19	See, Section 16/15.	Art 45.0492, CCP
WAIVER: A municipal court may waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that: (1) the defendant is indigent or was, at the time the offense was committed, a child as defined by Article 45.058(h); and (2) discharging the fine <i>and</i> costs under Article 45.049 or as otherwise authorized by Chapter 45 would impose an undue hardship on the defendant.	SECTION 17 / 16	H.B. 351: A municipal court may waive payment of all or part of a fine or costs imposed on a defendant if the court determines that: (1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine <i>or</i> costs or was, at the time the offense was committed, a child as defined by Article 45.058(h); and (2) discharging the fine <i>or</i> costs under Article 45.049 or as otherwise authorized by Chapter 45 would impose an undue hardship on the defendant. S.B. 1913: Same as H.B. 351, but also adds that a defendant is presumed to be indigent or to not have sufficient resources or income to pay all or part of the fine <i>or</i> costs if the defendant: (1) is in the conservatorship of the Department of Family and Protective Services, or was in the conservatorship of that department at the time of the offense; or (2) is designated as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a, or was so designated at the time of the offense.	Art. 45.0491, CCP

Comparison of Current Law to H.B. 351 and S.B. 1913 (85th Regular Legislative Session)

Under Current Law	Section (H.B. 351 / S.B. 1913)	Under Amended Law	Statute
<p>DPS OMNBASE FTA PROGRAM: The Department of Public Safety may not continue to deny renewal of a person's driver's license under Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear) after receiving notice of perfection of an appeal, dismissal of the charge, posting of bond or other security, other suitable arrangement to pay the fine and costs, acquittal, error, or destruction in accordance with the record retention policy.</p>	<p>SECTIONS 28-29 / 25-26</p>	<p>DPS may not continue to deny renewal of a person's driver's license under Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear) after receiving notice that the charge on which the person failed to appear was dismissed with prejudice for lack of evidence (in addition to the existing reasons under current law).</p>	<p>Sec. 706.005, Trans. Code</p>
<p>The \$30 administrative fee for each complaint or citation reported to DPS under Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear) is not required if the person is acquitted of the charges for which the person failed to appear.</p>		<p>The \$30 administrative fee for each complaint or citation reported to DPS under Chapter 706 of the Transportation Code (Denial of Renewal of License for Failure to Appear) is not required if the charges on which the person failed to appear were dismissed with prejudice by motion of the appropriate prosecuting attorney for (1) lack of evidence, (2) if the failure to appear report was sent in error, or (3) if the respective case is closed or failure to appear report has been destroyed in accordance with the applicable records retention policy.</p>	<p>Sec. 706.006(a), Trans. Code</p>
<p>Section 706.006 of the Transportation Code (Payment of Administrative Fee) does not contemplate that a person may be indigent or presumptions regarding indigence.</p>		<p>For purposes of Section 706.006 of the Transportation Code, if the court makes a finding that the person is indigent, the person may not be required to pay the \$30 administrative fee. For purposes of Subsection 706.006(d), a person is presumed to be indigent if the person: (1) is required to attend school full time under Section 25.085, Education Code; (2) is a member of a household with a total annual income that is below 125 percent of the applicable income level established by the federal poverty guidelines; or (3) receives assistance from the financial assistance program established under Chapter 31 of the Human Resources Code, the medical assistance program under Chapter 32 of the Human Resources Code, the supplemental nutrition assistance program established under Chapter 33 of the Human Resources Code, the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. Section 1786, or the child health plan program under Chapter 62, Health and Safety Code.</p>	<p>Sec. 706.006(d), Trans. Code</p>