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Overview of Processing Cases

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INTRODUCTION

The municipal court clerk is responsible for creating and maintaining court records, processing cases, preparing for and coordinating trials, and assisting court participants. As cases progress through the judicial system, clerks are required to perform many technical and detailed procedures. To help clerks better understand these procedures, this study guide provides an overview of court processes. Generally, the procedures presented in this guide apply to adult defendants although some procedures apply to all defendants—adults and persons under the age of 17. For specific information about procedures for handling defendants under the age of 17, see the TMCEC Study Guide Level II, *Juveniles and Minors*.

PART 1
MUNICIPAL COURT JURISDICTION

Since municipal courts are created by statute, their jurisdiction is also established by statute. The Legislature provided for municipal court jurisdiction in Art. 4.14, C.C.P., and in Sec. 29.003, G.C. Both statutes give a municipal court criminal jurisdiction over offenses that have a fine-only penalty that includes sanctions but does not consist of confinement in jail or in prison. Municipal court jurisdiction is almost exclusively criminal, with limited exceptions.

Courts also have geographic jurisdiction. Municipal court geographic jurisdiction includes the city's territorial limits and, in some instances, its extraterritorial limits. A municipal court's geographic jurisdiction differs depending on whether it is a municipal court of non-record or a municipal court of record.

A municipal court's subject matter jurisdiction is over Class C misdemeanors and other fine-only offenses. Municipal courts have exclusive original subject matter jurisdiction over some of these offenses and municipal courts share or have concurrent subject matter jurisdiction with the justice courts on others.

The Legislature has also given municipal courts jurisdiction over forfeiture of appearance bonds filed in the municipal courts. A forfeiture is initiated when a defendant has a bond filed with the court to guarantee his or her appearance and fails to appear. Although case law holds that bond forfeitures are criminal cases, a bond forfeiture is unlike most cases in municipal courts because the courts must use the Rules of Civil Procedure.

A. Types of Criminal Jurisdiction

1. Original Jurisdiction

Original jurisdiction means that a court has authority to try a case and pass judgment on the law and facts as distinguished from appellate jurisdiction. Courts with appellate jurisdiction generally review the transcript of a case appealed to determine if any error has occurred. The exception to this rule is county courts (and occasionally district courts) that handle appeals from non-record municipal courts. These courts conduct a new trial as if the first trial in municipal court never occurred. This trial is a trial de novo.

2. Exclusive Original Jurisdiction

Exclusive jurisdiction means that a court's authority to try certain cases is not shared with another court. Original jurisdiction means that a court has authority to try a case and pass judgment on the law and facts as distinguished from appellate jurisdiction. Therefore, exclusive original jurisdiction means that the court in which a case is filed has sole jurisdiction (authority) and no other court has jurisdiction to hear and determine the case. Municipal courts have exclusive original jurisdiction over violations of city ordinances and the rules, resolutions, or orders of a joint airport board under Section 22.074, T.C., Sec. 29.003, G.C., and Art. 4.14., C.C.P. These cases, however, can be appealed.

There is one exception to municipal courts' exclusive original jurisdiction over city ordinance violations—city ordinances involving signs in the city's extraterritorial jurisdiction. A justice court has concurrent jurisdiction with a municipal court in criminal cases and arising in the municipality's extraterritorial jurisdiction and that arise under an ordinance of the municipality applicable to the extraterritorial jurisdiction under Section 216.902, L.G.C., regarding sign violations. Art. 4.11(c), C.C.P.

3. Appellate Jurisdiction

Municipal courts have appellate jurisdiction in one instance—over red light camera cases. The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to a judge by filing an appeal petition with the clerk of the municipal court. Sec. 707.016(a)(2), T.C.

4. Concurrent Jurisdiction

Municipal courts share some of its jurisdiction with other courts—justice of the peace courts, district courts, and county courts. This type of jurisdiction is called concurrent jurisdiction and means that cases may be filed in any of the courts that have authority over certain types of offenses.

a. Justice of the Peace Courts

The municipal court has concurrent jurisdiction with the justice of the peace court of a precinct in which the municipality is located. This applies to all criminal cases arising under state law within the territorial limits of the city and property owned by the city in the city's extraterritorial limits punishable by fine-only and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. These cases may be filed in either the justice court or municipal court. Art. 4.14, C.C.P., and Sec. 29.003, G.C.

b. District Courts or County Courts

The governing body of a municipality may, by ordinance, provide that the municipal court of record has civil jurisdiction within the territorial limits and the extraterritorial limits for the purpose of enforcing dangerous structures and junked vehicle ordinances. This jurisdiction is concurrent with a district court or a county court at law for the purpose of enforcing health and safety or nuisance abatement ordinances. Sec. 30.00005, G.C.

5. Drug Courts

On September 1, 2007, Chapter 469, H.S.C., was amended to allow municipalities to establish drug court programs. In the past, only counties could establish these types of courts. Drug courts are special courts that handle only offenses in which an element is the use or possession of alcohol; the use, possession, or sale of a controlled substance, controlled substance analogue, or marihuana; or an offense in which the use of alcohol or a controlled substance is suspected to have significantly contributed to the commission of the offense if it did not involve the carrying, possessing, or using a firearm or other dangerous weapon, the use of force against a person of another, or the death of or serious bodily injury to another. Municipal drug courts' jurisdiction would include offenses such as: public intoxication, possession of drug paraphernalia, driving under the influence of alcohol by a minor (DUI), purchase of alcohol by a minor, attempt to purchase of alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor. Other fine-only offenses that could be heard in drug courts are offenses in which alcohol is suspected to have significantly contributed in the commission of the offense.

B. Types of Geographic Jurisdiction

Both municipal courts of record and municipal courts of non-record have geographic jurisdiction that is within the territorial limits of the municipality and property owned by the municipality in the municipality's extraterritorial jurisdiction. Sec. 29.003, G.C., and Art. 4.14, C.C.P.

1. Municipal Courts of Record

Municipal courts of record have additional exclusive original jurisdiction in their territorial limits and their extraterritorial limits. Section 30.00005, G.C., provides that municipal courts of record have jurisdiction, as authorized by Sections 215.072, 217.042, 341.903, and 401.002, L.G.C., over city ordinance violations. These sections, in some instances, also require that the city be a home-rule city in order for the municipal court of record to have jurisdiction. A home-rule city is one that is governed by a charter, which gives it some measure of self-government. Generally, a city must have a population of at least 5,000 in order to become a home-rule city.

Sections 215.072, 217.042, 341.903, and 401.002, L.G.C., provide the regulations listed below.

Regulation	Cite
A municipality is permitted to inspect dairies, slaughterhouses, or slaughter pens inside or outside the municipal limits from which milk or meat is furnished to the residents of the municipality.	Section 215.072, L.G.C.
A home-rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits and may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.	Section 217.042, L.G.C.
A home-rule municipality may police the following areas owned by and located outside the municipality: (1) parks and grounds; (2) lakes and land contiguous to and used in connection with a	Section 341.903, L.G.C.

lake; and (3) speedways and boulevards.	
A home-rule municipality may prohibit the pollution or degradation of the city's water supply and provide protection of and police watersheds. The statute further provides that the authority granted by this statute may be exercised inside the city boundaries and in the extraterritorial jurisdiction only if the city is required to meet certain other state or federal requirements. The authority granted under this statute regarding the protection of recharge areas may be exercised outside the city boundaries within the extraterritorial limits provided that the city has a population greater than 750,000 and the groundwater constitutes more than 75 percent of the city's water supply.	Section 401.002, L.G.C.

2. Municipal Courts of Non-Record

There is no statute that gives municipal courts of non-record jurisdiction over city ordinance violations that occur anywhere in the municipality's extraterritorial jurisdiction. For non-record municipal courts, statutes only provide authority for jurisdiction on property owned by the municipality in the municipality's exterritorial jurisdiction.

There is, however, an Attorney General Opinion that addresses the issue of jurisdiction of nuisance violations in a municipality's extraterritorial jurisdiction when the municipal court is a court of non-record. The Opinion stated that when a municipality is authorized to adopt a nuisance ordinance applicable to conduct occurring outside city limits and where the municipality has adopted such an ordinance, a municipal court has implied jurisdiction over cases arising from the violations of the ordinance that occur outside city limits. Tex. Atty. Gen. Op. JC-0025, March (1999).

C. Subject Matter Jurisdiction

Subject matter jurisdiction refers to the types of cases over which a court has jurisdiction. Municipal courts have subject matter jurisdiction over criminal fine-only offenses. Art. 4.14, C.C.P., and Sec. 29.003, G.C. A fine-only offense is defined as punishable by fine and any sanctions authorized by statute not consisting of confinement in jail or imprisonment. The fact that a conviction in a municipal court has 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, does not affect the original jurisdiction of the municipal court. Art. 4.14, C.C.P., and Sec. 29.003, G.C.

Sometimes a fine-only misdemeanor offense is generically referred to as a Class C misdemeanor. The Penal Code defines a Class C misdemeanor offense as a misdemeanor punishable by a fine not to exceed $500. Sec. 12.23, P.C. Section 12.41, P.C., defines a Class C misdemeanor outside of the Penal Code as any offense punishable by a fine only. Hence, any fine-only offense is considered a Class C misdemeanor regardless of the amount of fine. Municipal courts have jurisdiction over Class C misdemeanors.

For a list of more than 1,300 fine-only offenses defined by state law, see the TMCEC "Green Book" (Class C and Fine-Only Misdemeanors).

1. Violations of Ordinances, Resolutions, Rules, and Orders

City councils may establish penalties for city ordinance violations, and joint airport boards may establish penalties for violations of a resolution, rule, or order. The types of penalties that a city or joint airport board may create are regulated by statute. The penalties must conform to the definition of fine-only offenses that a municipality has been given jurisdiction over by Article 4.14, C.C.P., and Section 29.003, G.C. These two statutes have similar provisions, except that Section 29.003 also provides for jurisdiction over resolutions, rules, and orders adopted by the joint airport board. City councils and joint airport boards may establish the following penalties:

- a fine of up to $2,000 in all cases arising under the ordinances, resolutions, rules, or orders that govern:
  - –fire safety,
  - –zoning,
  - –public health, and
  - –sanitation (including dumping of refuse); and
- a fine of up to $500 for all other city ordinance violations or violations of a resolution, rule, or order of a joint board.

2. Violations of Statutes

Municipal courts have concurrent jurisdiction over statutory fine-only offenses as defined by Section 29.003, G.C. and Article 4.14, C.C.P., within the territorial limits of the city and property owned by the city located in the city's extraterritorial jurisdiction with a justice of the peace court of a precinct in which the municipality or property is located.

D. Jurisdiction over Juveniles and Minors

Municipal courts have jurisdiction over children under the age of 17 charged with Class C misdemeanor offenses. The authority over children includes jurisdiction over city ordinance offenses and traffic and non-traffic state law offenses. Sec. 8.07, P.C. The court may waive its jurisdiction over juveniles charged with state law non-traffic and non-tobacco violations on the first and second offense and it must be waived after there are two previous convictions of state law violations unless the city has a juvenile case manager under Article 45.056, C.C.P. Municipal courts must also waive jurisdiction over sexting offenses, and subsequent offenses committed for a child who has previously had a case dismissed under Section 8.08, P.C., for a lack of capacity.

True or False

Q. 1. Municipal court jurisdiction is established by statute. ____

Q. 2. Original jurisdiction means that a court has authority to adjudicate a case. ____

Q. 3. Municipal courts have exclusive original jurisdiction over all offenses filed in their court. ____

Q. 4. Municipal courts have concurrent jurisdiction with justice of the peace courts over state law violations that occur in the geographic jurisdiction of the city. ____

Q. 5. Municipal courts of record automatically have concurrent jurisdiction with district and county courts for the purpose of enforcing junked vehicle ordinances. ____

Q. 6. Municipal courts have geographic jurisdiction over fine-only offenses that occur within the territorial limits of the county. ____

Q. 7. Municipal courts have jurisdiction over fine-only offenses that occur on city-owned property in the city's extraterritorial jurisdiction. ____

Q. 8. Municipal courts of record in home-rule cities have some jurisdiction over city ordinance offenses which abate nuisances that occur within any part of the extraterritorial jurisdiction of the city. ____

Q. 9. Municipal courts do not have jurisdiction over offenses that include as part of the sanctions suspension of the driver's license. ____

Q. 10. State statutes specify maximum amounts of penalties that cities may establish for city ordinance violations. ____

Q. 11. The maximum amount of fine jurisdiction of municipal courts is $500. ____

Q. 12. Municipal courts may waive their jurisdiction over persons under the age of 17 for all Class C misdemeanor offenses. ____

PART 2
CHARGING INSTRUMENTS

A. Purpose

1. Notifies Defendant of Charge

One of the fundamental rights afforded defendants is notice of the specific charges filed against them. Art. 1.05, C.C.P. In the case of *Kindley v. State*, 879 S.W.2d 261 (Tex.App.—Austin 1982, pet. ref.), the court said that a charging instrument must notify a person of the offense so that he or she may prepare a defense. Defendants are entitled to notice of the charges filed against them not later than the day before any proceeding of the prosecution of the case. Defendants may, however, waive the right to notice. Art. 45.018, C.C.P.

2. Initiates Proceedings

When a court accepts a complaint, the filing of the complaint initiates proceedings in the court. As a general rule, a sworn complaint must be filed with the municipal court to vest jurisdiction of the court. *Ex parte Greenwood*, 307 S.W.2d 586 (Tex. Crim. App. 1957). The exception to this rule is when a citation is filed with the court and the defendant has been given a legible duplicate copy. The citation serves as the complaint for the defendant to plea to. If the defendant pleads not guilty, a sworn complaint must be filed unless the defense and prosecution agree in writing to go to trial on the citation and file the agreement with the court.

B. Complaint

The complaint is a sworn allegation charging an accused with the commission of an offense. Art. 45.018, C.C.P. The complaint must show that the accused committed an offense against the laws

of this state and must assert that the affiant has good reason to believe and does believe that the accused committed an offense against the law of this state. Art. 45.019(a)(4), C.C.P. The affiant does not have to have personal knowledge of the facts.

1. Requirements

a. Beginning and Ending

All municipal court complaints, including complaints for city ordinance violations, must begin with the words, "In the name and by the authority of the State of Texas." The complaint must also end with the words, "Against the peace and dignity of the State." If the offense is an ordinance, it may also conclude with the words "Contrary to the said ordinance." Art. 45.019, C.C.P.

b. Elements of Offense

All the elements necessary to constitute an offense must be alleged in the complaint. *Villareal v. State*, 729 S.W.2d 348 (Tex.App.—El Paso 1987, no pet.). Therefore, it is usually, but not always, sufficient to list in the complaint all the elements required by statute to constitute a crime. In addition, if there is an exception in the statute which the State must negate, the complaint must also negate the exception. *Bird v. State*, 927 S.W.2d 136 (Tex. App.—Houston [1st Dist.] 1996, no pet.).

A charging instrument must plead with sufficient particularity to allow the defendant to plead the judgment as a bar to a second prosecution for the same offense. *Kirk v. State*, 643 S.W.2d 190 (Tex. App.—Austin 1982, pet. ref.).

c. Location

The particular location within the court's jurisdiction at which a violation was committed need not be alleged if the violation is one that could occur at any place within the municipality's jurisdiction. *Bedwell v. State*, 155 S.W.2d 930 (Tex. 1941). For example, the offense of assault by threat does not require that it only be charged if it occurs in a certain place such as a public place. Thus, the specific location of the offense does not need to be stated in the complaint. Speeding is an example of an offense in which the specific location needs to be stated in the complaint. The complaint should state that the defendant violated a certain speed limit on a particular street. However, in *State v. Lang*, 916 S.W.2d 63 (Tex. App.—Houston [1st Dist.]), the court held that if a defendant had received a ticket that specified the location of the offense, it was not error to deny a motion to set aside the complaint for failure to state the location.

All complaints filed in municipal courts must allege that the violation occurred within the territorial limits of the city. Art. 45.019(c), C.C.P.

d. Culpable Mental States

The complaint must also allege a culpable mental state. The states of mind that a complaint could allege are found in Section 6.02, P.C., according to relative degrees, from highest to lowest, as follows:

- intentional;

- knowing;
- reckless; and
- criminal negligence.

A person commits an offense only if he or she voluntarily engages in conduct, including an act, an omission, or possession. Sec. 6.01(a), P.C. A person does not commit an offense unless he or she engages in conduct as the definition of an offense requires with a culpable mental state. If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. Sec. 6.02(b), P.C. If a statute (or ordinance) does not say which culpable mental state is required, Section 6.02(c), P.C., states it must be one of the first three and proof of one establishes criminal responsibility. A culpable mental state is required for city ordinance offenses punishable by a fine exceeding $500. Sec. 6.02(f), P.C.

The same rules that apply to complaints filed for state law violations apply when the offense is a city ordinance violation. When charging a city ordinance offense, the prosecution may not create new culpable mental states. *Honeycutt v. State*, 627 S.W.2d 417 (Tex. Crim. App. 1982).

Notwithstanding the requirement of a culpable mental state, there are some offenses, such as most traffic offenses, that do not require a culpable mental state. Offenses charged under the Transportation Code do not require pleading a culpable mental state in the complaint. *Zulauf v. State*, 591 S.W.2d 869 (Tex. Crim. App. 1979).

e. Abbreviations

A well-defined and well-understood abbreviation can be used in a charging instrument without rendering it defective. *Andrade v. State*, 622 S.W.2d 446 (Tex. App.—Corpus Christi 1983, pet. ref'd.) and *Barron v. State*, 760 S.W.2d 763 (Tex. App.—Beaumont 1988, no pet.).

f. Grammatical and Spelling Errors

Generally, mere errors in grammar do not make an otherwise valid complaint invalid. *Butler v. State*, 551 S.W.2d 412 (Tex. Crim. App. 1977).

g. Property

- Ownership - In crimes such as criminal mischief, trespass, or theft, the complaint must indicate who owns the property. *Talamantez v. State*, 59 S.W.2d 1084 (Tex. Crim. App. 1933). If the owner is an entity such as a trust, corporation, or partnership, the better practice is to allege a natural person who is an agent or employee of the entity. *Eaton v. State*, 533 S.W.2d 33 (Tex. Crim. App. 1976). Typically, this may be a store manager or security person employed by the entity.
- Identification - Article 21.09, C.C.P., provides that personal property shall be identified, if known, by the name, kind, number, and ownership of the property. If the property is not described at all, the complaint is defective. *Willis v. State*, 544 S.W.2d 151 (Tex. Crim. App. 1976). Failure to fully describe property does not give adequate notice to the defendant, making the complaint defective. *Rhodes v. State*, 560 S.W.2d 665 (Tex. Crim. App. 1978).

- Value of property - The value of property must be pled in the complaint with enough sufficiency to show that the amount falls within the jurisdiction of the court. *McKnight v. State*, 387 S.W.2d 662 (Tex. Crim. App. 1965).

h. Name of Victim

The victim of an alleged crime must be named or the complaint is defective. *Ex Parte Lewis*, 544 S.W.2d 430 (Tex. Crim. App. 1976). A name need only consist of a surname and one or more initials of names other than a surname. Art. 21.07, C.C.P. If the name of the victim is incorrect in the complaint, the evidence is insufficient unless the names sound the same. This is the doctrine of *idem sonans*. Two names are *idem sonans* if they can be sounded the same despite a variance in spelling. *Grant v. State*, 568 S.W.2d 353 (Tex. Crim. App. 1978) and *McDonald v. State,* 699 S.W. 2d 325 (Tex.App.—San Antonio 1985, no pet.). There are instances where certain victims, such as victims of trafficking of persons, are entitled to designate pseudonyms instead of their own names in court documents. These are unique situations wherein the prosecutor would step in for the preparation of that complaint.

i. Manner and Means

"Manner" is the method of doing something. "Means" is how the end is achieved. For example, in assault cases, the complaint must allege striking the victim (the manner) with his or her hands (the means). If the complaint does not allege the manner and means, it is defective because the defendant does not have proper notice of how the offense was committed. *Haecker v. State,* 571 S.W.2d 920 (Tex. Crim. App. 1978) and *State v. Jackson*, 571 S.W.2d (Tex. Crim. App. 1978).

j. Date of Offense

The complaint must state the date that the offense was committed as definitely as possible. Art 45.019(a)(5), C.C.P. Article 12.02, C.C.P., provides that a misdemeanor complaint must be presented (filed) within two years from the date of the commission of the offense, and not afterward. Hence, municipal court complaints must state the date of the offense and the date must show that the offense was committed within two years of the date of the complaint. The date of the offense is an element of the complaint.

k. Sworn and Signed

- Affiant - The person swearing to the complaint is the affiant. The affiant makes and subscribes an affidavit, which is a sworn statement. Subscribe means to sign a document. When an affiant swears to the complaint, he or she must do so in front of the person administering the oath. Any credible person acquainted with the facts of the alleged offense either by personal knowledge or hearsay may be an affiant. *Cisco v. State*, 411 S.W.2d 547 (Tex. Crim. App. 1968). An example of an affiant with personal knowledge is a peace officer who personally observed a person speeding and swears to the complaint. An example of a hearsay affiant is a person who has not observed the offense but reviews an arrest report and then swears to the complaint. This person has good reason to believe, based upon information provided by the officer who personally observed the offense, that the offense was committed. In determining the validity of a complaint, a court does not need to ask about the nature

of knowledge on which an affiant bases his or her statements. *Naff v. State*, 946 S.W.2d 529 (Tex. App.—Fort Worth 1997). The complaint must say that the affiant "does believe" the allegations in the complaint, not just merely that the affiant "has reason to believe." *Ex Parte Luehr*, 266 S.W.2d 375 (Tex. Crim. App. 1954) and *Barnes v. State*, 363 S.W.2d 471 (Tex. Crim. App. 1963).

- Oath - Statutes do not provide specific wording for the oath administered to an affiant swearing to a complaint. The following is a sample oath a court may want to consider using: "Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?" A judge, clerk, deputy clerk, city secretary, city attorney, or deputy city attorney may administer the oath to an affiant swearing to a complaint. Art. 45.019, C.C.P.
- Signed - A complaint must be signed. Art. 45.019, C.C.P. A complaint not signed by the affiant is defective. *State v. Bender*, 353 S.W.2d 39 (Tex. Crim. App. 1962). A signature on the complaint may be rubber-stamped. *Parsons v. State*, 429 S.W.2d 476 (Tex. Crim. App. 1968); *Murray v. State*, 438 S.W.2d 916 (Tex. Crim. App. 1969). A complaint may also contain an electronic signature. Art. 45.021, C.C.P. The name of the affiant need not appear in the body of the complaint. *Parsons v. State*, 429 S.W.2d 476 (Tex. Crim. App. 1968).
- Jurat - The certificate of the person before whom the complaint is being sworn is called a jurat. It is the clause written at the foot of an affidavit, such as a complaint, stating when and before whom the affidavit was sworn. Article 45.019, C.C.P., provides that a complaint in municipal court may be sworn to before: (1) the municipal judge; (2) the clerk of the court or a deputy clerk; (3) the city secretary; or (4) the city attorney or a deputy city attorney. If a complaint does not contain jurat, it is insufficient to constitute a basis for a valid conviction. If the jurat shows that the affidavit was sworn before someone who had no authority to administer the oath, the complaint is invalid. If the jurat is not signed, the complaint is invalid. *State v. Pierce*, 816 S.W.2d 824 (Tex. App.—Austin 1991, no pet.) An undated jurat renders a complaint defective. *Shackelford v. State*, 516 S.W.2d 180 (Tex. Crim. App. 1974) Where a jurat stated "Sworn to before or about" instead of a specific date, the complaint is defective. *Brown v. State*, 294 S.W.2d 722 (Tex. Crim. App. 1956).

I. Municipal Court Seal

Municipal court complaints are required to have a court seal. Article 45.012, C.C.P., requires municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. This statute is a general statute that applies only to non-record municipal courts. Municipal courts of record have a specific statute, Section 30.000125, G.C., regarding their seal. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012 does not provide for the wording of the seal for non-record courts, but Section 30.000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: "Municipal Court of/in_____, Texas." Non-record municipal courts may want to consider using the same or similar wording on their seal.

Unfortunately, neither of the two statutes provides for the appearance of the seal. Before 1999, Article 45.02, C.C.P., required the municipal court seal for both record and non-record municipal courts to contain a five-point star, but that statute was repealed. Although the courts now have no guidance on the appearance of the seal, most courts have retained the appearance that was once required by Article 45.02.

2. Defects in the Complaint

If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date of the trial on the merits of the case, the defendant waives and forfeits the right to object to the defect, error, or irregularity. The court may require an objection to the charging instrument be made at an earlier time. Art. 45.019(f), C.C.P.

3. Motions to Quash Complaint

A motion to set aside the complaint, commonly called a motion to quash, is a defendant's challenge to a complaint and a request of the court to enter an order setting aside the complaint because of defects in the complaint or an exception to the complaint. A motion to set aside may be in writing or may be oral. Art. 45.021, C.C.P.

If the court has set a pre-trial hearing pursuant to Article 28.01, C.C.P., the motion to set aside must be filed seven days before the date of the hearing or it is waived. If the court grants the motion to set aside the complaint, the court should enter an order setting aside the complaint. The State can refile the charge by a new complaint, assuming that the statute of limitations has not run out.

A county court conducting a trial de novo on an appeal from a non-record municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the municipal court. Art. 44.181(a), C.C.P. The attorney representing the State, however, may move to amend a defective complaint before the trial de novo begins. Art. 44.181(b), C.C.P.

4. Amendment to Complaint

Complaints cannot be amended because they are sworn statements and, if amended, the complaint would no longer be the sworn statement of the affiant. *Givens v. State*, 235 S.W.2d 899 (Tex. Crim. App. 1951). Even if a defendant agrees to an amendment, the complaint still cannot be amended. *Franklyn v. State*, 762 S.W.2d 228 (Tex. App.—El Paso 1988, no pet.). If a complaint, however, is amended and the affiant "re-swears" to the amended complaint, the complaint is valid. *Cannon v. State*, 925 S.W.2d 126 (Tex. App.—Amarillo 1996, pet. ref'd). Only the prosecutor can make a decision about how to handle any problems about a complaint.

Article 44.181, C.C.P., provides that a court conducting a trial de novo based on an appeal from a justice or municipal court may not dismiss the case because of a defect in the complaint. Furthermore, Article 44.181 provides that an attorney representing the State may move to amend a defective complaint before the trial de novo begins. It appears, however, that Article 44.181, C.C.P., applies only to complaints that are in the county court-at-law on appeal from non-record municipal courts and not to municipal court complaints before appeal.

5. Enhancements

Enhancements are allegations of prior convictions, which, if supported by evidence, are used to increase the punishment in the event of a conviction. Only a prosecutor can enhance a charge. Municipal court clerks must file documents without making changes to the documents. Hence, if a citation or complaint is not enhanced, the clerk has no authority to enhance the charge even if he or she knows that there are prior convictions.

If a complaint does not include the allegations of a prior conviction, the court cannot consider the higher punishment. The case for which the defendant is on trial is known as the "primary offense." The enhancements should be pled in the complaint immediately after the paragraph that charges the primary offense. In felony and Class A and B misdemeanor prosecutions, enhancement allegations are not read to the jury during the guilt stage of the trial. If the defendant is convicted, then there is an arraignment of the defendant as to the prior convictions and proof may be admitted. Art. 36.01, C.C.P. However, under Article 37.07, C.C.P., there are no provisions for a bifurcated (two-stage) trial in municipal courts. There is no case law that tells municipal courts how to handle enhancements in a single-stage trial in municipal courts.

There are several statutes that contain enhancement provisions to offenses. Some are:

- Section 106.02, A.B.C., Purchase of Alcohol by a Minor;
- Section 106.025, A.B.C., Attempt to Purchase Alcohol by a Minor;
- Section 106.04, A.B.C., Consumption of Alcohol by a Minor;
- Section 106.041, A.B.C., Driving Under the Influence of Alcohol by a Minor;
- Section 105.05, A.B.C., Possession of Alcohol by a Minor;
- Section 106.07, A.B.C., Misrepresentation of Age by a Minor;
- Section 521.457, T.C., Driving While License Invalid;
- Section 601.191, T.C., Failure to Maintain Financial Responsibility;
- Section 42.01, P.C. Disorderly Conduct; and
- Section 49.02, P.C., Public Intoxication.

In some instances, the enhancement changes the offense from a Class C misdemeanor to a higher class offense, which takes the case out of municipal court jurisdiction.

C. Citation

A written notice to appear issued by a peace officer is commonly called a "citation" or "ticket".

1. Authority of Peace Officer to Issue

Section 543.003, T.C., authorizes peace officers to issue written notices to appear in lieu of arrest for Subtitle C, Title 7, Transportation Code offenses. Article 14.06(b), C.C.P., provides authority for a peace officer to issue a citation for a Class C misdemeanor offense, except for the offense of public intoxication.

Since peace officers may not issue a citation for public intoxication, (except to children upon release to parent guardian, custodian, or other responsible adult) a sworn complaint must be filed

to initiate the proceedings for that offense. Also, any time a person is arrested in lieu of the citation being issued, the charges filed must be initiated by sworn complaint.

Article 14.06(c), C.C.P., provides authority for peace officers to issue citations for the following Class A and B misdemeanors:

- Possession of four ounces or less of marihuana. Sec. 481.121(b)(1)-(2), H.S.C.;
- Criminal mischief, where the value of damage done was $100 or more, but less than $750. (Sec. 28.03(b)(2), P.C.);
- Graffiti, where the amount of pecuniary loss is $100 or more, but less than $2,500 (Sec. 28.08(b)(2)-(3), P.C.);
- Theft, where the value of the property stolen was $100 or more, but less than $750. (Sec. 31.03(e)(2)(A), P.C.);
- Theft of service, where the value of the service stolen was $100 or more, but less than $750. (Sec. 31.04(e)(2), P.C.);
- Possession of contraband in a correctional facility, if the offense was punishable as a Class B misdemeanor. Sec. 38.114, P.C.; or
- Driving with an invalid license. Sec. 521.457, T.C.

2. When It or Citation Serves as the Complaint

Article 27.14(d), C.C.P., provides that a written notice to appear for fine-only misdemeanor offenses may serve as a complaint for defendants to plead guilty, not guilty, or nolo contendere. A legible duplicate copy must have been given to the defendant. Art. 27.14(d), C.C.P. Tex. Atty. Gen. Op. JM-869 (1988) and JM-876 (1988). A peace officer may obtain the signature of a person arrested on an electronic device capable of creating a copy of the signed notice. The officer retains the original paper or electronic copy of the notice and delivers a copy to the person arrested. Sec. 543.005, T.C.

3. When Defendant Pleads Not Guilty

When a defendant pleads not guilty after a written notice to appear has been filed with the court, generally the court is required to file a complaint that complies with the requirements of Chapter 45, C.C.P. The sworn complaint serves as an original complaint. If a defendant wants the prosecution to proceed on the written notice to appear, the defendant may waive the filing of a sworn complaint. If the prosecutor agrees with the defendant's waiving the filing of the sworn complaint, the agreement must be in writing with both the prosecutor and the defendant signing the agreement. Then the agreement must be filed with the court. Art. 27.14(d), C.C.P.

If an agreement is not signed and filed with the court, a sworn complaint must be filed. Any person acquainted with the facts may swear to the complaint. Since this complaint now serves as the original complaint, the clerk enters the date this complaint was filed with the court on the same docket as the written notice to appear that initiated the case. Both the written notice to appear and the sworn complaint have the same docket number. If for some reason the prosecutor wants to file this as a new case, then the clerk would enter the sworn complaint on a new docket.

4. When Defendant Fails to Appear

When a defendant fails to appear after having been issued a citation, the court must file a complaint. Art. 27.14, C.C.P.

True or False

Q. 13. Defendants in municipal courts are entitled to 10 days notice of a complaint filed against them. ____

Q. 14. The filing of a complaint in municipal courts initiates the proceedings in municipal courts. ____

Q. 15. Only peace officers, not citizens, may be affiants for complaints filed in municipal courts. ____

Q. 16. All complaints must begin with the words, "In the name and by the authority of the State of Texas." ____

Q. 17. State statutes require that all complaints end with the words, "Against the peace and dignity of the State," including complaints for city ordinance offenses. ____

Q. 18. Failure to allege all the elements of an offense in the complaint makes the complaint defective. ____

Q. 19. All complaints must allege a specific location in the complaint. ____

Q. 20. A complaint must allege that the offense occurred within the city. ____

Q. 21. City ordinance offenses punishable by a fine of more than $500 are not required to allege a culpable mental state. ____

Q. 22. A culpable mental state must be alleged in a complaint for all traffic offenses. ____

Q. 23. If an abbreviation is well-defined and well-understood, it can be used in the complaint without rendering the complaint defective. ____

Q. 24. Grammatical and spelling errors always make a complaint defective. ____

Q. 25. The owner of stolen property does not have to be identified in the complaint. ____

Q. 26. The complaint charging the offense of theft must describe the property stolen. ____

Q. 27. It is not necessary to allege the specific value of stolen property in a complaint. ____

Q. 28. The prosecutor is not allowed to allege the name of a victim in a complaint because the names of all victims are confidential. ____

Q. 29. The doctrine of *idem sonans* means that a name in a complaint may be amended. ____

Q. 30. The manner of committing an assault must be alleged in a complaint. ____

Q. 31. A complaint must allege the date of the offense on or about as definitely as the affiant can provide. ____

Q. 32. A complaint must be filed within two years of the commission of the offense. ____

Q. 33. A person swearing to a complaint must do so in front of the person administering the oath. ____

Q. 34. An affiant is required to have personal knowledge of an offense before swearing to a complaint. ____

Q. 35. Complaints must state that an affiant has reason to believe and does believe. ____

Q. 36. A jurat is the signature of the person swearing to a complaint. ____

Q. 37. If the person administering the oath to an affiant does not have authority to do so, the complaint is still valid. ____

Q. 38. If a jurat does not state a specific date, the complaint is defective. ____

Q. 39. Municipal court complaints are required to have a court seal. ____

Q. 40. A motion to quash a complaint means that the defendant is asking the court to set aside the complaint because of some defect in the complaint. ____

Q. 41. When a court grants a motion to set aside a complaint, the prosecutor cannot file a new complaint in the case. ____

Q. 42. If a complaint is amended, the affiant can "re-swear" to the amended complaint so that the complaint will not be defective. ____

Q. 43. Court clerks may enhance charges filed by citation if there are prior convictions. ____

Q. 44. A complaint must be enhanced to increase the second or subsequent punishment. ____

Q. 45. All Class C misdemeanor charges can be filed by a citation. ____

Q. 46. A citation may serve as a complaint only when the defendant has been given a legible duplicate copy. ____

Q. 47. The citation may never serve as a complaint at trial. ____

Q. 48. A sworn complaint based on probable cause or a probable cause affidavit must be on file with the court before a warrant may be issued. ____

PART 3
DISMISSALS

A. General Authority to Dismiss

Who has the power and the authority to dismiss a criminal case? The common law rule is that prosecutors have the power to dismiss, absent specific statutory authority to the contrary. Texas law has generally followed that rule, but Texas law includes judges in the dismissal process. Arts. 32.02 and 45.201, C.C.P.

Article 32.02, C.C.P., the general statute, requires the prosecutor to file a written statement of the reasons for dismissal. The statement must be filed with the other papers in the case and the reasons incorporated into the judgment of dismissal. Both Article 32.02 and Article 45.201, C.C.P., require judicial consent or approval. The general rule is that a judge may not dismiss a case except by consenting to and approving a prosecutor's motion and the grounds presented, except in certain situations. *Flores v. State*, 487 S.W.2d (Tex. Crim. App. 1972). Unless there is constitutional or statutory authority vesting a trial court with dismissal power, criminal prosecutions may be dismissed only on the motion of the prosecuting attorney. *State v. Morales*, 804 S.W.2d 331 (Tex. App.—Austin 1991, no pet.). Also, prosecutors may not dismiss without the court's consent. *State v. Johnson*, 821 S.W.2d 609 (Tex. Crim. App. 1991).

B. Duty to Dismiss

Some statutes create a mandatory judicial duty to dismiss criminal charges, which creates an exception to the usual rule about dismissals. In those cases, it is believed that judges are allowed to dismiss with or without a prosecutor's motion.

The following list comprises examples of laws that impose the duty of dismissing on the judge.

- When a defendant completes a driving safety course for certain traffic violations and the defendant presents the court with a completion certificate and the other required evidence, the judge must dismiss the traffic charge. Art. 45.0511, C.C.P.
- When a person presents satisfactory evidence of compliance with conditions of deferred disposition, the judge must dismiss the complaint, note the dismissal in the docket, and record no final conviction. Art. 45.051, C.C.P.
- When a person presents satisfactory evidence of completion of a teen court program, the court must dismiss the charge. Art. 45.052, C.C.P.
- When evidence is presented that a person was committed for and completed court-ordered treatment for chemical dependency, the court must dismiss the charge, note the dismissal in the docket, and record no final conviction. Art. 45.053, C.C.P.

C. Discretion to Dismiss

For examples of laws that grant the court discretion to dismiss a charge but do not create a legal duty to dismiss, see the compliance dismissal chart in the appendix of this guide, which contains examples of both discretionary and mandatory dismissals.

D. Defense to Prosecution

In some instances, statutes create a defense to the prosecution for certain actions. In these cases, the court must acquit at the trial, acquire a motion to dismiss from the prosecutor, or dismiss under statutory authority. The following are examples of defenses to the prosecution:

- When a defendant is charged with the offense of failure to display driver's license, the defendant is presumed to have operated the vehicle without a driver's license unless the person produces evidence of a valid driver's license for the type of vehicle the person was driving at the time of the offense. If the defendant can produce such proof, it is a defense to the prosecution. The court, however, may charge a fee not to exceed $10 upon dismissal. Sec. 521.025(f), T.C.
- When a defendant is charged with the offense of failure to maintain financial responsibility, the defendant is presumed to have operated the vehicle without financial responsibility unless the person produces evidence of financial responsibility that was valid at the time the citation was issued. If the defendant can produce such proof, it is a defense to the prosecution. After the court verifies a document produced as evidence of valid financial responsibility that was valid at the time the citation was issued, the court must dismiss the case. Sec. 601.193, T.C.

True or False

Q. 49. Texas law includes both judges and prosecutors in the dismissal process. ____

Q. 50. If a prosecutor decides to dismiss a case, the prosecutor does not have to provide the court with a reason for dismissing the case. ____

Q. 51. Because some statutes create a mandatory judicial duty to dismiss cases in certain instances, judges are allowed to dismiss without a prosecutor motion. ____

Q. 52. Municipal judges do not have any discretionary authority to dismiss cases. ____

PART 4
DOCKET

A docket is a formal record with brief entries of all the important acts in each case. The judge must keep a docket and enter proceedings in each trial. Art. 45.017, C.C.P.

A. Format

The docket may be a manual docket—bound book or loose-leaf—or it may be kept electronically. Article 45.017(b), C.C.P., provides that the information in the docket may be processed and stored by the use of electronic data processing equipment at the discretion of the judge.

Article 45.017, C.C.P., requires that the following information be entered in the docket:

- the style and file number of each criminal action;
- the nature of the offense charged;
- the plea offered by the defendant and the date the plea was entered;
- the date the warrant, if any, was issued and the return made thereon;
- the date the examination or trial was held, and if a trial was held, whether it was by a jury or by the justice or judge;
- the verdict of the jury, if any, and the date of the verdict;
- the judgment and sentence of the court, and the date each was given;
- the motion for new trial, if any, and the decision thereon; and
- whether an appeal was taken and the date of that action.

B. Judgment

1. Entered

A judgment is the official decision of a court showing the conviction, acquittal, or dismissal of charges against the defendant. Art. 42.01, C.C.P. It is written and must be signed by the trial judge and entered on the docket. Arts. 42.01 and 45.017(a)(7), C.C.P. All judgments and sentences must be rendered in open court. Art. 45.041(d), C.C.P.

Article 42.01, C.C.P., lists information that is required in judgments, while Article 45.041 deals specifically with municipal and justice court judgments in which there is a finding of guilty.

2. Electronically Recorded Judgment

An electronically recorded judgment has the same force and effect as a written signed judgment. Art. 45.012, C.C.P. Article 45.021, C.C.P., provides that a statutory requirement for a document to contain a signature of any person, including a judge, clerk of the court, or defendant is satisfied if the document contains the signature as captured on an electronic device. This means that judges may sign documents with a digital signature and that it has the same effect as the written signature. Thus, an electronically recorded judgment (must still be signed either manually or electronically) is the same as a written judgment.

True or False

Q. 53. A docket is a formal record of each case in the court. ____

Q. 54. If a court maintains and stores a docket electronically, the court must also maintain a paper copy of the docket. ____

Q. 55. A judgment is the official decision of a judge showing the conviction, acquittal, or dismissal of charges against a defendant. ____

Q. 56. A judgment may be signed electronically and then entered in the docket. ____

PART 5
NON-CONTESTED PROCEEDINGS

Defendants who do not want to contest the charges against them by going to trial can waive their right to a jury trial and plead either guilty or nolo contendere (no contest) and pay a fine. In some instances, the court may also require the defendant to comply with other sanctions. Adult defendants can plead guilty or nolo contendere without appearing in open court. They can do this by mailing or delivering to the court a plea and waiver of jury trial or payment of the fine and costs. Persons under the age of 17, commonly called juveniles, must appear in open court with a parent or guardian.

Defendants who do not contest charges against them, may still present evidence that may mitigate the fine. Article 45.023, C.C.P., says that proof as to the offense may be heard upon a plea of guilty or nolo contendere and the punishment assessed by the court.

A. Pleas of Guilty or Nolo Contendere

A plea of guilty is a formal admission of guilt. Defendants are confessing that they committed the crime charged. A plea of nolo contendere means that defendants are not contesting the charges filed against them. Literally, nolo contendere is a Latin phrase meaning, "I will not contest it." Although this plea has a similar legal effect as pleading guilty, the defendant does not admit or deny the charges, but a fine and court costs are assessed and imposed. The principal difference between a plea of guilty and a plea of nolo contendere is that the nolo contendere plea may not be used against the defendant in a civil action based upon the same acts. Both pleas of guilty and nolo contendere must be made intelligently and voluntarily.

Defendants who plead guilty or nolo contendere must also waive their right to a jury trial. The waiver must be in writing. Art. 45.025, C.C.P. When a defendant waives a trial by jury, the judge hears and determines the cause without a jury. If a defendant mails or delivers payment of a fine

to the court—usually the amount from the suggested minimum fine schedule provided to them by the peace officer—the payment constitutes a plea of nolo contendere and a written waiver of jury trial. Art. 27.14(c), C.C.P.

Clerks may not ask a defendant for a plea. Asking for a plea is a judicial duty. Instead, clerks should ask, "How do you want to handle your case?" Another way to get information from a defendant is to state, "These are your options from which you can decide what you want to do." Clerks should always remember that they can only process pleas.

B. Appearances

Appearance is a formal proceeding by which a defendant submits himself or herself to the authority and jurisdiction of the court. In municipal court, defendants may hire an attorney to represent them or they may represent themselves. Art. 1, Section 10, Tex. Const. and Art. 1.05, C.C.P. Family members or friends cannot make an appearance for a defendant, unless the family member of friend is authorized to practice law. Only persons authorized to practice law can appear on behalf of a defendant since this is the practice of law. Sec. 81.102, G.C.

1. Open Court

Adult defendants may appear in person or by counsel in open court to plead guilty or nolo contendere. Art. 27.14(a), C.C.P. In the county and district courts, this procedure is called arraignment. Article 26.02, C.C.P., defines arraignment as a proceeding in which a defendant appears in open court and a judge identifies the defendant, explains the charge, and requests a plea. At arraignment, if the defendant pleads guilty or nolo contendere, the judge can listen to mitigating circumstances before setting the fine.

Even after a defendant pleads not guilty at an arraignment and is scheduled for a jury trial, the defendant may change his or her mind and plead guilty or nolo contendere before the trial commences.

2. Delivery of Plea in Person

Adult defendants may make an appearance by delivering in person to the court a plea of guilty or nolo contendere and a waiver of jury trial. Art. 27.14(b), C.C.P. If the court receives the plea and waiver before the defendant is scheduled to appear, the court must dispose of the case without requiring a court appearance by the defendant. Because the defendant is bringing the plea to the court facility, usually the clerk receives it. The clerk then transmits the plea and waiver of jury trial to the judge to accept and enter a judgment. Only the judge has authority to request and accept a plea, and no authority exists for a judge to perform his or her duties or exercise his or her powers by delegation. Tex. Atty. Gen. Op., H-386 (1974).

The court must give notice to the defendant of the amount of any fine assessed in the case and, if requested by the defendant, the amount of an appeal bond. The notice may be hand-delivered in person or by certified mail, return receipt requested. After the defendant receives the notice, the defendant must pay the fine and costs assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

3. Mailed Plea

Adult defendants may make an appearance by mailing to the court a plea of guilty or nolo contendere and a waiver of jury trial. If the court receives the plea and waiver before the defendant is scheduled to appear, the court shall dispose of the case without requiring a court appearance by the defendant. Art. 27.14(b), C.C.P. Article 45.013, C.C.P., provides that a document is considered timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk and the clerk receives the document not later than the 10th day after the date the document is required to be filed with the clerk. Day is defined to not include Saturday, Sunday, or legal holidays.

The court must notify the defendant by certified mail, return receipt requested, of the amount of the fine assessed and, if requested by the defendant, the amount of an appeal bond. The defendant must pay the fine and costs or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

4. Payment of Fine Without Plea

In a procedure limited to fine-only offenses, a defendant may be found guilty without entering a plea by paying the fine and costs. Art. 27.14(c), C.C.P. Payments may be mailed or delivered to the court in person or by the defendant's counsel. The amount accepted by the court (judge) constitutes a written waiver of a jury trial and a finding of guilty in open court, as though a plea of nolo contendere had been entered by the defendant. After a clerk receives the payment, the clerk must give the case to the judge to accept the payment. After the judge signs a judgment, the clerk notes the judgment on the docket. The clerk then files the judgment with the case papers and notes the date of judgment in the docket.

C. Alternative Sentencing

If a defendant does not want to contest a charge, he or she can request a driving safety course, teen court, or deferred disposition. Each of these alternatives requires the defendant to pay court costs and plea guilty or nolo contendere.

True or False

Q. 57. A plea is only valid if it is given intelligently and voluntarily. ____

Q. 58. When defendants do not want to contest the charges filed against them, they must plead either guilty or nolo contendere and waive their right to a jury trial in writing. ____

Q. 59. When defendants appear in municipal courts, they are submitting themselves to the authority and jurisdiction of the court. ____

Q. 60. A family member of the defendant who is not an attorney may deliver to the court a signed nolo contendere plea to the court. ____

Q. 61. Adult defendants may appear by counsel in open court to plead guilty or nolo contendere. ____

Q. 62. If an adult defendant delivers a plea to the court on or before his or her scheduled appearance date, the court must dispose of the case without requiring a court appearance.

____

Q. 63. A defendant is considered to have made an appearance when he or she mails in a plea and/or fine payment. ____

Q. 64. Clerks may ask defendants who appear in their office for a plea to determine how to process the defendant's case. ____

Q. 65. Clerks have the authority to accept or reject a mail-in payment if it is an incorrect amount. ____

Q. 66. When clerks receive fine payment from defendants who either deliver or mail the payment to the court, there is not a conviction until the judge accepts the payment and signs a judgment. ____

PART 6
FAILURE TO APPEAR

A. Failure to Appear (FTA)

When a defendant lawfully released from custody with or without bail intentionally and knowingly fails to appear in accordance with the term of the release, the defendant may be charged with the offense of failure to appear. This offense is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only. Sec. 38.10, P.C. Section 12.23, P.C., provides that an individual adjudged guilty of a Class C misdemeanor in the Penal Code shall be punished by a fine not to exceed $500.

If a defendant has not been in custody, even though the defendant fails to appear, the defendant cannot be charged with the offense of failure to appear. In this instance, the court would issue a warrant of arrest or capias on the pending charge.

B. Violation of Promise to Appear (VPTA)

A person who willfully violates a written promise to appear in court commits a misdemeanor regardless of the disposition of the charge on which the person was arrested. Sec. 543.009, T.C. The offense of violation of promise to appear may be charged only when the underlying offense is an offense in Subtitle C, *Rules of the Road*, Transportation Code. Ch. 541-600.

Since no specific penalty is provided for the offense of violation of promise to appear, the court must look to the general penalty found in Section 542.401, T.C. That section provides that a person convicted of an offense that is a misdemeanor for which another penalty is not provided shall be punished by a fine of not less than one dollar or more than $200.

C. Filing Charges

The prosecutor makes the decision whether to file the charge of failure to appear or violation of promise to appear. Clerks must have direction from the prosecutor when and how to file failure to appear and violation of promise to appear. Just because a defendant did not appear in court does not always mean that the defendant can be charged with FTA or with VPTA. Only a prosecutor can make that determination after reviewing the circumstances of the case.

Both of these charges are initiated by a sworn complaint and filed on a new docket. Usually the bailiff, warrant officer, or marshal is the affiant on these complaints. Sometimes, if the court does not have a bailiff, the court clerk is the affiant.

D. Contracts

1. Contract with the Department of Public Safety (DPS)

A city may contract with DPS to provide information necessary for DPS to deny renewal of a person's driver's license for most fine-only offenses when a defendant fails to appear. Ch. 706, T.C. In this program, DPS contracts with a third party to administer the program. Presently, DPS has contracted with OmniBase, and the program is commonly referred to as the "Omni program."

2. Contract with the County or Texas Department of Motor Vehicles (TxDMV)

A city may contract with the county or TxDMV to deny renewal of vehicle registration of a person who fails to appear on a complaint that involves the violation of a traffic law. Ch. 702, T.C.

E. Nonresident Violator Compact

The State of Texas is a member of the *Nonresident Violator Compact*, a reciprocal agreement between 44 states and the District of Columbia. The compact assures that nonresident motorists receiving citations for minor traffic violations in a member state receive the same treatment accorded resident motorists. A nonresident receiving a traffic citation in a member state must fulfill the terms of that citation or face license suspension in the motorist's home state until the terms are met. Under the terms of the agreement, DPS will request the suspension of the driver's license of any resident of a member state who receives a citation and fails to respond. In cases where a defendant fails to appear, the court should first notify the defendant of the failure to appear. The court should use the *Notice of Failure to Comply* form. If the defendant does not respond within 15 days, the court forwards the second and third copies of the notice to DPS. If at any time the defendant resolves the case with the court, the court must send the fifth and sixth copies of the notice to DPS. Ch. 703, T.C.

True or False

Q. 67. All defendants who fail to appear can be charged with the Penal Code offense of failure to appear. ____

Q. 68. The offense of violation of promise to appear may be charged when a defendant fails to appear for any traffic offense. ____

Q. 69. Courts can contract with DPS to deny driver's license renewal to defendants who fail to appear. ____

Q. 70. Cities can contract with the Texas Department of Transportation for denial of vehicle registration renewal for defendant's failure to appear. ____

Q. 71. The purpose of the *Nonresident Violator Compact* is to assure that nonresident motorists receiving traffic citations in member states will receive the same treatment accorded resident motorists. ____

PART 7
WARRANTS, CAPIASES, AND SUMMONSES

This portion of the study guide contains an overview of probable cause and the types of warrants issued by the municipal courts. Although municipal court clerks have no authority to determine probable cause, they typically prepare affidavits of probable cause for peace officers and others. After the affidavits are sworn, they are presented to a judge or magistrate who determines if the information in the affidavit is sufficient probable cause to issue an arrest warrant.

After a judge issues a warrant, the clerk's role as custodian of the records is to coordinate with the police department for the handling of the warrant. Some courts give the police department a copy of the warrant; others give them the original. Some courts are connected electronically with the police department so that the peace officers have access to a list of defendants with outstanding warrants.

A. Probable Cause

No warrant shall issue, but upon probable cause. Amendment IV, U.S. Constitution; Article I, Section 9, Texas Constitution; and Article 1.06, C.C.P. Probable cause is the amount of evidence necessary to cause a person to believe someone has committed a crime. An arrest warrant, a capias, and a summons require probable cause before being issued.

A municipal court clerk lacks authority to determine probable cause. Only a judge or magistrate may determine probable cause. *Sharp v. State,* 677 S.W.2d 513 (Tex. Crim. App. 1984). Probable cause can be presented to a judge or magistrate by an affidavit or be contained in a complaint. A complaint is not sufficient to issue a warrant unless it contains probable cause. The test in determining if a complaint shows probable cause is whether it provides a neutral and detached magistrate with sufficient information to support an independent judgment that probable cause exists for the issuance of a warrant. *Rumsey v. State*, 675 S.W.2d 517 (Tex. Crim. App. 1984).

B. Service of Process

Process refers to written orders issued by a judge or a magistrate and includes a warrant of arrest, capias, capias pro fine, and summons.

1. City Police Officers and Marshals

City police officers and marshals serve municipal court process under the same rules and laws governing the service of process by sheriffs and constables, so far as applicable. Art. 45.202, C.C.P. A city police officer or marshal may serve all process issuing out of municipal court anywhere in the county in which the municipality is situated. If the municipality is situated in more than one county, the police officer or marshal may serve the process throughout those counties. Art. 45.202, C.C.P.

The officer or person executing a warrant of arrest shall without unnecessary delay, but no later than 48 hours, take the person or have him or her taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person

arrested shall without unnecessary delay be taken before some magistrate in the county in which the person was arrested. Arts. 15.16 and 15.17, C.C.P.

2. Warrant Fee

Article 102.011, C.C.P., requires courts to collect the $50 warrant fee for the services of a peace officer upon conviction of the defendant. The fee is collected even if the peace officer just processed the warrant and does not actually arrest the defendant. Since Article 102.011 does not define "processing," clerks should ask their judges about what type of documentation the judge will accept for the processing of a warrant. The clerk then coordinates getting that information from the peace officer so that the judge can determine whether to assess the fee or not. For more information on warrant fees, see the TMCEC Level II Study Guide, *Financial Management*.

C. Warrant of Arrest

Warrants of arrest may be issued by a judge with jurisdiction over a case to try the case or by any magistrate in the county. An arrest warrant is a written order from a judge or magistrate ordering a peace officer to arrest an accused person. Arts. 15.01 and 45.014, C.C.P.

1. Authority to Issue

A judge may issue warrants of arrest when either a sworn complaint or an affidavit based on probable cause is filed with the judge. Art. 45.014, C.C.P. These warrants are for fine-only misdemeanors filed in municipal courts.

2. Requisites

The requirements of a warrant issued pursuant to Article 45.014, C.C.P. are:

- issue in the name of "The State of Texas;"
- direct the proper peace officer or some other person specially named in the warrant;
- include a command that the body of the accused be taken and brought before the authority issuing the warrant, at the time and place there named;
- state the name of the person whose arrest is ordered, if it be known, and if not known, the person must be described as in the complaint;
- state that the person is accused of some offense against the laws of the State and state the name the offense; and
- signed by the justice/judge and name of the office in the body of the warrant or in connection with his or her signature.

D. Capias

A capias is a writ (written order) issued by the judge of the court having jurisdiction of a case after commitment or bail and before trial, or by a clerk at the direction of the judge and directed "[T]o any peace officer of the State of Texas", commanding the officer to arrest a person accused of an offense and bring the arrested person before that court immediately or on a day or at a term stated in the writ. Art. 23.01, C.C.P.

1. Authority to Issue

In misdemeanor cases, the capias or summons issues from a court having jurisdiction of the case. Art. 23.04, C.C.P. Where a forfeiture of bail is declared, a capias shall be immediately issued for the arrest of the defendant. Art. 23.05, C.C.P.

Although Article 23.01, C.C.P., says that a "capias" is a writ issued by the court or clerk, a municipal court clerk does not have the authority to issue a capias. In *Sharp v. State,* 677 S.W.2d 573, (Tex. Crim. App. 1984) a City of Houston municipal court clerk issued a capias writ for violating the "helmet safety law." The defendant was later arrested on that warrant and, as a result of this arrest, was charged with and convicted of possession of methamphetamine. The appellate court held that authority was not vested in the deputy municipal court clerk under Texas law to issue a capias writ. Because a magistrate had failed to direct the issuance of the capias and to determine probable cause, the defendant's arrest was illegal and the evidence discovered as a direct result of the arrest was suppressed. In *Crane v. Texas,* 759 F.2d 412 and 766 F.2d 193 (5th Cir. 1985), a district attorney and county attorney were held liable because the district attorney had devised a county policy authorizing clerks, rather than judges, to issue misdemeanor capias.

2. Requisites

Article 23.02, C.C.P., provides the requirements of a capias. It must:

- run in the name of "The State of Texas;"
- name the person whose arrest is ordered, or if unknown, describe the person;
- specify the offense of which the defendant is accused and state that the offense is against the penal laws of the State;
- name the court to which and the time when it is returnable (A capias does not lose its force if not executed and returned at the time fixed in the writ. It may be executed at any time afterward. All proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ. Art. 23.07, C.C.P.; and
- be dated and attested officially by the authority issuing the same.

3. Return

A return of the capias shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find him or her, and what information the officer has as to the defendant's whereabouts. Art. 23.18, C.C.P.

The clerk is responsible for coordinating the handling of the capias between the court and police department. If a peace officer is unable to serve the capias and returns it to the court, the clerk should bring this information to the attention of the judge and the prosecutor.

E. Summons

A summons gives notice to a person, an association, or a corporation that a charge has been filed in court. It provides the address of the court and a date and time requiring the defendant to appear. Examples of each of these types of summons can be found in the TMCEC *Forms Book*.

1. Authority to Issue

In a misdemeanor case, the summons is issued by a court (judge) having jurisdiction in the case. Art. 23.04, C.C.P. This summons should not be confused with a jury summons, which is a notice a clerk sends to a prospective juror to appear for jury service.

The summons may be issued *only* upon request of the attorney representing the State. Art. 23.04, C.C.P. There is, however, no requirement in Chapter 17A, C.C.P., that a prosecutor make a request for issuance of a summons to a corporation or association.

2. Requisites

a. For a Defendant

A summons issued by a judge for a misdemeanor follows the same form and procedure as in a felony case. Art. 23.04, C.C.P. The summons is in the same form as a capias, except it summons a defendant to appear before the proper court at a stated time and place. Art. 23.03(b), C.C.P. Article 23.03(d), C.C.P., requires that a summons issued for a felony must include the following notice, clearly and prominently stated in English and in Spanish: "It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on account of the service of the person as a witness or to prevent or delay a person's service as a witness to a crime." Clerks should review the form of the summons. If it is not proper or the information that should be in English and Spanish is not on it, the clerk should discuss with the judge or city attorney the proper wording.

b. For a Corporation or Association

If the court is issuing a summons for a corporation or association, the form of the summons is different. It shall be in the form of a capias and shall provide that the corporation or association appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served. If service is upon the Texas Secretary of State or the Commissioner of Insurance, the summons shall provide that the corporation or association appear at or before 10 a.m. of the Monday next after the expiration of 30 days after service. A certified copy of the complaint must be attached to the summons. Art. 17A.03, C.C.P.

4. Service

a. On the Defendant

Articles 23.03(c) and 15.03(b), C.C.P., provide procedures for how a peace officer serves a summons on a defendant. They are:

- delivering a copy to the defendant personally;

- leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or
- mailing it to the defendant's last known address.

b. On the Corporation

A peace officer shall serve a summons on a corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or the officer cannot locate the agent after diligent effort, the officer shall personally serve the president or a vice president of the corporation. If the attempt to effect service is unsuccessful, then the officer shall serve the summons on the Secretary of State by personally delivering a copy of it to the Secretary or the Assistant Secretary of State or to any clerk in charge of the corporation department at the Secretary of State's Office. Art. 17A.04, C.C.P.

Because of the difficulty in serving a corporation, the 82nd Legislature amended Section 5.201 of the Business Organizations Code to allow for process to be served on a corporation through the corporation's registered agent. An employee is required to be available at the registered office during normal business hours to receive service of process, notice, or demand.

c. On the Association

A peace officer shall personally deliver a copy of a summons to a high managerial agent at any place where business of the association is regularly conducted, or if the officer certifies on the return that diligence was used to attempt service but failed to serve a high managerial agent or employee of suitable age and discretion, then the officer may serve it to any member of the association. Art. 17A.05, C.C.P.

5. Enforcement

When a defendant fails to respond to a summons issued by a judge who has jurisdiction over the case, the judge enforces the summons by issuing a capias. Art. 23.03(b), C.C.P.

If counsel fails to appear for a corporation or association, the corporation or association is deemed to be present in person for all purposes, and the court shall enter a plea of not guilty and proceed with trial, judgment, and sentencing. Art. 17A.07, C.C.P. No individual may be arrested upon a complaint, judgment, or sentence against a corporation or association. Art. 17A.03(b), C.C.P.

F. Warrant for Seizure of Animals

A municipal judge may issue a warrant to order the seizure of an animal being cruelly treated. Sec. 821.022, H.S.C. On a showing of probable cause to believe that an animal has been or is being cruelly treated, the court (judge) shall issue the warrant and set a time within 10 calendar days of the date of issuance for a hearing to determine whether the animal has been cruelly treated.

The officer executing the warrant must impound the animal and give written notice to the owner of the animal of the time and place of the hearing. If an animal is ordered sold at a public auction, the owner may appeal the order. Sec. 821.025, H.S.C.

G. Warrants for Nuisance Abatement

Magistrates (municipal judges are magistrates) have authority under Article 18.05, C.C.P., to issue search warrants for fire, health, and code inspections. A search warrant may not be issued to a code enforcement official of a county with a population of 2.4 million or more for the purpose of allowing the inspection of specified premises to determine the presence of an unsafe building condition or a violation of a building regulation, statute, or ordinance. Art. 18.05(e), C.C.P. See Article 18.05 for procedures on issuance of the search warrant.

The governing body of a municipality may, by ordinance, provide authority for a judge of a municipal court of record to issue a search warrant for the purpose of investigating a health and safety or nuisance abatement ordinance violation. Sec. 30.00005, G.C.

Also, a governing body of a municipality may, by ordinance, provide authority for a municipal judge of a court of record to issue a seizure warrant for the purpose of securing, removing, or demolishing property that is a nuisance or remove debris from a property that is a nuisance. Sec. 30.00005, G.C.

True or False

Q. 72. Before a warrant or capias may be issued, the judge must have probable cause. ____

Q. 73. In some instances, court clerks may determine probable cause. ____

Q. 74. A complaint is not sufficient to issue a warrant unless it contains probable cause. ____

Q. 75. City police officers have countywide authority to serve municipal court warrants. ____

Q. 76. The $50 warrant fee may be collected if the clerks process the warrant. _____

Q. 77. A municipal judge has authority as a judge and as a magistrate to issue arrest warrants. ____

Q. 78. The judge's authority, under Art. 45.014, C.C.P., to issue warrants of arrest is for fine-only misdemeanors filed in the judge's court. ____

Q. 79. When a bond forfeiture is declared, the court is required to issue a capias. ____

Q. 80. A capias may be issued by either a municipal court clerk or a municipal judge. ____

Q. 81. Since a summons does not order an arrest but gives notice to a defendant to appear in court, clerks may issue and serve it. ____

Q. 82. Before a court can issue a summons, the prosecutor must request the issuance. ____

Q. 83. When a corporation or an association has been served with a summons, they have until the Monday next after the expiration of 20 days after service of the summons to appear.____

Q. 84. Since a summons does not command a peace officer to arrest the defendant, clerks can serve the summons by mailing it. ____

Q. 85. Service of summons on a corporation must first be attempted on the registered agent for service. ____

Q. 86. Defendants who fail to appear in response to a summons can be arrested on a capias. ____

Q. 87. Municipal judges can order the seizure of animals being cruelly treated. ____

Q. 88. All municipal judges have the authority to issue a search warrant for the purpose of investigating a health and safety or nuisance abatement ordinance violation. ____

Q. 89. Only municipal judges of municipal courts of record, after an ordinance is adopted by the city, may issue a seizure warrant for the purpose of securing, removing, or demolishing property that is a nuisance. ____

PART 8
TRIAL PROCESSES

A. Rights

A right is a privilege that a person ought to have or receive from the court. Defendants in municipal courts have most of the rights afforded defendants in other courts.

1. Right to a Jury Trial

The right to trial by jury is guaranteed by the 6th and 7th Amendments to the U.S. Constitution. Also, Article I, Section 10 of the Texas Constitution, and Article 1.05, C.C.P., state that in all criminal prosecutions, defendants have the right to:

- a speedy public trial by an impartial jury (There is no specific requirement that a trial be conducted within a certain number of days. The issue of speedy trial is determined upon a case-by-case basis when the defense makes a motion to dismiss the case because the defendant was denied a speedy trial.);
- demand to know the nature and cause of the accusation;
- receive a copy of the charging instrument (In municipal court, the charging instrument is the complaint.);
- represent themselves (pro se);
- be represented by an attorney;
- be confronted by witnesses against them;
- compel witnesses to come to court and testify on their behalf (the process used to compel the attendance of witness is the subpoena which may be issued by the court clerk.); and
- not be compelled to testify against themselves.

Article I, Section 15 of the Texas Constitution, provides that the right to a jury is inviolate. That means that the right to a jury trial is absolute and if a defendant does not want a jury trial, he or she must waive that right.

Defendants appearing in municipal courts generally have the same rights and guarantees provided to any person accused of a crime. Municipal court procedures and practices, however, are governed by Chapter 45. Art. 45.002, C.C.P.

2. Right to a Public Trial

The proceedings and trials in all courts must be public. Art. 1.24, C.C.P. Municipal courts may not exclude anyone from attending trials. The only exception is when "The Rule" is invoked by either the defense or the prosecution asking that witnesses who are not parties be excluded from hearing each other's testimony. In this instance, witnesses must wait in a room outside the courtroom and may not discuss the case together or with others. Rule 614, Tex. R. Evid. One exception to "The Rule" found in Article 36.06, C.C.P., allows the exclusion of victims only if the victim will testify and the court finds that the victim's presence would materially affect his or her testimony. This rule also includes a victim of any criminal offense, family members of murder victims, and guardians of victims. If "The Rule" is invoked, it is generally done so before any evidence is presented.

3. Right to a Speedy Trial

The right to a speedy trial arises from the time the defendant is formally accused or arrested. Article 32A.02, Section 1(3), C.C.P., which was repealed in 2005, required municipal courts to try all criminal cases within 60 days of filing. Before it was repealed, however, *Meshel v. State*, 739 S.W.2d 246 (Tex. Crim. App. 1987), declared Chapter 32A, C.C.P., unconstitutional.

Municipal court defendants, nonetheless, have not lost their right to a speedy trial. The speedy trial guarantee made by Amendment VI, U.S. Constitution, still applies. Also, Article I, Section 10 of the Texas Constitution, guarantees that any accused shall have the right to a speedy trial. Likewise, Article 1.05, C.C.P., guarantees the right to a speedy trial. Courts must decide each speedy trial issue raised on its own merits. When a defendant comes before a judge and claims that his or her right to a speedy trial has been violated, the judge must consider the individual circumstances.

In *Chapman v. Evans*, 744 S.W.2d 133 (Tex. Crim. App. 1988), the Court of Criminal Appeals stated, "The primary burden is on the prosecution and the courts to ensure that defendants are speedily brought to trial . . . Both the trial court and prosecution are under a positive duty to prevent unreasonable delay . . . [O]vercrowded trial dockets alone cannot justify the diminution of the criminal defendant's right to a speedy trial." Thus, the management of the trial docket is important.

Clerks should make certain that crowded trial dockets are not the cause of a case being dismissed for speedy trial. Clerks should work with judges and prosecutors to establish enough trial dates to keep cases from becoming backlogged on the trial docket.

4. Right to be Represented by an Attorney

A defendant in a criminal case has the right to be represented by an attorney in an adversarial judicial proceeding. An indigent defendant has the right to have an attorney appointed by the court in an adversary judicial proceeding that may result in punishment by confinement and in other criminal proceedings if the court concludes that the interests of justice require representation. Tex. Const., Art. 1, Sec. 10, and Art. 1.051, C.C.P.

Since municipal courts have jurisdiction over criminal cases in which jail or prison time is not a possible punishment, municipal judges do not usually appoint attorneys to represent defendants, although they can.

5. Right to Represent Self

Defendants have a right to represent themselves. Tex. Const. Art. 1, Sec. 10, and Art. 1.05, C.C.P.

Since defendants in municipal courts may represent themselves, they may ask the court clerk for advice about how the court works. The clerk's role, however, is to explain procedures, not to give legal advice. To help defendants unfamiliar with the trial process, courts may provide defendants with a pamphlet explaining pleas, appearances, the trial process, continuances, verdicts, judgments, new trials, appeals, and the like.

True or False

Q. 90. Clerks may explain procedures to defendants who represent themselves in court. ____

Q. 91. Defendants must ask for a jury trial if they want one. ____

Q. 92. All trials, including trials involving juveniles, are required to be open in municipal court. ____

Q. 93. Since municipal courts cannot assess confinement in jail as a punishment, municipal courts are not required to provide speedy trials. ____

Q. 94. Defendants have a right to be represented by an attorney in municipal court cases. ____

Q. 95. Defendants have a constitutional right to represent themselves. ____

B. Scheduling

Trial dockets are a listing of cases set for a particular date. These dockets usually include defendants' names; docket numbers; bonds posted with the court, if any; attorneys representing defendants; and any other information that courts find helpful to manage trials. See the TMCEC Level I Study Guide, *Trial Process and Procedure* for more information on scheduling. Prior to September 1, 2011, Article 17.085, C.C.P., required that the clerk of a court that does not provide online Internet access to that court's criminal case records shall post notice of the criminal court docket not less than 48 hours before the docket setting. The Article was amended to provide that a clerk of a court that does not provide online Internet access to the court's criminal case records must post notice of a prospective criminal docket setting "as soon as the court notifies the clerk of the setting." The impact of this ambiguous language has still yet to be determined.

C. Subpoenas

A subpoena is a writ (written order) issued to a person or persons giving an order to appear as a witness. Art. 24.01, C.C.P. Both the defense and prosecution are entitled to subpoena witnesses necessary to the presentation of their respective cases in court. Art. 1.05, C.C.P.

Judges, court clerks, and deputy court clerks have the authority to issue a subpoena because defendants are entitled to some type of process compelling the attendance of witnesses. Arts. 24.01(d) and 24.03(a), C.C.P. The subpoena must indicate it was issued, but it need not be under court seal. Arts. 24.01(d) and 45.012(g), C.C.P.

Although applications for subpoenas in district court must be in writing and sworn to, the Code of Criminal Procedure is silent on whether the application for subpoenas issued out of municipal courts must be in writing. Art. 24.03, C.C.P.

Regardless of whether the municipal court asks for the request for subpoena to be in writing or presented orally, the following information would be necessary to include before a subpoena could be issued:

- the name of each witness desired; and
- the location or address of each witness.

1. Types of Subpoenas

a. For Out-of-County Witnesses

The Code of Criminal Procedure has specific provisions regarding enforcement of subpoenas for out-of-county witnesses in felonies and misdemeanor cases that include confinement as part of the punishment. The Code of Criminal Procedures is silent regarding whether a defendant charged with a fine-only misdemeanor is entitled to a subpoena for an out-of-county witness or the enforcement of such a subpoena. Municipal court defendants, however, are entitled to a type of compulsory process compelling the attendance of witnesses. Art. 1.05, C.C.P. Municipal courts are not prohibited from issuing a subpoena for any witness regardless of where the witness resides, but the court may not be able to enforce the subpoena if the witness resides outside the county. This issue should be discussed with the judge.

b. For Child Witnesses

When a witness is younger than 18 years old, the court may issue a subpoena directing a person having custody, care, or control of the child to produce the child in court. Art. 24.011, C.C.P.

c. Subpoena Duces Tecum

A subpoena duces tecum is a subpoena that directs a witness to bring with him or her any instrument of writing or other tangible thing desired as evidence. Art. 24.02, C.C.P. The subpoena should give a reasonably accurate description of the document or item desired, such as the date, title, substance, or subject. A typical example of an item requested by defendants is the radar unit or repair logs of the radar unit.

2. Service of the Subpoena

A subpoena can be served by reading it to the witness, by delivering a copy to the witness, or by mailing the subpoena certified with return receipt requested to the last known address of the witness. A subpoena may not be mailed if the applicant requests in writing that the subpoena not be served by certified mail or the witness is set to appear within seven business days after the date the subpoena would be mailed. Art. 24.04(a), C.C.P.

The person serving the subpoena must be at least 18 years old or a peace officer. The person serving the subpoena may not be involved or be a participant in the proceedings for which the appearance is sought. Art. 24.01(b), C.C.P.

A peace officer can be compelled by the court to serve a subpoena. A person who is at least 18 and who is not a peace officer may not be compelled to serve the subpoena unless the person agrees in writing to accept that duty and should the person neglect or refuse to serve or return the subpoena, he or she may be fined not less than $10 or more than $200 for contempt at the discretion of the court. Art. 24.01(c), C.C.P.

The person serving the subpoena must show the time and manner of service if served. If he or she fails to serve the subpoena, the officer's return must state the reason for not serving it, the diligence used to find the witness, and information regarding the whereabouts of the witness. Arts. 24.04 and 24.17, C.C.P.

3. Refusal to Obey Subpoena

If a witness refuses to obey a subpoena in a misdemeanor case, the court may fine the witness in an amount of up to $100. Arts. 24.05, C.C.P.

4. Bail for the Witness

Witnesses may be required to post bail. The amount is set by the judge. If the witness is unable to post bail, he or she must be released without security. Art. 24.24, C.C.P.

5. Payment of Witness Fees

Article 102.002, C.C.P., requires municipal courts to maintain a record of the following information:

- the number and style of each criminal action before the court;
- the name of each witness subpoenaed, attached, or recognized to testify in the action; and
- whether the witness was a witness for the state or for the defendant.

True or False

Q. 96. Clerks have the authority to issue subpoenas. _____

Q. 97. The municipal courts have specific authority to issue subpoenas for out-of-county witnesses. ____

Q. 98. If a witness is younger than 18, the court may subpoena his or her parents to produce the witness in court. ____

Q. 99. A subpoena duces tecum is a subpoena that orders the witness to bring other witnesses with him or her. ____

Q. 100. If a peace officer serves a subpoena by mail, the subpoena can be mailed regular mail. ____

Q. 101. A defendant can request in writing that a subpoena be served in person rather than by mail.____

D. Interpreters

The rules governing court interpreters can be found in Chapter 38, Code of Criminal Procedure, Chapter 57, Government Code, and Chapter 157, Government Code. There have been a number of changes to these rules in recent years, possibly the largest being the creation of Chapter 157 by the 83rd Legislature. This section will provide an overview of these rules.

As always, clerks should consult with their city attorney when specific questions arise. The new Judicial Branch Certification Commission (JBCC) provides comprehensive information at www.txcourts.gov/jbcc.aspx and the Office of Court Administration maintains another website with online resources at www.txcourts.gov/programs-services/translation-interpretation.aspx. For questions regarding deaf and harding of hearing individuals, contact the Deaf and Hard of Hearing Services (Texas Department of Assistive and Rehabilitative Services) at 800.628.5115.

1. Appointment of an Interpreter

Article 38.30, C.C.P., authorizes an interpreter to be sworn in to interpret for a defendant or witness who does not understand the English language. Article 38.31, C.C.P., requires a qualified interpreter be appointed if a defendant or witness is hard of hearing or deaf. Section 62.1041, G.C. requires courts to reasonably accommodate jurors who are hard of hearing or deaf. All interpreters must be sworn before performing interpretation. Tex. R. Evid. 604.

Chapter 57, G.C., provides for a certification program for court interpreters for the deaf and hard of hearing and Chapter 157, G.C., provides for a licensing program for court interpreters for individuals who can hear, but do not comprehend or communicate in English.

Section 57.001(1), G.C., defines **certified court interpreter** to mean "an individual who is a qualified interpreter as defined in Article 38.31, C.C.P., or Section 21.003, Civil Practice Remedies Code or certified under Subchapter B by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual."

Section 157.001(2) defines **licensed court interpreter** to mean an individual licensed under this chapter by the commission to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.

Generally, a court must appoint an interpreter that holds a license that includes the appropriate designation and indicates that the interpreter is permitted to interpret in that court. Sec. 57.002(b-1). Interpreters appointed for a person who is hard of hearing or deaf must be certified regardless of the population of a county. There are exceptions for spoken language interpreters, however, depending on the size of the county. In a county with less than 50,000, a court may appoint a spoken language interpreter who is not licensed, provided that the required qualifications (see below) are met. Sec. 57.002(c). In a county with more than 50,000, a court may appoint a spoken language interpreter who is not certified or licensed if the required qualifications below are met, and:

(1) the language necessary in the proceeding is a language other than Spanish; and

(2) the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.

a. Required Qualifications

All interpreters, besides being licensed or certified, must also meet the following qualifications:

- must be qualified by the court as an expert under the Texas Rules of Evidence;
- must be at least 18 years of age; and
- may not be a party to the proceeding.

b. Court Proceedings

Section 57.001(7), G.C., defines court proceedings to include an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution. (The Code Construction Act codified in Chapter 311 of the Government Code defines the word "includes" in Section 311.005(13) to be a term of enlargement and not of limitation or exclusive enumeration, and the use of the term does not create a presumption that components not expressed are excluded.) Hence, court proceedings can be more than the list enumerated in Section 57.001.

Attorney General John Cornyn addressed the "interpreter issue" in Tex. Atty. Gen. Op. JC-0584 (2002). One of the issues was whether a clerk receiving a plea from a non-English speaking defendant in the clerk's office constitutes a court proceeding meriting a licensed court interpreter. The opinion states that a criminal proceeding includes all possible steps in an action from its commencement to its execution. The commencement of the action includes a clerk receiving (processing) a plea from a defendant. A court clerk who assists a defendant in filing a plea by conversing in a language other than English does not necessarily violate the law. If, however, the clerk does not speak the language of the defendant and must have another clerk interpret, the interpreter must be licensed.

2. Telephone Interpreters

A qualified telephone interpreter may be sworn to interpret for the person in any criminal proceeding before a judge or magistrate if:

- an interpreter is not available to appear in person at the proceeding; or
- the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang.

"Qualified telephone interpreter" is defined as a telephone service that employs:

- licensed court interpreters as defined by Section 157.001, G.C.; or
- federally certified court interpreters.

3. Violation of Interpreter Rules

a. For Hearing Impaired Individuals

A person may not interpret for a hearing-impaired individual at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds an appropriate certificate. Sec. 57.026, G.C. A person commits a Class A misdemeanor if the person violates that rule and is also subject to administrative penalties. Sec. 57.027, G.C.

b. For Individuals Who Do Not Comprehend or Communicate in English

A person may not advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license. Sec. 157.106, G.C. A person commits a Class A misdemeanor if the person violates that rule and is also subject to administrative penalties as provided by Chapter 153. Sec. 157.107, G.C.

True or False

Q. 102. When an interpreter is certified by the State, the court is not required to administer an oath to the interpreter before he or she performs interpretation. ____

Q. 103. A municipal court in a county with a population of more than 50,000 must always appoint a licensed interpreter for non-English speaking defendants. ____

Q. 104. An Attorney General's opinion includes a clerk receiving a plea from a defendant as part of the court proceedings in which interpreters must be available. ____

Q. 105. If a city has a population of less than 50,000, the municipal court does not have to appoint a spoken language state certified and qualified interpreter. ____

Q. 106. The court is not required to appoint an interpreter for a witness who is deaf. ____

Q. 107. Telephone interpreters must be certified by the State of Texas under the Government Code. ____

Q. 108. It is a Class A misdemeanor to interpret without a license. ____

E. Court Reporter

Only for courts of record is a municipality required to provide a court reporter to preserve a record of cases tried before the court. The court reporter must meet the qualifications provided by law for official court reporters. Sec. 30.00010(a), G.C. An official court reporter must take the oath of office required of other officers of this state. In addition to the official oath, each official court reporter must sign an oath administered by the district clerk. Sec. 52.045, G.C.

The court reporter may use written notes, transcribing equipment, video or audio recording equipment, or a combination of these methods to record the proceedings in the court. The reporter shall keep the record for the 20-day period beginning after the last day of the proceeding, trial, denial of motion for new trial, or until any appeal is final, which ever occurs last. Sec. 30.00010(b), G.C. The court reporter is not required to record testimony unless the judge or one of the parties requests a record. Sec. 30.00010(c), G.C.

Instead of providing a court reporter, the governing body may provide for the proceedings to be recorded by a good quality electronic recording device. If the governing body authorizes the electronic recording, the court reporter is not required to be present to certify the statement of facts. The recording shall be kept for the 20-day period beginning the day after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last. If a case is appealed, the proceedings shall be transcribed from the recording by an official court reporter. Sec. 30.00010(d), G.C.

True or False

Q. 109. All municipal courts are required to have a court reporter. ____

Q. 110. Court reporters must take the oath of office required of other officers of the State of Texas. ____

Q. 111. Court reporters are required to sign an oath administered by the district clerk. ____

Q. 112. Court reporters may use a combination of transcribing equipment, video or audio recording equipment, and written notes to record court proceedings. ____

Q. 113. If a court reporter uses a recording device, the recording must be kept for 20 days, beginning after the last day of proceeding, trial, denial of motion for new trial, or until any appeal is final, whichever occurs last. ____

F. Appearance and Plea

An adult defendant in municipal court may, with the consent of the prosecutor, appear by his or her attorney and the trial may proceed without the defendant being in court personally. Art. 33.04, C.C.P. If a defendant is not represented by an attorney and fails to appear, the court may not, however, try the case in the defendant's absence.

A plea of not guilty may be made orally by the defendant or by his or her counsel in open court. If the defendant refuses to plead, a plea of not guilty shall be entered for him or her by the court. Arts. 27.16(a) and 45.024, C.C.P.

An adult defendant charged with a misdemeanor for which the maximum possible punishment is a fine, may, in lieu of pleading not guilty in open court, mail to the court a plea of not guilty. Art. 27.16(b), C.C.P.

True or False

Q. 114. The court must require the personal presence of an adult defendant at trial even if the defendant's lawyer and the prosecutor agree to go to trial without the defendant being present. ____

Q. 115. If a defendant fails to appear, the court may proceed to trial in the defendant's absence. ____

Q. 116. If a defendant refuses to plea, the court must enter a not guilty plea for the defendant. ____

Q. 117. An adult defendant may handle his or her appearance by mail. ____

G. Pre-Trial

The court may set any criminal case for a pre-trial hearing before it is set for trial and direct the defendant and his or her attorney and the prosecutor to appear for the pre-trial. Art. 28.01, Section 1, C.C.P. Pre-trial hearings provide an effective means of caseflow management because they:

- handle the defendant's challenges to the charges filed;
- dispose of issues that do not relate to the merits of the case; and

- assure in advance that the time set for disposition of non-contested cases will not be taken up by other matters.

To expedite the pre-trial process, clerks might want to establish procedures that include:

- making time deadlines for notifying parties of the pre-trial;
- handling filed motions, which may include date stamping the motion when it is filed and noting the cause number of the case on the motion;
- providing the judge and prosecutor with a copy of the filed motions; and
- filing the original motion with the case.

1. Notice

Section 3 of Article 28.01, C.C.P., says that notice of a pre-trial hearing is sufficient if it is given in one of the following ways:

- in open court in the presence of the defendant or his or her attorney;
- by personal service upon the defendant or his or her attorney;
- by mail at least six days prior to the date set for hearing; or
- if the defendant has no attorney, such notice shall be addressed to the defendant at the address shown on the bond; if the bond shows no address, it should be sent to one of the sureties on the bond.

If the envelope containing the notice is properly addressed, stamped, and mailed, the State is not required to show how it was received.

2. Pre-Trial Issues

Some courts require every case set for a jury trial to go to a pre-trial first; other courts require a pre-trial depending on the circumstances of the case. Courts should use the pre-trial process whenever possible to resolve issues relating to the case, but not concerning the merits of the case. The pre-trial process, nevertheless, should not be used as a tool to thwart a defendant's effort at obtaining a trial.

At pre-trial, the following matters can be determined (Art. 28.01, Sec. 1, C.C.P.):

- exceptions to the form or substance of the indictment or information (Indictments or information initiate proceedings in county and district court; complaints initiate proceedings in municipal court. Defendants in municipal court may file a motion that says there is a problem with the form or substance of the complaint.);
- motions for continuance;
- motions to suppress evidence (to keep secret from the jury or factfinder);
- discovery (pre-trial device to obtain facts and information about the case);
- entrapment (when law enforcement induces a person to commit a crime not contemplated by the person for the sole purpose of instituting a criminal prosecution against the person); and

- motion for appointment of an interpreter.

3. Pre-Trial Motions

The court may, but does not have to, require all motions to be on file at least seven days prior to the date of the pre-trial hearing provided that the defendant has sufficient notice of such a hearing to allow him or her not less than 10 days in which to raise or file such preliminary matters. Art. 28.01, Sec. 2, C.C.P.

True or False

Q. 118. Before the court can schedule a pre-trial, the court must have a motion from either the prosecutor or the defense. ____

Q. 119. Pre-trial is for the purpose of determining the merits of the case. ____

Q. 120. Generally, pre-trial procedures help expedite the trial process. ____

Q. 121. Notice of a pre-trial hearing must be given to the defendant in person. ____

Q. 122. The court may require all motions filed with the court before a pre-trial to be filed at least seven days prior to the date of the pre-trial hearing. ____

H. Continuances

A continuance is a postponement of a hearing, trial, or other proceeding to a subsequent day or time. Each court should establish a policy on how to process motions for continuance. Courts may establish a policy requiring a motion for continuance to be submitted to the court a certain number of days before trial. Once the court establishes the policy, the clerk should provide a copy of the policy to the defendant and the prosecutor.

When clerks receive a request for a continuance, the clerk should give it to the judge to make a decision. After the judge decides whether or not to grant the motion, the clerk notifies the prosecutor and the defendant of the decision.

If the judge grants a continuance, the court clerk should show the case as continued on the trial docket. The case is then reset and a new notice is sent to the defendant and prosecutor. This information should also be entered on the case file or jacket.

Below is a list of the different types of continuances.

1. Operation of Law

Article 29.01, C.C.P., provides for continuances that come under operation of law. These continuances are for the following reasons:

- a defendant has not been arrested;
- a corporation or association has not been served with the summons; or
- insufficient time for trial at that term of court.

2. Agreement

A criminal action (case) may be continued by consent and agreement of both the defense and the prosecutor in open court. When a continuance by agreement is granted, it may be only for as long as is necessary. Art. 29.02, C.C.P.

3. Sufficient Cause

A criminal action may be continued on the written motion of the State or of the defendant upon sufficient cause shown, which shall be fully set forth in the motion. A continuance may be only for as long as is necessary. Art. 29.03, C.C.P.

A continuance for cause is the most common type of continuance in municipal courts. Since the granting or denying of a continuance requires a decision, this judicial duty may not be delegated to court clerks. Though clerks may not grant continuances, they should, nevertheless, work with their judges to establish policy on how to handle continuances. There is no requirement that this motion be by an affidavit, but it is required to be in writing. Courts may establish a policy requiring that a motion for continuance be submitted to the court a certain number of days before trial. Once the court establishes the policy, the clerk should provide a copy of the policy to the defendant and the prosecutor. When clerks receive a request for a continuance, the clerk should forward it to the judge to make a decision. After the judge decides whether or not to grant the request, the clerk then notifies the state and defendant of the decision.

4. Religious Holy Days

A continuance may be requested for a religious holy day, a day on which the tenets of a religious organization prohibit its members from participating in secular activities, such as court proceedings. A religious organization means an organization that meets the standards for qualifying as a religious organization under Section 11.20, Tax Code.

A continuance for a religious holy day may be requested by a defendant, defense attorney, the prosecutor, or juror. An affidavit filed under this law is proof of the facts stated and need not be corroborated. Arts. 29.011 and 29.0112, C.C.P. A person seeking the continuance must file with the court an affidavit stating the:

- grounds for the continuance; and
- person holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.

An affidavit filed under this law is proof of the facts stated and need not be corroborated. When a clerk receives this affidavit, the clerk presents it to the judge and notifies the prosecutor or defense, whichever the case may be, of the continuance.

5. Resetting the Trial

If the judge grants the continuance, the court clerk should show the case as continued on the trial docket. The case should then be reset and a new notice sent to the defendant. This information should be entered on the case file or jacket.

True or False

Q. 123. Continuances by operation of law can be because a defendant has not been arrested. ____

Q. 124. Continuance by agreement is by consent of both parties in open court. ____

Q. 125. Clerks have the authority to grant a continuance and reset a case when a defendant calls the court. ____

Q. 126. A request for a continuance for cause is required to be in writing. ____

Q. 127. Only the defendant can request a continuance for a religious holy day. ____

I. Jury Trials

If an accused pleads not guilty and does not waive trial by jury, the judge shall issue a writ commanding the proper officer (usually the court clerk) to summon immediately a venire (a list of prospective jurors summoned to serve for a particular term of the court). Art. 45.027, C.C.P.

1. Prospective Jurors

In municipal court, six qualified persons from the venire shall be selected to serve as jurors. Art. 45.027, C.C.P. In municipal courts of record, ordinances, rules, and procedures concerning a trial by a jury, including the summoning of jurors, must substantially conform to Chapter 45, C.C.P. Sec. 30.00013(a), G.C. In a municipal court of record, the presiding judge, the municipal court clerk, or the court administrator, as determined by ordinance, shall supervise the selection of persons for jury service. Sec. 30.00013(b), G.C.

a. Jury Summons

Typically, clerks summon prospective jurors approximately three weeks prior to the date of the trial. Jurors may be selected from tax rolls, utility rolls, voter registration rolls, or in any other non-discriminatory manner. State law requires that a prospective juror live within the city. Sec. 62.501, G.C. Usually a minimum of 30 persons is summoned so that there are adequate qualified persons after exemptions, excuses, and challenges. All prospective jurors must remain in attendance until discharged by the court. Art. 45.027(b), C.C.P.

Courts usually notify prospective jurors by mail. The notice typically includes the date, time, and location at which prospective jurors are to report for jury duty. The summons must also include a notice that a person claiming a disqualification or exemption based on lack of citizenship in the county may cause the person to be ineligible to vote in the county. Sec. 62.0142, G.C.

To help clerks better manage the jury selection process, the notice should state the qualifications and exemptions for jury duty. Either included on the notice itself or on a separate sheet is a request for personal information that will be used to help the defense and prosecution select jurors. The court can require prospective jurors to either mail in this personal information or bring it in with them on the day of the trial.

b. Qualifications

Sections 62.102 through 62.105, 62.501, and 62.1031 of the Government Code provide qualifications for prospective jurors. The potential juror must:

- be a qualified voter in the state and county but does not have to be registered to vote;
- not have been convicted of misdemeanor theft or a felony;
- not be under indictment or other legal accusation for misdemeanor theft or felony;
- not be insane;
- not have physical defects or a mental disease or defect making him or her unfit for jury service;
- not be a witness in the case;
- not have served on the grand jury that issued the indictment, which only applies to felony cases;
- not have served on the jury in a former trial of the same case;
- not have a bias or prejudice, either in favor of or against the defendant or the State;
- not have already formed an opinion or conclusion as to the guilt or innocence of the defendant which would influence the finding of a verdict in the case; and
- be able to read and write the English language.

People who are deaf or hard of hearing are still qualified to be prospective jurors. Deaf or hard of hearing means having a hearing impairment, regardless of whether the individual also has a speech impairment that inhibits the individual's comprehension of an examination, or proceeding, or communication with others. Sec. 62.1041(f), G.C. Courts are required to make reasonable accommodations for a deaf or hard of hearing individual in accordance with the Americans with Disabilities Act. Sec. 62.1041(c). This may include a qualified interpreter for deaf or hearing-impaired jurors or an auxiliary aid or service for a municipal court proceeding. Sec. 62.1041(e).

c. Exemptions

Section 62.106 of the Government Code provides for legal juror exemptions. The potential juror may claim an exemption if he or she:

- is over 70 years of age;
- has legal custody of a child or children under the age of 12 years and the jury service would cause the child or children to be left without adequate supervision;
- is a student of a public or private secondary school;
- is enrolled in an institution of higher education;
- is an officer or employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- is a primary caretaker of an invalid who is unable to care for himself/herself;
- is a member of the U.S. military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence;

- has served on a petit jury in the county in the last 24-month period preceding the currently scheduled day of service, unless the county uses a jury plan under Section 106.011, G.C., and the period authorized under Section 62.011(b)(6), G.C., exceeds two years (only applies in a county with a population of at least 200,000); or
- has served as a petit juror (the ordinary jury for the trial of a civil or criminal action) in the county during the three-year period preceding the date the person is to appear for jury service (only applies in a county with a population of at least 250,000 where the jury wheel has not been reconstituted after the date the person served as a petit juror). (Sec. 62.001, G.C., provides that in a county with a population of 250,000 or more, the names of persons who are summoned for jury service in the county and who appear for service must be removed from the jury wheel and may not be maintained in the jury wheel until the third anniversary of the date the person appeared for service or until the next date the jury wheel is reconstituted, whichever date occurs earlier. This applies regardless of whether the person served on a jury as a result of the summons.)

d. Permanent Exemption

A person who is at least 70 years of age may file for permanent exemption from jury duty. The court clerk shall promptly have a copy of the exemption delivered to the county tax assessor-collector. Secs. 62.107(c) and 62.108(a), (c) and (d), G.C. The county collector is required to maintain a current register of persons who claim and are entitled to a permanent exemption. The name of a person on the register may not be used in preparing the record of names from which a jury is selected.

e. Establishing an Exemption

A prospective juror may establish an exemption without appearing in person by filing a signed statement of the ground of the exemption with the clerk of the court at any time before the date of trial. Art. 35.04, C.C.P.

Section 62.0142, G.C., lets prospective jurors request a postponement of the initial appearance for jury service by contacting the clerk of the court in person, in writing, or by telephone before the date on which the person is summoned to appear. The clerk is required to grant the postponement if:

- the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and
- the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

The clerk may approve a subsequent request for postponement only for an extreme emergency that could not have been anticipated, such as death in the person's family, sudden serious illness suffered by the person, or a natural disaster or national emergency in which the person is personally involved.

f. Providing False Information

If a person answering a jury summons knowingly provides false information in a request for an exemption or excuse from jury service, he or she is subject to a contempt action punishable by a fine of not less than $100 or more than $1,000. Sec. 62.0141, G.C.

g. Personal Information

Information, collected by the court or by a prosecuting attorney during the jury selection process, about a person who may serve or who does serve as a juror is confidential. This information may not be disclosed by the court, by the prosecuting attorney, by defense counsel, or by court personnel. The court, nevertheless, is allowed to disclose the personal juror information on application by a party in the trial or on application by a member of the news media acting in such capacity on a showing of good cause. Art. 35.29, C.C.P.

The personal information that courts might request from prospective jurors may include the following:

- home address;
- home telephone number;
- driver's license number;
- occupation;
- employer;
- length of employment;
- previous employer;
- former occupation, if retired;
- spouse's name and occupation;
- whether the juror has ever been involved in a lawsuit; and
- whether the person has previously served as juror (include when and where service occurred).

h. Compensation

Section 61.001, G.C., provides that each grand juror or petit juror in a court is entitled to receive reimbursement for travel and other expenses. The reimbursement cannot be less than six dollars or more than $40 for each day or part of each day served as a juror. Municipal court jurors, however, are not entitled to compensation under Chapter 61 of the Government Code. Section 61.001(c), G.C., provides that a municipality may reimburse expenses to persons reporting for jury service in an amount to be determined by the municipality.

Section 61.003, G.C., says that the court must provide a form letter that when signed by the prospective juror directs the treasurer to donate all of the prospective juror's reimbursement for jury service to:

- the Crime Victim's Compensation Fund;
- the Child Welfare Services Fund;

- any program selected by the commissioner's court that is operated by a public or private non-profit organization and provides shelter and services to victims of family violence; or
- any other program approved by the commissioner's court of the county.

The donation is voluntary and may be all or part of the pay. The Comptroller's Office is responsible for seeing that the donations are properly accounted. However, since municipal courts are not required by statute to pay jurors, the Comptroller has not devised a form for municipal courts to report juror donations.

i. Failure to Appear for Jury Service

Any person summoned for jury duty who fails to attend may be fined up to $100 for contempt. Art. 45.027, C.C.P.

2. Day of Trial

a. Juror Handbooks

When prospective jurors arrive, the clerk shall provide a copy of the uniform juror handbook developed by the State Bar of Texas for the courts to provide to the jurors. The jurors should be directed to read the book before the trial begins. After the jurors have read the handbook, the court should collect them to hand out to other jury panels. Ch. 23, G.C.

b. Jury Selection

Before a jury trial begins, the jury must be selected to hear the case. In municipal court, six qualified persons from the venire shall be selected to serve as jurors. Art. 45.027, C.C.P. On the day of the trial, the prospective jurors summoned to appear arrive at the courtroom so that jury selection may begin.

The clerk should have copies of the jury list and juror information sheets for the judge, prosecutor, and defendant. When the trial is over, the juror information sheets should be left on the defense and prosecution tables. Neither the prosecutor nor the defendant should be allowed to remove them from the courtroom since the information is confidential. Art. 35.29, C.C.P.

c. Jury Shuffle

A jury shuffle is required when either the prosecution or defense demands that the order of the jury be changed. When a request is made, the judge will have the clerk shuffle the list of jurors. If the court is computerized, the computer may be able to randomly change the order of the prospective jurors. If the court does not have a computer, the clerk should write the names of the jury panel on separate pieces of paper and place them in a receptacle so that they can be mixed and drawn randomly. Regardless of how the names are shuffled, the names are recorded in the order that they are drawn or selected. The prospective jurors are then reseated in the order selected. A copy of the new jury list is given to the prosecutor, defendant, and judge. Only one shuffle is allowed under the law. Art. 35.11, C.C.P.

d. Challenge to the Array (Membership)

The prosecution and the defense may challenge the array (membership) of the jury panel. A challenge may be that the officer summoning the jury willfully summoned prejudiced or biased persons. Art. 35.07, C.C.P. All challenges must be in writing stating distinctly the ground for such a challenge. The challenge must be supported by a sworn affidavit from the defendant or a credible person. A judge shall hear the evidence and decide without delay whether or not the challenge should be sustained. A challenge to the array must be heard prior to questioning jurors regarding their qualifications. Art. 35.06, C.C.P.

If a challenge is made and sustained, the judge will order a new jury panel to be summoned by someone other than the person who summoned the original panel. Since court clerks are the ones who usually summon prospective jurors, they should develop a procedure for the random selection. Art. 35.08, C.C.P.

e. The Voir Dire Process

The voir dire process is the screening phase of the jury trial where the venire (prospective jurors) is placed under oath and asked questions by the judge, prosecutor, and defendant or defense attorney. Arts. 35.02 and 35.17, C.C.P. The purpose of this questioning is to discover any prejudices or preconceived opinions about the case. After questioning each prospective juror, both the prosecution and defense may request the removal of any prospective juror who does not appear capable of making a fair and impartial verdict. When a prospective juror is removed by this process, it is called removal for cause.

f. Peremptory Challenges

Besides removal for cause under the voir dire process, the State and defense are also allowed three peremptory challenges. The prosecution and defense may each remove up to three prospective jurors without stating a reason, except an illegal reason (such as a strike based solely upon a person's race or gender). Art. 45.029, C.C.P. Removing a juror under this process is commonly called striking a juror.

g. The Jury

After voir dire and peremptory challenges, the prosecutor and defense give their lists to the court clerk who writes or prints the names of the first six persons not stricken off either list. Then the clerk gives a copy of the list to the prosecutor, defense, and judge and calls the jurors selected. Art. 35.26, C.C.P. These six persons form the municipal court jury.

In some courts, if the court has more than one jury trial scheduled that day, the six jurors selected to hear the first case are placed back into the jury pool and go through the voir dire process for the other trials. Other courts conduct voir dire for all the trials scheduled on a certain day before starting jury trials. If clerks are uncertain about how their judges want this process handled, they should work with their judges to establish procedures.

h. Pick-Up Jury

If from challenges, strikes, or legal exemptions, a sufficient number of jurors is not in attendance, the judge shall order the proper officer, usually a peace officer, to summon a sufficient number of

qualified persons to form a new jury panel. Art. 45.028, C.C.P. This is commonly called a pick-up jury.

To avoid a pick-up jury and to better manage the court and court participants' time, the clerk should summon at least 30 persons for each jury trial. By the time some of the prospective jurors have claimed legal exemptions and others have been removed for cause or by peremptory strike, the court should still have enough jurors to hear the case.

i. Jury Behavior During Trial

The jury shall retire in charge of an officer when the case is submitted to them and be kept together until they agree on a verdict or are discharged. Art. 45.034, C.C.P.

No person shall be permitted to converse with a juror about the case on trial except in the presence and by the permission of the court. Art. 36.22, C.C.P.

Should the jury have any questions, they should be addressed to the judge in writing. The judge in the presence of the attorneys may answer proper questions.

Judges who sequester a jury are required to provide jurors a reasonable time to vote on election day. A court may provide the jurors with transportation to and from their polling places. Sec. 276.009, Election Code.

True or False

Q. 128. Defendants must waive their right to a jury trial in order to have a bench trial. ____

Q. 129. Before the court summons prospective jurors, the judge must issue a writ of venire. ____

Q. 130. A venire is a list of prospective jurors to be summoned for a particular term of court. ____

Q. 131. State statutes require that municipal court jurors reside in the city in which the city is located. ____

Q. 132. A person must be a registered voter before he or she can serve on a jury. ____

Q. 133. A person who is enrolled in college can be required to sit on a jury if the trial is scheduled at a time when the person is not in class. ____

Q. 134. To request a permanent exemption from jury service, a person must be at least 70 years of age. ____

Q. 135. A clerk who receives a request for permanent exemption from jury service must deliver a copy of the exemption to the county tax assessor-collector. ____

Q. 136. A prospective juror may establish an exemption by filing a written statement of the ground of the exemption with the clerk. ____

Q. 137. The clerk may never grant a postponement of jury service.____

Q. 138. A person who provides false information in a request for exemption is subject to contempt and can be fined up to $1,000. ____

Q. 139. Since personal information on jurors collected by the court is confidential, it cannot be released for any reason. ____

Q. 140. State law does not require municipal courts to pay their jurors. ____

Q. 141. A person who fails to appear for jury service can be charged with the offense of failure to appear and assessed a $100 fine. ____

Q. 142. The court is required to have prospective jurors read a jury handbook before serving on a jury. ____

Q. 143. Only the defense can ask for a jury shuffle since the statutes only allow one shuffle in a trial. ____

Q. 144. If a challenge to the array of a jury is made, the clerk must reseat the jury in random order. ____

Q. 145. Voir dire is a screening process to determine a juror's qualifications. ____

Q. 146. Peremptory challenges to jurors do not require a reason for the challenge. ____

Q. 147. The first six prospective jurors not removed or struck on a peremptory challenge are the ones selected to hear the case. ____

Q. 148. If after voir dire there are not enough jurors, the trial must be rescheduled for another trial date. ____

Q. 149. Since clerks are court officers, they may converse with jurors after the case has been submitted to the jury for a decision. ____

f. Bench Trials

Defendants in municipal court, like defendants in all other courts with criminal jurisdiction, have the right to a jury trial. Defendants, however, may waive that right and request that a judge hear and decide the case. Arts. 1.05, 1.14, and 45.025, C.C.P.

As in jury trials, a defendant in municipal court may, with the consent of the prosecutor, appear by his or her attorney and the trial may proceed without the defendant being present in court. Art. 33.04, C.C.P. However, if a defendant is not represented by an attorney and fails to appear, the court may not try the case in the defendant's absence.

g. Day of Trial

Generally, the overall process for jury trials and trials before the judge is similar, but there are some differences. The opening announcement is typically the same and the order of proceedings starting after the jury selection is the same. The biggest difference is that in a jury trial, the jury decides whether a defendant is guilty or not guilty and can determine punishment if the defendant elected so before trial. In a trial before the judge, the judge hears the evidence, makes a decision of guilt or innocence, and if guilty, decides the punishment.

Whether the trials scheduled are bench or jury, the clerk is responsible for coordinating the movement of people in the court facility. The following is a list of suggestions to help clerks provide guidance to court participants.

- Provide signs throughout the court facility to enable participants to find their way.
- Provide signs or pamphlets about the rules of the court including proper dress, no smoking, courtroom decorum, and the prohibition of weapons in the court facility.
- If possible, have a deputy clerk act as information officer to direct people.

- Wear nametags so court participants know who to go to for assistance.
- Make sure that the court has made all required accommodations for those with mobility, visual, hearing, and other impairments.
- If the court does not have a pay telephone, make one available for the public.
- Since some court participants may need a letter to present to a work supervisor, have forms available for either the judge or clerk to sign.

1. Defendant's Appearance

a. Failure to Appear for Trial

In addition to the filing of nonappearance crimes discussed in this guide, if a defendant fails to appear for trial and filed a bond with the court, the prosecutor can request that the court forfeit the bond. The forfeiture process is initiated by a judgment nisi (a temporary order that will become final unless the defendant and/or surety show good cause why the judgment should be set aside). If a cash bond if filed with the court and the defendant has also signed a conditional plea of nolo contendere, the court can forfeit the bond for the fine and costs.

If the defendant did not waive a jury trial and fails to appear for the jury trial, the judge may order a defendant to pay the costs incurred for impaneling the jury. The court may release the defendant from the obligation for good cause. The court should conduct some type of show cause hearing before releasing a particular party from these expenses. An order to pay may be enforced by contempt as provided in Section 21.002(c), G.C. Art. 45.026, C.C.P. Clerks should do an analysis of the costs of summoning a jury. Items to include in the analysis are:

- clerk's time to select jurors and prepare and mail jury summons;
- costs of jury summons and envelopes;
- costs of postage or peace officer's costs if peace officer summoned jury; and
- any other applicable costs.

b. Appears for Trial

When a defendant appears for trial, the clerk should show the defendant where to sit in the courtroom and if the trial is a jury trial, provide the defendant with a copy of the list of jurors and a copy of the juror information form.

2. Opening Announcement

The bailiff or court clerk should precede the judge into the courtroom and request that all rise. When the judge enters the courtroom, all court participants should stand during the opening announcement.

The opening announcement may be that of:

- All present give attention — "All rise!"
- The exact name of the court and municipality — "The Municipal Court of the City of_____ is now in session."

- The name of the judge presiding — "The Honorable Judge _____ presiding."

After the judge sits, the bailiff or clerk should direct that all be seated.

3. Explanation of Rights, Options, and Court Proceedings

After the announcement that court is in session, the judge typically explains the defendant's rights, options, and court procedures. At this time, some defendants might decide not to go to trial. Some request to take a driving safety course or ask the judge to grant deferred disposition. After the introductory statement by the judge and processing defendants who change their mind about trial, the court is ready to proceed.

4. Docket Call in Non-Jury Trials

Usually several cases are set on non-jury trial dockets. After an introductory statement by the judge, the judge may call, or instruct the bailiff or clerk to call, the names of defendants scheduled for trial on that docket. This process is commonly called a docket call. The judge instructs defendants in what manner the judge wants the defendants to respond when their name is called. If defendants do not answer, the judge may ask the clerk or bailiff to step outside the courtroom and call those names. This procedure is required when a defendant has a bond filed with the court. Calling a defendant's name outside the courtroom on the fourth floor was held to be sufficient compliance with Article 22.02, C.C.P., requiring the name to be called distinctly at the courthouse door.

After the clerk or bailiff completes the docket call, he or she prepares a certificate or attestation indicating the call and files it with the case. This certificate or attestation may be used later as probable cause for issuing warrants for failure to appear, and if the defendant has a bond posted, it is documentation that the name was called outside the courtroom.

5. Jury Selection in Jury Trials

After the announcement that court is in session, the judge makes an introductory statement to the jurors about court proceedings. The case set for jury trial is called and both the defendant and the State are asked if they are ready to proceed. Then the judge reviews qualifications and exemptions with the jurors. If any prospective juror wishes to claim an exemption or explain to the judge why he or she is not qualified, he or she can do so at this time. After that, jury selection can be done on the same day as the trial.

A defendant has the right to request a jury trial as well as to withdraw the request.

6. The Trial

The proceedings and trials—whether bench or jury—in municipal courts must be public. Art. 1.24, C.C.P. Municipal courts may not exclude anyone from attending trials, including members of the media. For a detailed step by step process outlining jury trial, see the TMCEC 2015 *Bench Book*. The steps are broadly listed below:

- The prosecutor reads the complaint to the defendant.

- After opening statements from the prosecutor and the defense, if the defense so chooses, the prosecutor presents the State's case by calling witnesses to testify against the defendant.
- After the prosecution witness finishes testifying, the defense is given the opportunity to cross-examine the witness. Cross-examining means that the defendant may ask the witness questions about his or her testimony or other facts relevant to the case. Cross-examination must be in the form of questions only.
- After the prosecution presents its case-in-chief, the defendant may present his or her case by calling witnesses who know about the incident.
- The prosecutor may cross-examine the witnesses called by the defense.
- The defendant may testify on his or her own behalf, but he or she cannot be compelled to testify. The defendant's silence cannot be used against him or her, but if the defendant testifies, the State may cross-examine the defendant.
- Both sides may put on rebuttal evidence if they so choose, to dispute the other side's evidence presented earlier in the trial.
- In a jury trial, the judge reads a charge to the jury before closing arguments containing the law that applies to the case. Many judges prepare the charge in advance and give a copy of it to the prosecutor and defense before trial for review.
- Finally, the defense and prosecution can present a closing argument on behalf of their case. Closing arguments may be based only on the testimony presented at trial. The State has the right to present the first and last arguments.

7. Judgment in Bench Trial

In a trial before the judge, the judge hears the evidence and decides whether the defendant is guilty or not guilty based solely upon the evidence presented. If the defendant is guilty, the judge renders a judgment of guilty and assesses punishment according to the penalty allowed for the particular offense. If the judge finds the defendant not guilty, the judge enters a judgment of not guilty, and releases the defendant.

8. Verdict in Jury Trial

The decision of the jury is called the verdict. When the case is submitted to the jury, the jury retires in the charge of a bailiff or a court officer to a room to deliberate over the case. Municipal jurors are kept together until they agree on a verdict, are discharged, or the court recesses. Art. 45.034, C.C.P. The decision of the jury can be based only on the testimony of witnesses and evidence admitted during the trial. No person is permitted to converse with a juror about the case except in the presence and by the permission of the court. Art. 36.22, C.C.P. If the jury has any questions, they must be addressed to the judge in writing. The judge in the presence of the attorneys may answer proper questions. Judges who sequester a jury must provide jurors a reasonable time to vote on Election Day. A court may provide the jurors with transportation to and from polling places. Sec. 276.009, E.C.

The jury returns to the courtroom to announce its verdict in open court. After a verdict is announced, the judge renders a judgment. Art. 45.036, C.C.P. If the defendant elected that the

jury determine punishment, the jury also sets the punishment. If the defendant did not elect that the jury make the decision of punishment, the judge does so.

If the jury cannot reach a decision on the guilt or innocence of a defendant, the court must declare a mistrial. Statutes require the judge to discharge a jury if it fails to agree to a verdict. If a jury is discharged without having rendered a verdict, the case may be tried again as soon as practicable. Art. 45.035, C.C.P.

9. Judgment/Verdict in Open Court

Article 45.041, C.C.P., requires all judgments, sentences, and final orders of the judge to be rendered in open court.

a. Not Guilty

If a defendant is found not guilty by the jury or the judge, the judge enters a finding of not guilty and discharges the defendant without any liability.

b. Guilty

When a defendant is found guilty in either a jury trial or a trial before the judge, the defendant must pay the fine and costs if he or she does not request a new trial or appeal the case.

Article 45.041(a), C.C.P., says that the judgment in a municipal court shall be that the defendant pays the amount of the fine and costs to the State. Subsection (b) of Article 45.041 says that the judge may direct the defendant:

- to pay:
- (subject to Subsection b-2) the entire fine and costs when sentence is pronounced;
- the entire fine and costs at some later date; or
- a specified portion of the fine and costs at designated intervals;
- if applicable, to make restitution to any victim of the offense; and
- to satisfy any other sanction authorized by law.

Subsection (b-2) was added to Article 45.041, C.C.P., effective September 1, 2011. It reads,

> When imposing a fine and costs, if the justice or judge determines that the defendant is unable to immediately pay the fine and costs, the justice or judge shall allow the defendant to pay the fine and costs in specified portions at designated intervals.

The judge must credit a defendant for time served in jail. Arts. 42.03 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 clerk's responsibility is to prepare the judgment for the judge's signature, to properly maintain the records, and to ensure that the financial accounting of the transactions is accurate and properly recorded.

10. New Trial

a. Non-Record Municipal Court

A motion for a new trial in a non-record court must be made within five days after the rendition of judgment and sentence and not afterward. Art. 45.037, C.C.P. In no case shall the State be entitled to a new trial. Art. 45.040, C.C.P. Not more than one new trial may be granted the defendant in the same case. Art. 45.039, C.C.P. Article 45.037, C.C.P., was amended, effective September 1, 2011, to extend the time to file a motion for new trial in a non-record court from one day to five days.

When a clerk of a non-record municipal court receives a motion for new trial, the clerk should notify the judge immediately. The judge must make a decision whether to grant or deny the motion not later than the 10th day after the date that the judgment was entered. If a motion for a new trial is not granted before the 11th day after the date that the judgment was entered, the motion is considered denied. Art. 45.038, C.C.P. As soon as the judge makes a decision, the clerk should immediately notify the defendant of the decision.

According to the mailbox rule, a document is timely filed with the clerk of a court if the document is deposited with the U. S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk and the clerk receives the document not later than the 10th working day after the date the document is required to be filed with the clerk. Art. 45.013, C.C.P. If a motion was mailed to the court and received according to the time limits in the mailbox rule, the document would be timely filed. However, since a judge must rule on the motion for new trial by the 10th calendar day after the judgment, the motion for new trial would be overruled by operation of law if the court received the motion after the 10th working day.

In a non-record court, when a new trial has been granted, the justice or judge shall proceed as soon as practicable to try the case again. Art. 45.039, C.C.P.

b. Municipal Court of Record

If the trial is in a court of record, a written motion for new trial must be filed with the municipal court clerk not later than the 10th day after the date on which judgment was rendered. The motion must set forth the points of error of which the appellant complains. Sec. 30.00014(c), G.C. The motion for new trial may be amended by leave of the court at any time before action on the motion is taken, but not later than the 20th day after the date on which original or amended motion is filed. The court may for good cause extend the time for filing or amending, but the extension may not exceed 90 days from the original filing deadline. If the court does not act on the motion before the expiration of 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.

In a record court, the judge decides from the briefs submitted with the written motion for new trial, whether to grant a new trial. The court may grant a new trial any time before the record of the case is filed with the appellate court for an appeal. Sec. 30.00022, G.C.

True or False

Q. 150. If a defendant wants a jury to decide punishment, the defendant must have elected before the trial for the jury to do so. ____

Q. 151. Clerks should provide guidance about proper conduct and dress to court participants during the day of trial. ____

Q. 152. A defendant who has been in custody and then failed to appear for trial, may be charged with the Penal Code offense of failure to appear. ____

Q. 153. When a defendant who has a bond filed with the court fails to appear, the prosecutor can request the court forfeit the bond. ____

Q. 154. If a defendant fails to appear for a jury trial, the court may assess the defendant the costs for impaneling a jury. ____

Q. 155. Docket call is when the court determines if all the prospective jurors appeared. _____

Q. 156. If a defendant fails to withdraw a request for a jury trial not earlier than 24 hours before the time of trial, the defendant must pay a jury fee of $10. ____

Q. 157. Municipal courts may close a trial to the public if it is in the best interest of the defendant. ____

Q. 158. The court may, upon request of either the prosecution or the defense, exclude witnesses from hearing each other's testimony. ____

Q. 159. In a bench trial, the judge renders judgment. ____

Q. 160. The jury's decision is called a verdict. ____

Q. 161. If a mistrial is declared, the case must be tried within two days. ____

Q. 162. If a jury finds a defendant not guilty, the defendant is still liable for the costs of the trial. ____

Q. 163. The judge may require defendants to pay the entire fine and costs when sentence is pronounced. ____

Q. 164. The judge must credit all defendants for time served in jail before a trial. ____

Q. 165. The judgment in the case must specify the period of time for jail credit. ____

Q. 166. Municipal courts have authority to collect a three-dollar jury fee upon conviction by a jury. ____

Q. 167. Defendants convicted in non-record municipal courts must request a new trial within one day of the judgment. ____

Q. 168. When a motion for a new trial is filed with the court, the judge has 10 days to decide whether to grant or deny the motion. ____

Q. 169. If a defendant makes a motion for new trial by mail, the motion must be received by the court within 10 business days from the date of judgment to be properly filed. ____

Q. 170. If a new trial is granted, the court must try the case within 10 days of granting the motion. ____

Q. 171. If a defendant in a municipal court of record wants a new trial, the defendant must submit a written motion to the court not later than 10 days after the judgment. ____

Q. 172. Defendants in a municipal court of record may not file an amended motion for new trial.
____

PART 9
CONTEMPT

Section 21.002, G.C., is the general statute on contempt. Noted in this part of the guide are statutes containing contempt provisions that are specific to a certain procedure.

A. Types of Contempt

1. Direct and Indirect Contempt

Direct contempt occurs in the judge's presence under circumstances that require the judge to act immediately to quell disruption, violence, disrespect, or physical abuse. Indirect contempt occurs outside the court's presence and includes such acts as failure to comply with a valid court order; failure to appear in court; attorney being late for trial; and filing offensive papers with the court. Indirect contempt requires that the person be notified of the charges, have a hearing in open court, and the right to counsel.

2. Civil and Criminal Contempt

Direct and indirect contempt may also be classified civil or criminal. Civil contempt includes willfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings or obstruct justice and are directed against the dignity of the court or bring the court into disrepute.

B. Penalty

1. General Penalty

Contempt in municipal courts is punishable by up to three days confinement in jail and/or a fine up to $100. Sec. 21.002(c), G.C.

2. Against Sheriff or Officer

Failure by a sheriff or peace officer to execute summons, subpoena, or attachment is punishable for contempt by a fine of $10 to $200. Art. 2.16, C.C.P.

3. Failure to Appear for Jury Duty

Failure to appear for jury duty in municipal court is contempt punishable by a maximum fine of $100. Art. 45.027(c), C.C.P.

4. Juvenile's Failure to Obey a Municipal Court Order

If a defendant under the age of 17 fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court may hold the child in contempt. Art. 45.050, C.C.P. That section provides that a municipal court may hold

a child in contempt for failing to obey an order and assess a fine against the child not to exceed $500. No person under 17 may be confined in jail for contempt.

5. Failure to Pay Costs of Impaneling Jury

Article 45.026, C.C.P., provides that the judge may order a party who demands a jury trial and fails to appear to pay the costs incurred for impaneling the jury. The court may release the party from the obligation for good cause. The court should conduct some type of show cause hearing before releasing a particular party from these expenses. An order to pay may be enforced by contempt as provided in Section 21.002(c), G.C.

True or False

Q. 173. Direct contempt means that an act occurred in the judge's presence. ____

Q. 174. Indirect contempt is an act that occurs outside the court's presence. ____

Q. 175. If a person is charged with either indirect or direct contempt, the person is not entitled to a hearing. ____

Q. 176. Civil contempt includes willfully disobeying a court order. ____

Q. 177. Criminal contempt means that a person disrupted court proceedings or obstructed justice. ____

Q. 178. If a peace officer fails to execute a summons, subpoena, or attachment, the officer may be punished by contempt. ____

Q. 179. Failure to appear for jury duty includes three days in jail as a punishment. ____

PART 10
POST-TRIAL PROCEDURES

A. Expunction upon Acquittal

This section is not intended to cover all instances where a defendant can have his or her records expunged. We address expunction at this point in the overview of processing cases to note that the judge has an additional duty if a defendant is acquitted. When a defendant is acquitted, the defendant is entitled to have all records and files relating to the arrest expunged. Upon acquittal, the trial court shall advise the defendant of the right to expunction. Art. 55.02, Sec.1, C.C.P. The defendant petitions the district court for expunction. Ch. 55, C.C.P.

B. Penalties

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

Article 4.14, C.C.P., and Section 29.003, G.C., establish limits on the amount of maximum possible penalties that municipal governments may establish for city ordinance violations and that joint airport boards may establish 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. It is the judge who establishes a minimum suggested fine schedule that is usually printed on the back of tickets for defendants who do not want to contest the charges.

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.

3. Class C Misdemeanors

Section 12.23, P.C., says that an individual convicted of a Class C misdemeanor shall be punished by a fine not to exceed $500. Section 12.41, P.C., which is titled "Classification of Offenses Outside This Code," says that fine-only offenses outside the Penal Code are classified as Class C misdemeanors. An example of an offense that is a fine-only offense outside the Penal Code, but 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 to be a Class C misdemeanor because it is a fine-only offense.

If an offense outside of the Penal Code is defined as a Class C misdemeanor without assigning a specific amount to the penalty, the court must use the Penal Code definition of Class C misdemeanor. In some instances, statutes state that a particular act is an offense. In these cases, the court must look to the general penalty clause of that statute for the punishment. If the general penalty clause provides for a fine-only penalty for that offense, municipal courts have jurisdiction over the case.

For some violations of Class C misdemeanors, the penalty is different depending on the age of the defendant. An example of this is the offense of public intoxication. Defendants under the age of 21 charged with the offense of public intoxication are subject to different penalties from those who are 21 or older. A person 21 or older faces a fine of 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, A.B.C., and include a fine of up to $500, community service, driver's license suspension, and an alcohol awareness course, drug awareness course, or Drug and Alcohol Awareness Program (DADAP). Sec. 106.071, A.B.C.

C. Restitution

Article 45.041(b)(2), C.C.P., permits a municipal court to require a defendant to pay restitution to any victim of an offense in any amount unless the offense is issuance of bad check, where the maximum amount of restitution is $5,000 paid through the prosecutor's office. Otherwise, restitution payments can be made through the court. Restitution simply means the act of making good or giving the equivalent of any loss.

When the court requires restitution, the court clerk should keep records of the restitution transactions and coordinate the payment to the victim.

Article 42.037(g), C.C.P., gives the court authority to charge defendants a $12 restitution fee when ordered to make restitution in installments. The court retains $6 and $6 is paid to the Crime Victims' Compensation Fund.

When deferred disposition is granted under Article 45.051, C.C.P., the judge may require the defendant to pay restitution to the victim of the offense in an amount not to exceed the fine assessed as a term of deferred. For example, a defendant charged with criminal mischief could be

required to pay restitution for the property damaged. If the Crime Victims' Compensation Fund has already reimbursed the victim, the court can order the defendant to pay restitution directly to the fund.

True or False

Q. 180. Since city governments establish penalties for city ordinance violations, the government has the authority to set fines on defendants convicted of city ordinance violations. ____

Q. 181. Fine penalties for state law offenses vary. ____

Q. 182. A person convicted of a Class C misdemeanor offense in the Penal Code may be assessed a maximum fine of $500. ____

Q. 183. Any fine-only offense outside the Penal Code regardless of the amount of fine is a Class C misdemeanor. ____

Q. 184. If an offense outside the Penal Code is a Class C misdemeanor and the code does not define Class C misdemeanor, the maximum penalty is $500. ____

Q. 185. Municipal courts may require restitution up to the amount of the fine regardless of the maximum amount of the fine. ____

D. Payment of Fine and Costs

1. Jail-Time Credit

The judge must credit a defendant for time served in jail. Arts. 42.03 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.

For offenses that occur after January 1, 2004, the rate of credit is not less than $50 for a period of time specified in the judgment. For offenses that occurred before January 1, 2004, the rate of credit is not less than $100 for a period of time specified in the judgment.

"Period of time" is defined to be 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.

As custodian of the records, court clerks should properly record jail-time credit. In some instances, jail-time credit may have been the method of discharging the total fine; in other instances, it may be just a partial discharge. If a defendant does not pay any money to the court because he or she had sufficient jail-time credit for both fine and court costs, the State 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 a credit card or electronic means, the court can allow defendants to pay by this means.

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, L.G.C., 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 would not be 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. Sec. 132.007, L.G.C. Currently, Chapter 552, G.C., the Public Information Act, makes an exception to public information for debit and credit card numbers of private individuals collected by the city or corporations or associations that do business with the city using a debit or credit card.

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 collection of a 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. Sec. 132.003(b), L.G.C.

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 cost, 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. Sec. 132.004, L.G.C.

3. Payment by Community Service

Fines and costs imposed by municipal court may be discharged if the defendant performs community service. Art. 45.049, C.C.P. When a defendant discharges a fine payment by performing community service, the person is satisfying the judgment by means other than paying 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.

A judge may require a defendant to discharge all or part of his or her fine or costs by performing community service if the defendant:

- fails to pay a previously assessed fine or costs; or
- is determined by the court to have insufficient resources or income to pay a fine or costs.

A municipal judge may allow a defendant under 17 to discharge all of the fines and costs through community service, without consideration of the child's ability to pay. Art. 45.0492, C.C.P. A judge may also allow children under 17 to discharge their fines and costs through tutoring, if the offense charged occurred on school grounds where the defendant was enrolled at the time. The judge may not order more than 200 hours of service for a child defendant.

The judge is required to specify in an order requiring community service the number of hours the defendant is required to work. 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 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.

For offenses that occurred before January 1, 2004, a defendant is considered to have discharged $100 of fines or costs for each eight hours of community service performed. For offenses that occur after January 1, 2004, a defendant is considered to have discharged not less than $50 of fine or costs for each eight hours of community service performed. Under the law that went into effect January 1, 2004, 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; it can be more.

Under 45.049(f), C.C.P., 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 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 of completion of community service, and properly recording community service orders and completion of the service.

4. Waiver of Fine and Costs

A municipal court may waive payment of a fine or costs when a defendant defaults if the court determines that the defendant is indigent and each alternative method of discharging the fine or cost under Article 45.049, C.C.P., would impose an undue hardship on the defendant. Art. 45.0491, C.C.P.

5. Time Payment Fee

Clerks 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 State Comptroller may audit municipal court records relating to these fees. Sec. 133.103, L.G.C.

True or False

Q. 186. When a defendant is entitled to jail credit, the clerk should properly record jail credit. ____

Q. 187. If a defendant discharges a fine and costs by jail credit, the city is liable for payment of the court costs to the State Comptroller. ____

Q. 188. Only the judge may authorize defendants to pay fines and costs by credit card. ____

Q. 189. Clerks are not allowed to collect payments through the internet unless the judge authorizes that method of payment. ____

Q. 190. If payment is not honored by a credit card company, the municipality may collect a service charge from the defendant. ____

Q. 191. Defendants may discharge a fine, but not the costs by community service. ____

Q. 192. The court may require an indigent defendant to discharge a fine by community service. ____

Q. 193. The court must credit the defendant with not less than $50 for every eight hours of community service performed if the offense was committed after January 1, 2004. ____

Q. 194. A municipal judge may waive a fine and court costs for any indigent defendant. ____

Q. 195. A time payment fee is due on the 31st day after a judgment if the fine or costs are not paid by that time. ____

PART 11
FINE ENFORCEMENT AND COLLECTION

A. Default in Payments

1. Capias Pro Fine

A capias pro fine is a writ issued by the judge when a judgment has been entered against an adult defendant who is not in custody or when an adult defendant fails to satisfy a judgment. 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 in traffic violations are based upon "a finding beyond a reasonable doubt." The Court further adds, "[t]hus, 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 be certain 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 clerk should present that information to the judge so that the judge may issue the capias pro fine. After a capias pro fine is issued, clerks should give it to the police department to be served. When a defendant is arrested and pays the balance owed on the judgment, or the judge grants time-payment or allows the defendant to discharge the judgment by performing community service, the clerk must devise a method of properly recording the payment information.

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.

2. Indigency Hearings

Indigency applies to an individual 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. Instead, the court must allow the defendant to discharge the fine by community service or through a time payment plan.

If a defendant fails to pay or discharge a fine in a manner ordered by the court, the court can issue a capias pro fine to bring the defendant before the court. If the court is not in session, the defendant can be placed in jail until the business day following the date of the defendant's arrest. The court may order the defendant to be confined in jail until the judgment is discharged if the judge determines that the defendant intentionally failed to make a good faith effort to discharge the judgment and the defendant is not indigent. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. Art. 45.046, C.C.P.

If a defendant is indigent, the court may not jail the defendant but must allow the defendant to discharge the fine by community service or on a time payment plan. The court may waive payment of the fine or costs when a defendant defaults if the court determines that the defendant is indigent and discharging the fine and costs by community service would impose a hardship on the defendant. Art. 45.0491, C.C.P.

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 U.S. 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).

True or False

Q. 196. A capias pro fine is a written order of the court issued because a defendant defaulted in payment of fine and costs. ____

Q. 197. A capias pro fine may not be issued if an indigent defendant fails to complete community service requirements to satisfy a fine. ____

Q. 198. If a defendant pays a fine with a check that has insufficient funds to cover it, the court may issue a capias pro fine. ____

Q. 199. Judges must conduct indigent hearings when defendants are arrested on a capias pro fine. ____

3. Civil Collection of Fines

B. Collection by Civil Process

Municipal courts have express statutory authority to use civil execution against a defendant's property in the same manner as a judgment in a civil suit. Art. 45.047, C.C.P. Rule 621 of the Texas Rules of Civil Procedure states that the judgments of district, county, and justice courts shall be enforced by execution or other appropriate process. Chapter 31 of the Texas Civil Practice and Remedies Code deals with civil judgments and uses of court proceedings to assist in the collection of judgments. Some of the judicial remedies include turnover orders for non-exempt property, authority to appoint a receiver to manage or sell property to generate revenue to satisfy the judgment, and use of contempt powers to enforce these orders. The court cannot enter or enforce an order under Chapter 31 that requires the turnover of proceeds or property that are exempt under any statute, including Sections 42.001, 42.002, and 42.0021 of the Property Code. These sections define exempt personal property that is not subject to execution. This includes but are not limited to:

- home furnishings;
- food and beverages;
- farming/ranching implements and vehicle;
- tools and equipment used in a trade or profession;
- clothes;
- two firearms;
- one motor vehicle for each member of the family;
- two horses, mules, or donkeys and a saddle, blanket and bridle for each;
- 12 head of cattle;
- 60 head of other livestock;
- 120 fowl;
- household pets;

- life insurance policies; and
- retirement plans and IRAs

Current wages for personal services are also exempt and cannot be garnished directly from a defendant's employer. Sec. 42.001(b)(1), P.C. However, when wages are deposited into checking or savings accounts they may be subject to garnishment. *American Express Travel Related Services v. Harris*, 831 S.W.2d 531 (Tex. App.—Houston [14th Dist.] 1992).

Before proceeding to execution, the city may want to use some civil discovery tools to ascertain whether a defendant/debtor has any assets that might satisfy the court's judgment. There are several inexpensive ways to ascertain whether someone has any unknown assets that can be levied on to satisfy a judgment for the fine and costs. Post-judgment discovery in the same manner as pre-trial discovery may be used unless an appeal bond has been posted. Rule 621a, R.Civ.P.

These provisions, when taken together and in conformity with the express intent of the Legislature (to execute on a defendant's non-exempt property for unsatisfied municipal court judgments), allow the court or city attorney to propound interrogatories, requests for production, and requests for admissions to discover non-exempt assets to satisfy the court's judgment. If non-exempt assets are located, then the court "may order the fine and costs collected by execution against a defendant's property in the same manner as a judgment in a civil suit."

1. Collection by Execution

Execution is a civil process where a defendant's property may be seized and sold to pay for the municipal court's judgment of fine and costs. Execution means carrying out some act or course of conduct to its completion. Execution upon a money judgment is the legal process of enforcing the judgment, usually upon somebody's property. The execution process begins by the city attorney requesting execution usually within 30 days after the judgment if there is no request for a new trial or appeal. The clerk issues the writ of execution, which evidences the debt of the defendant and commands a peace officer to take property of the defendant and sell it to satisfy the debt. Rule 629, R.Civ.P., provides for the requirement of the writ of execution:

- shall be styled "The State of Texas;"
- shall be directed to any sheriff or any constable with the State of Texas;
- shall be signed by the clerk or judge and bear the seal of the court, if any;
- shall require the officer to execute it according to its terms;
- to make costs which have been adjudged against the defendant in execution and the further costs of executing the writ;
- shall describe the judgment, stating the court in which and the time when rendered, and the names of the parties in whose favor and against whom the judgment was rendered;
- shall attach to the writ a copy of the bill of costs taxed against the defendant in execution; and
- shall require the officer to return it within 30, 60, or 90 days as directed by the city attorney.

Rule 636, R.Civ.P., requires the officer receiving the execution to endorse it with the exact hour and day when he or she received it. If the officer receives more than one on the same day against the same person, he or she shall number them as received.

When an execution is issued upon a judgment for a sum of money or directing the payment of a sum of money, it must specify the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum. It must require the officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law. Rule 630, R.Civ.P. The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of the debt.

Article 45.202, C.C.P., says that all process issuing out of a municipal court shall be served when directed by the court, by a peace officer or marshal of the municipality within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court. Hence, city police officers could serve the writ of execution.

Although post-judgment interest is added to all civil judgments at a rate set by the state consumer credit agency (now 10 percent per annum), there appears to be no statutory authority for post-judgment interest to be added to criminal judgments. However, since the Legislature expressly authorizes the use of civil execution against a defendant's property in the same manner as a judgment in a civil suit, it appears that the cost of executing the writ may be added and collected from the defendant.

2. Abstract of Judgment

An abstract of judgment is a simplified notation of basic information about the judgment and debtor, and includes the name and address of the defendant, the identity of the court that claims an interest in the judgment, the date of the judgment, and the amount of the judgment. Abstract of judgment can lead to recoveries by formally recording the court's judgment with a county clerk.

Preparing and filing an abstract of judgment with the county clerk may lead to payment at a later date. Abstracts of judgment recorded by the county clerk are usually picked up and noted by consumer credit companies, who routinely peruse the minutes of the county judgment records. Real estate title companies almost always look at county judgment records before issuing title insurance policies. Title companies are reluctant to issue policies for the sale of real estate if there is an outstanding judgment abstracted and recorded against the owner of the land.

True or False

Q. 200. The process of execution is started by the city attorney. ____

Q. 201. A writ of execution is a written order showing the debt of the defendant and commanding a peace officer to take property and sell it. ____

Q. 202. Only the judge can issue the writ of execution. ____

Q. 203. Only sheriffs and constables can serve a writ of execution. ____

Q. 204. An abstract of judgment requires the defendant/debtor to pay a municipal court judgment immediately. ____

Q. 205. An abstract of judgment can be filed with the county clerk's office claiming a judgment against a defendant. ____

C. Contracts

1. With the Department of Public Safety

A city may contract with DPS to deny renewal of the driver's license of a person who has failed to appear for the prosecution of the offense or failed to pay or satisfy a judgment ordering the payment of a fine and cost. Ch. 706, T.C.

Before a court can send a clearance report to DPS, 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 defendant is acquitted, no fee is required. Also, there are two grounds of discharge without payment of the fee. They include a report that the original submission was made in error or that the file was destroyed in accordance with a records retention policy. Secs. 706.002-706.006, T.C.

2. With the Texas Department of Motor Vehicles

A home-rule city may contract with the county assessor-collector or the Texas Department of Motor Vehicles 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.

3. With Public and Private Vendors

Article 103.0031, C.C.P., provides for contracts for 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 costs;
- forfeited bonds (Bonds filed by a commercial bail bondsman 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 in a collection contract.);
- fines and fees assessed by a hearings officer for administrative parking citations; and
- amounts in cases in which 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. (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.)

Contracts with a public or private vendor or attorney must specify a 30 percent collection fee or it does not come under the authorization of Article 103.0031, C.C.P. Hence, if the fee is a different amount, it cannot be assessed against a defendant and must be paid by the city.

The fee does not apply if a case is dismissed or to any part of the fine or costs that a defendant discharged by jail credit or community service. However, if a defendant makes any partial payment, the vendor is paid its 30 percent fee first. Next the court costs are paid, and then the fine is paid. Tex. Atty. Gen. Op. GA-0147.

When assessing the collection fee on a case in which the defendant failed to appear, the amount of the collection fee is based upon the amount to be paid that is communicated to the accused as acceptable to the court under its standard resolution of the case policy, if the accused voluntarily agrees to pay that amount. If a defendant does not agree to that amount, the 30 percent is based upon the amount ordered paid by the court after plea or trial. The 30 percent paid by a defendant must be used to compensate the contracted vendor.

Article 103.0031(i), C.C.P., allows cities to enter into a contract to collect a debt incurred on an offense that was committed before June 18, 2003. The collection fee, however, does not apply to the debt and cannot be collected from a defendant. The city, however, can pay the vendor from the general fund for the service.

True or False

Q. 206. To deny the driver's license renewal of a defendant who fails to satisfy a judgment ordering the payment of fine and costs, a city must contract with DPS. ____

Q. 207. Before a court can send a clearance report to DPS when a defendant appeals his or her case, posts a bond to go to trial, or makes suitable arrangements to pay the fine, the defendant must pay a $30 administrative fee. ____

Q. 208. If a defendant's case is dismissed, the defendant does not have to pay the $30 administrative fee. ____

Q. 209. All cities can contract with the TxDOT to deny vehicle registration for failure to pay a traffic fine and costs. ____

Q. 210. The governing body of a municipality may contract with a public or a private vendor for collection services for debts and accounts receivable such as fines, fees, and restitution. ____

Q. 211. When a city contracts with the vendor for collection services, the debt or failure to appear must be more than 60 days overdue before the defendant can be required to pay 30 percent on the debt or fine assessed. ____

PART 12
ALTERNATIVE SENTENCING

A. Driving Safety Courses

Citations issued for violations of traffic offenses must inform defendants of the right to complete a driving safety course or a motorcycle operator course. Art. 45.0511(q), C.C.P. Courts must also inform defendants charged with traffic offenses of their right to take a driving safety course or a motorcycle operator course. Art. 45.0511(p), C.C.P.

Courts may dismiss only one charge for each completion of course. Art. 45.0511(m), C.C.P.

1. Application

a. Offenses to Which DSC/MOC Applies

Article 45.0511, C.C.P., is entitled "Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures." DSC and MOC apply to an offense in the jurisdiction of the justice or municipal court that involves the operation of a motor vehicle as defined by Sec. 472.022, T.C.; Subtitle C, Title 7, T.C.; and Sec. 729.001(a)(3), T.C.

b. Exceptions

Exceptions to the application of Article 45.0511, C.C.P., include the following:

- persons with a commercial driver's license (if they held a CDL at the time of the offense or if they hold a CDL at the time of the request for DSC) even when the person is driving his or her own personal vehicle;
- an offense committed in a construction or maintenance zone when workers are present;
- persons who are alleged to have been speeding 25 mph or more over the speed limit;
- persons who are alleged to have been speeding more than 95 mph;
- persons charged with passing a school bus loading or unloading children;
- persons charged with leaving the scene of a collision after causing damage to a vehicle that is driven or attended; and
- persons charged with leaving the scene of a collision who fail to give information and/or render aid.

2. 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 DPS.

c. Driving Safety Course—Special Safety Belt Course

If the offense charged is under Sections 545.412 or 545.413(b), T.C., regarding securing children in child safety seat systems or safety belts, defendants have a right to request a driving safety course. The court, however, must require a driving safety course that contains four hours of instruction on the effectiveness and safety of using a child safety seat system and seat belts. Secs. 545.412(g) and 545.413(i), T.C. If the defendant completes the course and submits the other required evidence to the court, the court must dismiss the case and report the completion date of the driving safety course for the defendant's driving record.

3. Eligibility and Requirements

a. Mandatory DSC and MOC

Defendants have a right to be granted a driving safety course or a motorcycle operator course if the defendant:

- has not have completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense (Exception: 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);
- enters a plea of guilty or nolo contendere on or before the answer date on the citation and present the court in person, by counsel, or by certified mail (postmarked on or before the due date) a request to take the course;
- presents a valid Texas driver's license or permit or is a member of the military on active duty or the spouse or dependent child of a person on active military duty who has not had a driving safety course in another state in the last 12 months; and
- provides evidence of financial responsibility.

b. Eligibility Requirements for Judge's Discretion

If a defendant has completed an approved driving safety course or motorcycle operator training course within the 12 months preceding the date of the current offense or fails to request the course in a timely manner, the court has the discretion to grant a request to take DSC or MOC if the request is made before final disposition of the case. Art. 45.0511(d), C.C.P.

4. Costs

Section 133.101, L.G.C., requires defendants to pay all applicable court costs when a case is deferred. These costs must be paid up front when the court grants the request for a driving safety course.

a. Mandatory DSC or MOC

The court may require a $10 administrative fee. The defendant is not entitled to a refund of the administrative fee if the defendant fails to complete DSC or MOC.

b. Judge's Discretion

If the judge allows a defendant to take a driving safety course under the permissive provisions under Article 45.0511(d), C.C.P., the judge may require a fee in an amount not to exceed the maximum amount of the fine for the offense. 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 fee. Art. 45.0511(f)(2), C.C.P.

5. Time Requirements

After the defendant enters a plea and makes the request for the course, the court must enter judgment on the plea at the time the plea is made, defer imposition of the judgment, and allow the defendant 90 days to successfully complete the approved course and present evidence of successful completion of the course to the court on or before the 90th day.

6. Evidence Required for Dismissal

The defendant must present to the court on or before the 90th day after being granted the right to take a driving safety course the following evidence:

- a certificate of completion of DSC or MOC;
- the defendant's certified driving record as maintained by DPS 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; and
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course under Article 45.0511, C.C.P., on the date of the request and had not taken one course within the 12 months preceding the date of the current offense.

If a defendant fails to present evidence of all three requirements by the end of the 90-day deferral period, the court may not dismiss the charge.

7. Satisfactory Completion

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

8. Failure to Complete Course/Submit Evidence of All Requirements

When a person fails to present all of the required evidence mentioned above, the court must set a show cause hearing and notify the defendant by mail of the hearing. If the defendant appears but does not have a good reason for failing to submit the required evidence by the 90th day, the court simply imposes the fine. If the person can show good cause for the failure, the court may allow

an extension of time in which the defendant may present the required evidence. If the defendant fails to appear for the show cause hearing, the court must impose the fine.

9. Appeal

If the defendant fails to complete the course or submit all the required evidence and the judge finds him or her guilty, the defendant may appeal the conviction in a non-record municipal court.

10. Payment of Fine

Defendants who do not complete the driving safety course and do not appeal must pay the fine. After the show cause hearing, the court enters a final judgment imposing the fine. If the defendant is placed on a time payment plan, the court counts 30 days from the date the judge entered final judgment to determine the 31st day for the time payment fee to be added, if necessary.

11. Reports to the Texas Department of Public Safety (DPS)

If the defendant completes a DSC or MOC course and presents all satisfactory evidence to have the charge dismissed, the court reports the successful completion to DPS pursuant to Article 45.0511, C.C.P., noting the date of completion. Art. 45.0511(*l*)(2), C.C.P.

If the defendant fails to complete the course and does not appeal, the court reports the traffic conviction to DPS. Sec. 543.203, T.C.

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 probation. Art. 45.051, C.C.P. Only judges have discretion to grant deferred disposition. The clerk's role is to maintain the paperwork and keep track of the probationary time period.

Deferred disposition applies to misdemeanor offenses punishable by fine only, with a few exceptions, which are:

- offenses committed in a construction work zone when workers are present (Secs. 472.022 and 543.117, T.C.);
- a person who holds a commercial driver's license or held a commercial driver's license at the time of the offense and is charged with an offense involving motor vehicle control (Art. 45.051(f)(2), C.C.P.);
- a minor charged with the offense of consuming an alcoholic beverage who has been previously convicted twice or more of this offense (Sec. 106.04, A.B.C.);
- a minor charged with driving under the influence of an alcoholic beverage previously convicted twice or more of this offense (Sec. 106.041, A.B.C.); and
- a minor under 17 charged with an offense to which Section 106.071, A.B.C., applies previously convicted at least twice of minor in possession of alcohol, consumption of alcohol, purchase of alcohol, attempt to purchase alcohol by a minor, or misrepresentation of age by a minor (Sec. 106.071(i), A.B.C.).

1. 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.

2. Court Costs

After a plea or finding of guilt, the judge may require the defendant to pay court costs before deferring proceedings under deferred disposition. 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 deferral, require the defendant to discharge the payment of the court costs by performing community service, or by both paying the court costs in installments and performing community service. Art. 45.051(a-1), C.C.P.

3. Time Period

The probation period may not exceed 180 days. Art. 45.051(a), C.C.P.

4. Terms

a. Discretionary Terms

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

- post bond in the amount of the fine assessed to secure payment of the fine;
- pay a special expense fee;
- 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; and
- comply with any other reasonable condition.

b. Mandatory Terms

Under certain circumstances, when a judge grants deferred disposition, the judge must order certain terms as conditions of the deferred. 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. Art. 45.051(b-1), C.C.P.
- If the defendant has a provisional driver's license (applies to drivers under 18) and is charged with a moving traffic 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), T.C. Art. 45.051 (b-1), C.C.P. (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. 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, a drug education program, or a drug and alcohol driving awareness program. 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.

5. 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, the judge shall:

- dismiss the complaint, and
- clearly note in 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.

6. Failure to Comply with the Terms

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

Article 45.051(d), C.C.P., 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 of time the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or reduce the fine. The imposition of the fine or lesser fine constitutes 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 to retake the driving test under Section 521.161(b)(2), T.C.

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, C.C.P. The court may issue a non-secure custody order for the juvenile defendant.

7. Appeal

If a defendant in a non-record municipal court fails to complete the terms of deferred and the judge subsequently adjudicates the defendant's guilt, the defendant may appeal the conviction.

8. Docket Entries

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

- the date the judge ordered the sentence to be suspended and the disposition deferred (after the judge signs the order);
- for an Alcoholic Beverage Code offense, that the deferral has been reported to DPS;
- the deferral period;
- court costs paid or when the court costs are to be paid;
- the fine assessed (although not yet imposed); and
- whether there was a plea of guilty or nolo contendere, or a finding of guilt at trial.

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 (after the judge signs the judgment);
- special expense, if any, imposed, method of payment, and receipt number of payment (the judge must order the special expense imposed before it may be collected);
- whether there was a show cause hearing conducted;
- amount of fine imposed (after the judgment is signed ordering the fine paid), if any, method of payment, and receipt number; and
- an appeal, if any.

9. Reports to Department of Public Safety

- Traffic offenses—The court may not report to DPS deferral orders for a traffic offense. However, if the defendant fails to complete the terms of probation and the judge enters a finding of guilty and imposes the fine on the offense, the court must notify DPS of the conviction not later than the 30th day after the date on which the judge adjudicates guilt. Secs. 543.203 and 543.204, 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 deferred disposition is granted. Sec. 106.117, A.B.C.

C. 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 probation under Article 45.053, C.C.P.

D. Teen Court

1. Eligibility

Article 45.052, C.C.P., allows courts to defer proceedings and grant teen court. A defendant must meet the following criteria to be eligible to request teen court. The defendant:

- is charged with a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine only;
- pleads guilty or no contest in open court with his or her parent, guardian, or managing conservator present;
- is under 18 years of age;
- is enrolled full-time in school leading to a high school diploma;
- presents to the court an oral or written request to attend a teen court program; and
- has not successfully completed a teen court program within the year preceding the date that the alleged offense occurred.

2. Time Limit

When a court grants a teen court, the defendant has 90 days to complete the teen court program and present the court with evidence of satisfactory completion.

3. Court Costs

Court costs are required to be paid when a defendant requests teen court but Subsection (g) of Article 45.052, C.C.P., provides that a justice or municipal court may exempt a defendant from the requirement to pay court costs or other fees that are imposed by another statute. Thus, judges have authority to waive court costs and fees when granting a defendant the right to participate in a teen court program.

4. Fees

The judge may assess an optional fee not to exceed $10 when a defendant requests to participate in a teen court program. This fee is retained by the city. Art. 45.052, C.C.P.

The court may also assess another $10 fee to cover the cost of the teen court for performing its duties. This fee is paid to the teen court program, but the program must account to the court for the receipt and disbursal of the fee.

If the court is in a county which borders Louisiana, the two aforementioned fees may not exceed $20 instead of $10. The Texas-Louisiana border region is defined to mean the area consisting of the counties of Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, Smith, Titus, Upshur, and Wood. Sec. 2056.002, G.C.

5. Transferring a Case

A defendant's case in which teen court has been granted may be transferred to a court in another county as long as the court to which the case is transferred consents to the transfer and the case falls within the court's jurisdiction.

6. Completion of the Terms

The court must dismiss the charge when the defendant completes teen court. If the charge is a traffic violation, the court is required to report to the DPS the completion and completion date of the teen court program.

True or False

Q. 212. The copy of the citation given to the defendant for a traffic offense by a peace officer must contain a statement of the person's right to take a driving safety course. ____

Q. 213. A driving safety course may be taken for any traffic offense. ____

Q. 214. A person with a commercial driver's license driving his or her personal vehicle is not eligible to take a driving safety course for a violation of a traffic offense. ____

Q. 215. Offenses committed in a construction maintenance work zone when workers are present are not eligible for a driving safety course. ____

Q. 216. Persons leaving the scene of a collision are eligible for a driving safety course. ____

Q. 217. The court may approve any driving safety course for a defendant to take. ____

Q. 218. A motorcycle operator course must be approved by the Texas Education Agency. ____

Q. 219. Defendants charged with not securing a child in a child passenger safety seat system or a seatbelt who wish to take a D.S.C. must take a special driving safety course that includes four hours of instruction on child passenger safety issues. ____

Q. 220. Defendants who want to exercise their right to take a driving safety course must plead either guilty or nolo contendere. ____

Q. 221. Defendants may exercise their right to take a driving safety course even if they have failed to appear and are later arrested. ____

Q. 222. Defendants must have a Texas driver's license and evidence of financial responsibility to

be eligible to exercise their right to a driving safety course. ____

Q. 223. Defendants do not have to pay court costs until they submit evidence of completion of a driving safety course. ____

Q. 224. The $10 administrative fee that the court may collect when granting a driving safety course must be refunded to the defendant if the defendant fails to complete the course. ____

Q. 225. When a judge grants a driving safety course under the permissive provisions, the judge may require a nonrefundable fee not to exceed the maximum possible fine for the particular offense. ____

Q. 226. Defendants who are granted the right to take a driving safety course must take the course and submit evidence of completion within 120 days. ____

Q. 227. If a defendant's driving record submitted with the DSC completion certificate shows that the defendant was not eligible, the court must still dismiss the traffic charge if the defendant completed the driving safety course. ____

Q. 228. If a defendant's driving record shows the defendant was eligible and the defendant completed the driving safety course timely, but the defendant fails to file the required affidavit, the court may not dismiss the traffic charge. ____

Q. 229. If a defendant fails to submit the required evidence of course completion, the court must conduct a show cause hearing. ____

Q. 230. No defendant who fails to complete the driving safety course may appeal. ____

Q. 231. Courts must report the dismissal date of a driving safety course to DPS. ____

Q. 232. Courts can grant deferred disposition to defendants charged with any Class C misdemeanor. ____

Q. 233. Clerks may grant deferred disposition to defendants. ____

Q. 234. A person who holds or held a commercial driver's license at the time of the offense is generally not eligible for deferred disposition. ____

Q. 235. A person who commits an offense in a construction and maintenance work zone when workers are present is eligible for deferred disposition. ____

Q. 236. Defendants who agree to deferred disposition must either plead guilty or nolo contendere or be found guilty. ____

Q. 237. Before a judge can grant deferred disposition, the defendant is required to pay court costs. ____

Q. 238. The maximum deferral period for deferred disposition is 180 days. ____

Q. 239. When the judge grants deferred disposition to a defendant under 25 charged with a moving traffic violation, the judge must require as a term of the deferred a driving safety course. ____

Q. 240. When a court grants a deferred disposition to a defendant with a provisional license charged with a moving traffic violation, the court must require the defendant to retake the driving test at DPS. ____

Q. 241. An adult defendant whose case is dismissed for completion of deferred disposition may

petition the municipal court for expunction. ____

Q. 242. If a defendant over the age of 25 fails to complete the terms of deferred disposition, the court may reduce the fine. ____

Q. 243. Defendants in non-record municipal courts who fail to complete the terms of the deferred disposition cannot appeal. ____

Q. 244. If a traffic offense is dismissed under deferred disposition, the court is required to report the deferral to DPS. ____

Q. 245. If an Alcoholic Beverage Code offense is deferred under deferred disposition, the court is required to report the deferral to DPS. ____

Q. 246. A defendant requesting to take a teen court program must give the court a plea of guilty or nolo contendere. ____

Q. 247. A defendant requesting to take a teen court must be under the age of 18 or enrolled in school. ____

Q. 248. The court can require the defendant to pay $10 for administering the teen court program and a $10 fee that must be paid for requesting the teen court program. ____

Q. 249. The judge can waive all court costs and fees when granting teen court. ____

Q. 250. Courts are required to report the completion of a teen court program for any Class C misdemeanor to DPS. ____

PART 13
APPEALS

A. Right to Appeal

A defendant in any criminal action has the right of appeal. Art. 44.02, C.C.P. The right of appeal, shall in no way be abridged. Art. 44.07, C.C.P. Since municipal courts handle criminal cases, all the defendants charged in municipal court have a right to an appeal.

B. Appellate Courts

Appeals from a municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court, except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. Art. 45.042, C.C.P.

1. When Appellate Court Does Not Have Jurisdiction

When an appeal bond is not filed in a timely manner, 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 the county court may decide whether it has jurisdiction.

2. When Appellate Court Refuses Jurisdiction

A writ of procedendo is an instrument by which the county court declares its lack of jurisdiction and returns 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.

C. Appeals from Non-Record Courts

If an appeal is from a non-record court, the trial in the appellate court (generally the county court or, if there is not a county court, the district court) shall be de novo (a new trial), as if the prosecution had been originally commenced in that court. Art. 45.042(b), C.C.P.

D. Appeals from 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. The appeal deadlines are different in a municipal court of record and a court of non-record. The information in this guide addresses only the procedures in non-record municipal courts. See 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, and if a defendant charged with a misdemeanor is on bail, and upon convicted, appeals, his or her bond is not discharged until he or she files an appeal bond as required by Article 44.04, C.C.P.

F. Appeal Bonds

1. Rules Applicable to Bail

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

2. Rules Governing Appeal Bonds

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

3. 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 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 also permit the defendant to post a personal appeal bond, and promise to appear to all subsequent court settings at the appellate court.

4. 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 bond. The amount of a 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 then $50 ($100 in a court of record) and be made payable to the State of Texas. Art. 45.0425, C.C.P.

G. Appearance Not Required to Post Appeal Bond

A defendant charged in a non-record municipal court may mail or deliver in person to the court a plea of guilty or 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 appeal bond that the court will approve. If the court receives a plea and waiver before the defendant is scheduled to appear in court, 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 the fine assessed in the case and, if requested by the defendant, the amount of 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 the notice. Art. 27.14(b), C.C.P.

Article 45.0425, C.C.P., says 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), C.C.P., notified the defendant would be approved if the appeal bond 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 of jury trial to the court facility, the court shall notify the defendant either in person or by certified mail, return receipt requested, of the amount of the fine assessed in the case and, if requested by the defendant, the amount of 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 sentence was rendered. Art. 45.0426, C.C.P.

1. Computing Time

The standard formula for calculating time is the first day is excluded and the last day is included. If the last day falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next business day. Sec. 311.014, G.C.

2. Mailbox Rule

A bond would be considered timely filed if it is mailed in a first-class postage prepaid envelope and 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. Article 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 mailed. Art. 45.013(b), C.C.P. If an appeal bond is filed by mail, clerks should file stamp the envelope and send it with the transcript on 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 (completed). Art. 45.0426(a), C.C.P.

J. Notice of Appeal

In non-record municipal courts, no appeal shall be dismissed because the defendant failed to give notice of appeal in open court.

K. 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 because the municipal court no longer has jurisdiction over the case. Art. 45.043, C.C.P. The municipal court must send the case to the appellate court so that the appellate court may determine if it has jurisdiction.

L. 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. No. 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 within the discretion of the clerk or the judge for that matter. *Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986).

When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it and 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 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, together with the appeal bond, if any, with a certified transcript of all the proceedings before the court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the case. Art. 44.18, C.C.P.

When a clerk certifies a transcript, the clerk authenticates the transcript by attesting that the information contained in the transcript is true.

3. Defects in Transcript

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.

M. Conviction or Affirmance of Judgment on Appeal

In a trial de novo on appeal, when there is a conviction, the fine money 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, the fine and costs imposed on appeal shall be paid into the municipal treasury. Art. 44.281, C.C.P.

N. Payment of Fine Before Appeal

When a defendant pays the fine, the judgment has been satisfied and there is nothing to appeal. *Fouke v. State*, 529 S.W.2d 772 (Tex. Crim. App. 1975).

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. If the prosecutor in the appellate court finds an error in the case filed in county court, such as the appeal not being filed in a timely manner, the prosecutor can file an application for a write of procedendo. The appellate court will remand the case back to municipal court if the application is granted. See the TMCEC *Forms Book*, under "Prosecutor Forms" for examples of these pleadings.

True or False

Q. 251. Defendants charged with a city ordinance violation do not have a right to appeal. ____

Q. 252. Most appeals from a municipal court are heard in the county court. ____

Q. 253. If a defendant fails to present the appeal bond to the court within the required time, the court can refuse to send it to the county court. ____

Q. 254. If a county court refuses to take jurisdiction of a municipal court appeal, the defendant must pay the municipal court's fine. ___

Q. 255. When a defendant appeals a case from a municipal court of non-record, the defendant gets a new trial at the appellate court. ____

Q. 256. Courts can require defendants to post a cash appeal bond. ____

Q. 257. When a court takes the appeal bond, the amount of the bond must be at least two times the amount of the fine and court costs. ____

Q. 258. Defendants in non-record municipal courts can plead guilty and appeal a case. ____

Q. 259. If a court receives through the mail a plea of nolo contendere and waiver of jury trial and a request for the amount of an appeal bond, the court can notify the defendant of the amount of the appeal bond by regular mail. ____

Q. 260. A defendant who makes a plea by mail and wants to appeal his or her case must present the court with an appeal bond before the 31st day from the judgment. ____

Q. 261. Defendants who appear in open court have 10 days from the time the judgment is entered to present the court with an appeal bond. ____

Q. 262. When counting the appeal time, the court counts the day the judgment is entered. ____

Q. 263. If the last day of the appeal falls on a Saturday, Sunday, or a holiday, the court must give the defendant to the next working day of the court to file the appeal bond. ____

Q. 264. If a defendant mails an appeal bond to the court, the court must receive the bond by the 10th day after judgment is entered. ____

Q. 265. If a clerk makes a mistake in an appeal transcript, the county court cannot take jurisdiction of the appealed case. ____

Q. 266. Municipal court clerks have a mandatory ministerial duty to send a case to the county court regardless of whether the appeal bond was timely filed. ____

Q. 267. An appeal transcript must be attested to as being true and correct. ____

Q. 268. When there is a conviction on an appealed case from a court of non-record, the fine money is deposited into the county treasury for the use and benefit of the county. ____

Q. 269. There is nothing to appeal when a defendant pays his or her fine because the judgment has been satisfied. ____

ANSWERS TO QUESTIONS

PART I

Q. 1. True.
Q. 2. True.
Q. 3. False.
Q. 4. True.
Q. 5. False.
Q. 6. False.
Q. 7. True.
Q. 8. True.
Q. 9. False.
Q. 10. True.
Q. 11. False.
Q. 12. False.

PART 2

Q. 13. False.
Q. 14. True.
Q. 15. False.
Q. 16. True.
Q. 17. True.
Q. 18. True.
Q. 19. False.
Q. 20. True.
Q. 21. False.
Q. 22. False.
Q. 23. True.
Q. 24. False.
Q. 25. False.
Q. 26. True.
Q. 27. False.
Q. 28. False.
Q. 29. False.
Q. 30. True.
Q. 31. True.
Q. 32. True.
Q. 33. True.

Q. 34. False.
Q. 35. True.
Q. 36. False.
Q. 37. False.
Q. 38. True.
Q. 39. True.
Q. 40. True.
Q. 41. False.
Q. 42. True.
Q. 43. False.
Q. 44. True.
Q. 45. False.
Q. 46. True.
Q. 47. False.
Q. 48. True.

PART 3

Q. 49. False
Q. 50. False.
Q. 51. True.
Q. 52. False.

PART 4

Q. 53. True.
Q. 54. False.
Q. 55. True.
Q. 56. True.

PART 5

Q. 57. True.
Q. 58. True.
Q. 59. True.
Q. 60. False.
Q. 61. True.
Q. 62. True.
Q. 63. True.
Q. 64. False.

Q. 65. False.

Q. 66. True.

PART 6

Q. 67. False.

Q. 68. False.

Q. 69. True.

Q. 70. True.

Q. 71. True.

PART 7

Q. 72. True.

Q. 73. False.

Q. 74. True.

Q. 75. False.

Q. 76. True.

Q. 77. True.

Q. 78. True.

Q. 79. False.

Q. 80. False.

Q. 81. True.

Q. 82. True.

Q. 83. True.

Q. 84. False.

Q. 85. True.

Q. 86. True.

Q. 87. True.

Q. 88. True.

Q. 89. True.

PART 8

Q. 90. True.

Q. 91. False. (The defendant has a right to jury trial and must affirmatively waive that right to proceed without a jury trial.)

Q. 92. True.

Q. 93. False.

Q. 94. True.

Q. 95. True.

Q. 96. True.
Q. 97. False.
Q. 98. True.
Q. 99. False.
Q. 100. False.
Q. 101. True.
Q. 102. False.
Q. 103. False.
Q. 104. True.
Q. 105. False.
Q. 106. False.
Q. 107. False.
Q. 108. True.
Q. 109. False.
Q. 110. True.
Q. 111. True.
Q. 112. True.
Q. 113. True.
Q. 114. False.
Q. 115. False.
Q. 116. True.
Q. 117. True.
Q. 118. False.
Q. 119. False.
Q. 120. True.
Q. 121. False.
Q. 122. True.
Q. 123. True.
Q. 124. True.
Q. 125. False.
Q. 126. True.
Q. 127. False.
Q. 128. True.
Q. 129. True.
Q. 130. True.
Q. 131. True.
Q. 132. False.

Q. 133. False.
Q. 134. True.
Q. 135. True.
Q. 136. True.
Q. 137. False.
Q. 138. True.
Q. 139. False.
Q. 140. True.
Q. 141. False.
Q. 142. True.
Q. 143. False.
Q. 144. False.
Q. 145. False.
Q. 146. True.
Q. 147. True.
Q. 148. False. (If there are an insufficient number of juror left after challenges, the judge may have the proper officer summons more jurors. This is known as a "pick up" jury.)
Q. 149. False.
Q. 150. True.
Q. 151. True.
Q. 152. True.
Q. 153. True.
Q. 154. True.
Q. 155. False.
Q. 156. False.
Q. 157. False.
Q. 158. True.
Q. 159. True.
Q. 160. True.
Q. 161. False.
Q. 162. False.
Q. 163. False.
Q. 164. True.
Q. 165. True.
Q. 166. True.
Q. 167. False.
Q. 168. True.
Q. 169. False.

Q. 170. False.
Q. 171. True.
Q. 172. False.

PART 9

Q. 173. True.
Q. 174. True.
Q. 175. False.
Q. 176. True.
Q. 177. True.
Q. 178. True.
Q. 179. False.

PART 10

Q. 180. False.
Q. 181. True.
Q. 182. True.
Q. 183. True.
Q. 184. True.
Q. 185. False.
Q. 186. True.
Q. 187. False.
Q. 188. False.
Q. 189. False.
Q. 190. True.
Q. 191. False.
Q. 192. True.
Q. 193. True.
Q. 194. False.
Q. 195. True.

PART 11

Q. 196. True.
Q. 197. False.
Q. 198. True.
Q. 199. True.
Q. 200. True.

Q. 201. True.
Q. 202. False.
Q. 203. False.
Q. 204. False.
Q. 205. True.
Q. 206. True
Q. 207. True
Q. 208. False.
Q. 209. False.
Q. 210. True.
Q. 211. True.

PART 12

Q. 212. True.
Q. 213. False.
Q. 214. True.
Q. 215. True.
Q. 216. False.
Q. 217. False.
Q. 218. False.
Q. 219. True.
Q. 220. True.
Q. 221. False.
Q. 222. False.
Q. 223. False.
Q. 224. False.
Q. 225. True.
Q. 226. False.
Q. 227. False.
Q. 228. True.
Q. 229. True.
Q. 230. False. (Defendants in a non record court may appeal a conviction that is entered when they fail to complete DSC.)
Q. 231. False.
Q. 232. False.
Q. 233. False. (Granting deferred disposition is a judicial function.)
Q. 234. False.
Q. 235. False.

Q. 236. True.
Q. 237. False.
Q. 238. True.
Q. 239. True.
Q. 240. True.
Q. 241. False.
Q. 242. True.
Q. 243. False.
Q. 244. False.
Q. 245. True.
Q. 246. True.
Q. 247. False.
Q. 248. True.
Q. 249. True.
Q. 250. False.

PART 13

Q. 251. False.
Q. 252. True.
Q. 253. False.
Q. 254. True.
Q. 255. True.
Q. 256. False.
Q. 257. True.
Q. 258. True.
Q. 259. False.
Q. 260. True.
Q. 261. True.
Q. 262. True.
Q. 263. True.
Q. 264. False.
Q. 265. False.
Q. 266. True.
Q. 267. True.
Q. 268. True.
Q. 269. True.