Municipal Court Clerk Certification Program 2013

Funded by a grant from the Texas Court of Criminal Appeals
Municipal Court Clerk Certification Program

Level I

Sponsored by

Texas Court Clerks Association
Texas Municipal Courts Association
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The Texas Municipal Courts Education Center, the Texas Court Clerks Association, and the Texas Municipal Courts Association, in cooperation with Texas State University sponsor the Municipal Court Clerk Certification Program. This optional program for municipal court clerks is designed with three levels of certification. In order to advance through the three levels, clerks must pass standardized written exams and satisfy other conditions.

How to Use the Study Guide

The Level I study guide provides basic information about duties and procedural issues that commonly confront municipal court support personnel, and assists clerks in preparing for the Level I exam. Each section explores the sources of authority for performing certain functions, along with the procedures to help municipal courts manage their volume of cases. The text has been updated with the 83rd Legislative changes.

There are some significant changes to the structure of this and the Level II study guides. The Ethics chapters from each level have been combined into the Level I Ethics study guide. The Handling Children and Minors chapter from the Level I study guide has been moved into the Level II study guide. Thus, both Level I and Level II now have nine chapters.

The material in the guide is divided into sections with related questions following each topic. Answers to the questions may be found at the end of each section. To help clerks find specific topics, a detailed table of contents is found at the start of each chapter.

The best way to prepare for the Level I exam is to read and review the material in each section and work through all the questions. Upon completion of each section, check your answers with the answer key and correct your work.

Secondary Source of Law

Every effort has been made to ensure the accuracy and completeness of this work. However, the guide is a summary of applicable law and is not an authority. Throughout the text, the law is frequently paraphrased to facilitate understanding.

This study guide is for educational purposes only and may not be used as a substitute for legal advice or counsel. Should any material in this publication conflict with constitutional, statutory, or case law, the law provided by the constitution, statute, or case prevails.

Judges and court staff should contact their city attorneys with any specific questions about the operations of their courts, and remember that the views expressed in these guides do not reflect those of the Texas Municipal Courts Education Center or the Board of Directors, the State Justice Institute, the Texas Municipal Courts Association, the Texas Court Clerks Association, or Texas State University.
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ABBREVIATIONS

The following abbreviations are used throughout this Level I study guide:

A.B.C. Alcoholic Beverage Code
C.C.P. Code of Criminal Procedure
CDL Commercial Driver’s License
CMV Commercial Motor Vehicle
DL Driver’s License
DMV Department of Motor Vehicles
DPS Department of Public Safety
E.C. Education Code
e.g. exempli gratia (for example)
F.C. Family Code
i.e. id est (that is)
L.G.C. Local Government Code
OCA Office of Court Administration
O.C. Occupations Code
P.C. Penal Code
H.S.C. Health and Safety Code
Tex. App. Texas Court of Appeals
Tex. Crim. App. Texas Court of Criminal Appeals
T.A.C. Texas Administrative Code
T.C. Transportation Code
T.X.D.O.T. Texas Department of Transportation
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INTRODUCTION

The judicial system in the United States is an adversarial system. An adversary in a legal proceeding is a contestant who, like a boxer in a boxing match, tries to win while working within the rules of the match or the boundaries of the law. Similarly, an adversarial legal system is one in which the lawsuit or case is viewed as a struggle between two sides. Each side acts in its own interest, presenting its case in the best possible light to the court. The judge remains neutral and decides questions of law (disputed legal contentions) and, when there is no jury, questions of fact (disputed factual contentions). The theory of this process is that the trier of fact (the judge or the jury) will be able to determine the truth if the opposing parties present their best arguments and show the weaknesses in the other’s case. Decisions are based upon the evidence presented and the applicable law.

PART 1
HISTORY OF THE JUDICIAL PROCESS

A. Common Law

The American legal justice system has its origins in the English system of common law. Common law refers to the body of law that developed in England and the American colonies before the American Revolution. Today, it is viewed as principles, customs, and rules of action that are accepted as part of the justice system. Many common law principles have been incorporated into current codes and statutes. For example, the waiver of trial by jury (Arts. 1.13 and 45.025, C.C.P.), the defense of necessity (Sec. 9.22, P.C.), and the defense of justification (Sec. 9.02, P.C.) all spring from the English common law. Other common law principles have not been codified (have not been written into statutes), such as the inherent power of a court. The inherent power of the judiciary is the authority that is essential to the existence, dignity, and functions of the court originating from the very fact that it is a court. “The inherent judicial power of a court is not derived from legislative grant or specific constitutional provision, but from the very fact that the court has been created and charged by the Constitution with certain duties and responsibilities. The inherent powers of a court are those which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity.” Eichelberger v. Eichelberger, 528 S.W.2d 395, 398 (Tex. 1979).

B. Constitutional Law

After the American Revolution, the founders of this new nation produced a most remarkable document known as the U.S. Constitution. The Constitution, in its original seven articles, established a system of government to be directed by laws and principles. To prevent the accumulation of too much power into too few hands, the U.S. Constitution divides the government into three branches: the legislative, the executive, and the judicial. The legislative branch makes or enacts the law; the executive branch enforces the law; and the judicial branch interprets and applies the law. This principle is known as separation of powers.

Although the three branches must function together cohesively to fulfill the obligations of government, each branch must perform its duties independently. Every time a court does its job as it is supposed to, independent of the other branches of government and according to the law, that court is playing its part in the constitutional plan.
Underlying the separation of government into three branches is the theory of checks and balances. The founding fathers believed that if governmental power was divided into three branches, no one branch would be able to dominate the other two, and thereby impose its own will on an unconsenting public. Separation of powers, while sometimes cumbersome and sometimes the source of tension between the government’s branches, is one of the fundamental principles of American democracy.

Since its drafting in 1787, there have been 27 amendments (additions or changes) to the U.S. Constitution. The first 10 amendments are known as the Bill of Rights. These rights are intended to protect individual citizens against government tyranny and lawlessness. American courts, from their inception, have been charged with interpreting the meaning of such protections. Many of these amendments have import to criminal law matters, and are laid out below (the italicized font is the actual wording used by the drafters). A brief summary of each amendment is also given.

**1st Amendment:** Freedom of religion, speech, press, assembly, and petition

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

**2nd Amendment:** Right to bear arms

*A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.*

**4th Amendment:** No unreasonable searches and seizures

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

**5th Amendment:** Right to remain silent

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

**6th Amendment:** Right to a speedy and public trial

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the*
witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

7th Amendment: Right to a jury trial in civil suits

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

8th Amendment: Fair fines and bail

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14th Amendment: Due process

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Texas Constitution took effect in 1876. Beginning with 17 articles, it has since been amended 474 times. Like the U.S. Constitution, the Texas Constitution also establishes three branches of government—the legislative, the executive, and the judicial—and provides for separation of powers. The Texas courts named in the Texas Constitution are collectively referred to as constitutional courts. Such courts include the high appellate courts (Texas Supreme Court and Texas Court of Criminal Appeals), the intermediate courts of appeals, the district courts, the constitutional county courts, and the justice courts. Note that municipal courts are not created by the text of the Constitution.

Article I of the Texas Constitution—referred to as the State’s “Bill of Rights”—contains many similar provisions to those in the U.S. Constitution.

Section 9. Searches and Seizures

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Section 10. Rights of Accused in Criminal Prosecutions

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have
the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

Section 13. Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Section 14. Double Jeopardy

No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.

Section 15. Right of Trial by Jury

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

C. Federal and State Law

As a component of the judicial branch, municipal courts are unique in that they are the only state trial courts to operate at the city-level of government. Nevertheless, despite their existence at the local level of government, municipal courts, like all state courts, are obligated to follow federal law and to give precedence to the U.S. Constitution over federal law, treatises, and state law. Art. VI, U.S. Const. Accordingly, in adjudicating cases, municipal courts are required to construe and apply common law, both federal and state constitutional law, both federal and state statutory law, and local ordinances. That is, undoubtedly, a large body of law with which to abide. Fortunately, many of the state statutory laws governing criminal procedure in the Texas Code of Criminal Procedure parallel those protections guaranteed by the constitutions—both U.S. and Texas. For example:

- The 14th Amendment to the U.S. Constitution has been statutorily codified in Article 1.04: No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land.
- Article 1.05 codifies the rights of the accused found in Section 10 of the Texas Constitution.
• Article 1.07 codifies the protection against unreasonable searches and seizures found in Section 9 of the Texas Constitution.
• Article 1.09 codifies the protection from cruel or unusual punishment found in Section 13 of the Texas Constitution.
• Article 1.12 provides that the right of trial by jury shall remain inviolate, just as in Section 15 of the Texas Constitution.

Q. 1. What is meant by the statement: “The American judicial system is an adversarial system”?
________________________________________________________________________

Q. 2. Define common law and give an example applicable to municipal courts.________________________
________________________________________________________________________

Q. 3. Describe the role of each branch of government. _________________________________
________________________________________________________________________
________________________________________________________________________

Q. 4. Why did the Founding Fathers design a government based on the principle of separation of powers?
______________________________________________________________
________________________________________________________________________

Q. 5. What are the first 10 amendments to the U.S. Constitution called?  ______________________
________________________________________________________________________

For questions 6-10, what U.S. Constitutional Amendment corresponds with the following descriptions:
Q. 6. The prosecutor cannot call the defendant to the stand to testify. ______________________

Q. 7. The judge cannot put a $1 million bond on a defendant arrested for Class C criminal mischief. ______________________

Q. 8. The city council cannot pass an ordinance banning the possession of guns everywhere in the city limits. ______________________

Q. 9. The judge cannot just close the courtroom because he does not like the media. ______________________

Q. 10. The police detective must go to a magistrate to get a warrant after investigating a crime. ______________________

True or False
Q. 11. Since municipal courts are local courts, they do not have to follow federal or state law. ______

Q. 12. List the courts established by the Texas Constitution. ______________________
______________________________________________________________
________________________________________________________________________
PART 2  
TEXAS JUDICIAL SYSTEM

Refer to Appendix A to see a graphic representation of the court structure of Texas.

A. Court Structure of Texas

The structure of the present court system was established in 1891 by an amendment to the Texas Constitution to allow the Legislature to “establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof and… conform the jurisdiction of the district and inferior courts thereto.” In essence, the amendment modified the Constitution to allow the Legislature to statutorily create additional courts as it deemed necessary in an effort to ensure judicial efficiency.

There are two basic types of courts in Texas: trial courts and appellate courts. Texas hosts a bifurcated system for appellate courts, which means that the highest appellate court handling civil appeals in Texas and the highest appellate court handling criminal appeals are two separate courts—the Texas Supreme Court and the Texas Court of Criminal Appeals, respectively.

1. Appellate Courts

The appellate courts of the Texas judicial system are:

- the Texas Supreme Court, the highest final state appellate court for civil and juvenile cases;
- the Texas Court of Criminal Appeals, the highest final state appellate court for criminal cases; and
- 14 Courts of Appeals, intermediate appellate courts for civil and criminal appeals from trial courts.

These courts review the actions and decisions of the lower courts on questions of law or allegations of procedural error.

a. The Texas Supreme Court

The Texas Supreme Court has final appellate jurisdiction statewide in civil and juvenile cases. A civil case usually deals with private rights of individuals, groups, or businesses. A civil lawsuit may be brought when one person feels wronged or injured by another person. An example is a lawsuit for recovery of damages suffered in a car collision. Juvenile cases originating in juvenile court are also civil.

In addition to hearing oral arguments and writing decisions for cases on appeal, the Supreme Court is empowered to make and enforce all necessary rules of civil trial practice and procedure. The Legislature has authorized the Supreme Court and the Court of Criminal Appeals collectively to promulgate the rules of evidence and appellate procedure used in both civil and criminal matters. The Supreme Court also has original jurisdiction to issue writs and to conduct proceedings for the involuntary retirement or removal of judges. To ensure the efficient administration of justice in Texas, the Supreme Court has many administrative duties that include:

- promulgating the rules of procedure for the State Commission on Judicial Conduct;
• equalizing the dockets of the intermediate courts of appeals; and
• supervising the operations of the State Bar of Texas.

The Supreme Court is composed of one Chief Justice and eight Justices, who are elected in partisan elections on a statewide basis for six-year terms of office. Vacancies between elections are filled by gubernatorial appointment with the advice and consent of the State Senate, until the next general election. To be eligible to serve as a justice on this court, a person must be licensed to practice law in Texas, be a U.S. and Texas citizen, be at least 35 years of age, and have been a practicing lawyer, or a judge of a court of record, for at least 10 years. Art. V, Sec. 2, Tex. Const.

b. The Texas Court of Criminal Appeals

The jurisdiction of the Texas Court of Criminal Appeals extends to all criminal cases heard by the intermediate courts of appeals and those criminal cases coming directly from the district courts when the death penalty has been imposed. A criminal case is a legal action brought by the government against a person charged with committing a crime. Some examples are the offenses of murder and rape to speeding and driving without financial responsibility.

The Court of Criminal Appeals has been authorized by the Legislature to promulgate the rules for judicial education.

The Court of Criminal Appeals consists of one Presiding Judge and eight Judges, who must have the same qualifications, and are elected in the same manner, as the justices of the Supreme Court.

c. The Courts of Appeals

Each of the 14 intermediate courts of appeals has at least three judges: a Chief Justice and two other Justices. The Legislature, however, may increase the number whenever the workload of an individual court requires additional judges.

Courts of appeals hear the appeals from the trial courts located within their respective districts. The appeals are based upon the “record” (a written transcription of the testimony given, exhibits introduced, and the documents filed in the trial court) and the supplementary written briefs and oral arguments of the appellate lawyers. The courts of appeals do not receive testimony or hear witnesses when considering cases on appeal. Appeals are usually heard by a panel of three justices, unless in a particular case an en banc hearing is ordered, in which case all the justices of the court hear and consider the case.

Justices of the courts of appeals are elected in partisan elections for six-year terms of office by the voters in their districts. They must have the same qualifications for office as the justices of the Supreme Court.

The courts of appeals are located in 13 cities:

• Amarillo (District 7);
• Austin (District 3);
• Beaumont (District 9);
• Corpus Christi/Edinburg (District 13);
• Dallas (District 5);
• Eastland (District 11);
• El Paso (District 8);
• Fort Worth (District 2);
• Houston (two courts: Districts 1 and 14);
• San Antonio (District 4);
• Texarkana (District 6);
• Tyler (District 12); and
• Waco (District 10).

Using the graphic below, find the district where your municipality is located.

2. Trial Courts

The trial courts are those courts in which trials are held, witnesses are heard, testimony is received, and exhibits are offered into evidence. In a criminal case, the judge or the jury
determines whether the defendant is guilty or not guilty beyond a reasonable doubt of the crime alleged. Defendants in criminal cases and the parties in civil lawsuits have the right to a trial by a jury of either six or 12 local citizens, depending on the classification of the case. Except in capital murder cases, the parties have the right to waive a trial by jury and to have the judge presiding over the case make the final determination of guilt and sentencing.

The trial court structure in Texas has several different levels, each level handling different classifications of cases. Jurisdiction is defined as the authority and legal power to hear and decide cases. Courts created by the Constitution have jurisdiction granted to them by the Constitution; the Legislature can expand jurisdiction for these courts, but it cannot take away jurisdiction granted by the Constitution. Courts created by the Legislature have jurisdiction granted to them solely by the Legislature.

The state trial courts of general jurisdiction are known as the district courts. A court of general jurisdiction has unlimited civil and criminal jurisdiction, though its judgments are subject to appellate review. In contrast, municipal, justice of the peace, and county courts are courts of limited jurisdiction, meaning they may only hear certain types of matters (civil, criminal, or both). The county-level courts consist of the constitutional county courts, the county courts at law, and the statutory probate courts. Municipal courts are located in each municipality, and the justice of the peace courts are located in precincts of each county of the state.

Original jurisdiction means that a court has authority to try a case and pass judgment on the law and facts. This is contrary to appellate jurisdiction, where the transcript of an appealed case is reviewed to determine if any error has occurred. Exclusive jurisdiction means that a court’s authority to try certain cases is not shared with another court. Therefore, exclusive original jurisdiction means that the court in which a case is filed has sole jurisdiction and no other court has jurisdiction to hear and determine the case. Concurrent jurisdiction, on the other hand, means that cases may be filed in any of the courts that have authority over certain types of offenses.

### a. District Courts

District courts are courts of general jurisdiction. They generally have original jurisdiction in all criminal cases of the grade of felony (offenses generally punishable by a year or more in prison), misdemeanors involving official misconduct, and misdemeanors transferred to the district court under Article 4.17 of the Code of Criminal Jurisdiction Procedure non-attorney judges in a county court. The civil jurisdiction is more complex and extends to cases of divorce, suits for title to land or enforcement of liens on property, contested elections, suits for slander or defamation, and all civil matters wherein the amount in controversy is $200 or more.

The district courts hear contested matters involved in probate cases and have general supervisory control over the county commissioners. In addition, district courts have the power to issue writs of habeas corpus, mandamus, injunction, certiorari, sequestration, attachment, garnishment, and all other writs necessary to enforce their judgments.

Appeals from judgments of district courts are to the court of appeals that has jurisdiction over the district court, except that appeals from criminal judgments imposing the death penalty go directly to the Court of Criminal Appeals.
b. County-Level Courts

The Texas Constitution provides for a county court in each county. Generally, “constitutional” county courts have concurrent jurisdiction with justice of the peace courts in civil cases where the amount in controversy exceeds $200, but does not exceed $10,000; general jurisdiction over probate cases; and exclusive original jurisdiction over misdemeanors where punishment for the offense is by fine exceeding $500 and/or a jail sentence not to exceed one year. County courts have jurisdiction over Class A misdemeanors (a fine not to exceed $4,000 and/or a jail sentence of up to one year) and Class B misdemeanors (punishable by a fine not to exceed $2,000 and/or a jail sentence not to exceed 180 days). Constitutional county courts also have concurrent criminal jurisdiction with justice courts over state law fine-only offenses. In essence, this means that county courts share jurisdiction with justice and municipal courts over most fine-only offenses.

County courts generally have appellate jurisdiction (usually by trial de novo, which means trying a matter anew; the same as if it had not been previously heard before and as if no decision had been previously rendered) over cases tried originally in the justice of the peace courts and most municipal courts. However, if a case is appealed from a municipal court of record, the county court would review the case on the record and not de novo. Original and appellate judgments of the county courts may be appealed to the appropriate court of appeals.

The Constitution provides that the county judge “shall be well informed in the laws of the State.” This has been interpreted to mean that neither formal study of law nor a license to practice law is a necessary qualification to hold the office of county judge.

Under its constitutional authorization to “establish such other courts as it may deem necessary,” the Legislature has created statutory county courts and statutory probate courts, primarily in metropolitan counties, to provide assistance to the single “constitutional” county court. Some statutory county courts have family law jurisdiction. County court at law judges are required to be at least 25 years old, a resident of the county, and a licensed attorney with four years’ experience in practicing law.

c. Justice of the Peace Courts

The Texas Constitution provides that each county is to be divided into at least one and not more than eight justice precincts. In each precinct, there should be one or two places for justices of the peace. A justice of the peace is elected by voters of the respective precinct of the county in partisan elections for four-year terms of office. There are no special statutory or constitutional qualifications to hold this office. Approximately 819 justice of the peace courts are in operation today in Texas.

Justices of the peace have original jurisdiction in misdemeanor criminal cases under state law where the punishment upon conviction may be fine-only or by fine and, as authorized by law, sanctions not consisting of confinement or imprisonment. This jurisdiction is concurrent with the municipal court. Justice courts also have concurrent jurisdiction over municipal ordinance violations involving the regulation of signs in a city’s extraterritorial jurisdiction. In addition to the jurisdiction and powers provided by the Constitution and other laws, the justice court has original jurisdiction of the following:

- civil matters in which exclusive jurisdiction is not in the district or county court and in which the amount in controversy is not more than $10,000, exclusive of cost;
• cases of forcible entry and detainer;
• foreclosure of mortgages; and
• enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court’s jurisdiction.

However, justice courts do not have jurisdiction over:

• a suit on behalf of the State to recover a penalty, forfeiture, or escheat;
• a suit for divorce;
• a suit to recover damages for slander or defamation of character;
• a suit for trial of title to land;
• or a suit for the enforcement of a lien on land. Sec. 27.031, G.C.

Trials in justice of the peace courts are not of record. Appeals from these courts are trial de novo in the county court, the county court at law, or the district court.

d. Municipal Courts

Under its constitutional authority to create “such other courts as may be provided by law,” the Legislature passed the Corporation Court Law of 1899, which created a corporation court—the precursor to municipal courts—in each municipality in Texas. This law has now been codified in Chapter 29 of the Government Code. Hence, municipal courts are statutory courts. Sec. 29.002, G.C. Municipal courts are presently operating in approximately 926 cities in Texas. Metropolitan cities usually have more than one municipal court.

As statutory courts, municipal courts are able to adjudicate any subject matter determined by the Legislature. This type of jurisdiction is called “subject matter jurisdiction.” Municipal court subject matter jurisdiction is almost exclusively criminal, with limited exceptions. The Legislature has given municipal courts limited civil jurisdiction. Examples of civil jurisdiction that has been granted to municipal courts are bond forfeitures and the court’s authority to hear cases and assess civil penalties against owners in cruelly-treated animal or dangerous dog cases under Chapters 821 and 822 of the Health and Safety Code, respectively. Furthermore, certain municipalities may declare the violation of city ordinances relating to the parking and stopping of vehicles to be civil offenses and prescribe civil penalties.

(1) Exclusive Original Jurisdiction

Municipal courts have exclusive original jurisdiction over violations of city ordinances and the resolutions, rules, and orders of a joint airport board that occur in the territorial jurisdiction of the city and on property owned by the city in the city’s extraterritorial jurisdiction. There is one exception to municipal court’s exclusive original jurisdiction over city ordinance violations, found in Article 4.11(c) of the Code of Criminal Procedure, which provides that justice courts have concurrent jurisdiction with municipal courts in certain sign ordinance violations in the city’s extraterritorial jurisdiction. City ordinances are generally punishable by fines of up to $500, but fines of up to $2,000 may be established for violations relating to fire safety, zoning, or public health and sanitation. The city council would determine the fine range, within these limits, for city ordinance violations.
(2) Concurrent Original Jurisdiction

Municipal courts have concurrent original jurisdiction with justice courts in all cases under state law that (1) occur within the territorial limits of the city or on property owned by the city in the city’s extraterritorial jurisdiction and (2) are punishable by a fine-only. Art. 4.14, C.C.P. and Sec. 29.003, G.C. The term “fine-only” deserves emphasis and a word of warning. The typical notion of a fine-only offense is a Class C misdemeanor in the Penal Code, punishable by a maximum fine of $500. Sec. 12.23, P.C. Be aware, however, that the Penal Code defines a Class C misdemeanor outside of the Penal Code as any offense punishable by a fine only. Sec. 12.41, P.C. Hence, any fine-only offense is considered a Class C misdemeanor regardless of the amount the maximum fine determined by the Legislature. For example, passing a school bus, defined in the Transportation Code, is punishable by a maximum fine of $1,250. Additionally, “fine only” is not limited to just a fine; courts may impose sanctions not consisting of confinement in jail or imprisonment. The imposition of a sanction or denial, suspension, or revocation of a privilege does not affect the original jurisdiction of the local trial courts in Texas. Arts. 4.11 and 4.14, C.C.P. and Sec. 29.003, G.C.

(3) Appellate Jurisdiction

Municipal courts also have incidental appellate jurisdiction in three instances. The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty of running a red light 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. A person charged with violating the civil administrative parking ordinances of a city may appeal the order of the hearing officer by filing a petition with the clerk of the municipal court. Sec. 682.011, T.C. Lastly, the owner of a dog who is declared to be dangerous by the animal control authority can appeal that determination to the municipal court. Sec. 822.0421, H.S.C.

(4) Geographic Jurisdiction

The municipal court’s jurisdiction is limited to those cases that occur within the territorial limits of the city. This is called geographic jurisdiction. The Legislature, at the request of local governments, has experimented with the expansion of municipal court geographic jurisdiction depending on size and contracts with other cities. In 1995, the Legislature provided that a city that contracts with one or more municipalities for the operation of a joint police department may conduct its municipal court proceedings within the municipal limits of any municipality that is a party to the contract. Sec. 29.105, G.C. In 2009, the Legislature authorized a city with a population of 1.9 million or more and a contiguous municipality to enter into agreements for concurrent municipal court jurisdiction. However, it applies only to offenses punishable by a fine and committed on the boundary of those municipalities or within 200 yards of that boundary. Sec. 29.003(h), G.C. In 2011, the Legislature authorized a city to enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the city to establish concurrent jurisdiction of the municipal courts in both cities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the city in which the case arose for all criminal cases arising under city ordinance, cruelly-treated animal seizure cases (civil cases), or failure to attend school cases. Sec. 29.003(i), G.C. In 2013, the Legislature expanded a provision that allowed cities with a population of 700 or less to conduct its municipal court proceedings within the corporate limits of a contiguous incorporated
municipality to apply to cities with a population of 3,500 or less. This will apply to over half of the municipal courts in Texas.

(5) Court of Record

Chapter 30 of the Government Code creates a municipal court of record in 51 Texas cities. For all other cities, the governing body can choose to have a municipal court of record or a municipal court of non-record. The majority of municipal courts are not courts of record, and appeals from non-record courts go to the county court, the county court at law, or the district court for trials de novo.

Under the authority of Chapter 30 and the Municipal Courts of Record Act passed in 1997, a municipal court may become a court of record through passage of a local ordinance. In a court of record, a formal record and transcript are made of the proceedings in the trial and appeals are made on the record. Such appeals are generally heard in the county court or county court at law, but the Legislature has authorized both the City of El Paso and the City of Dallas to create municipal courts of appeals to hear appeals from those cities’ municipal courts. The statutes creating these municipal courts of record require that the judges be licensed to practice law in Texas. No such provision is required of other municipal judges. According to the Office of Court Administration only 149 municipal courts have indicated they are courts of record.

Municipal courts of record have additional jurisdiction in their territorial limits and their extraterritorial limits. Section 30.00005, G.C. This jurisdiction is concurrent with a district court or county court at law for the purpose of enforcing health and safety or nuisance abatement ordinances.

(6) Initiating and Retaining Jurisdiction

Municipal court jurisdiction is initiated when a complaint is filed with the court, charging a person with the commission of an offense. Art. 45.018, C.C.P. Article 27.14(d) of the Code of Criminal Procedure permits the court to use a citation–written notice to appear issued by a peace officer–filed with the court to serve as the complaint to which the defendant can enter a plea. Both the citation and complaint serve to give the defendant notice of the charge filed with the court. If a complaint or citation is not filed with the court, the court does not have jurisdiction over the defendant. Article 12.02(b) of the Code of Criminal Procedure provides that a complaint or information may be presented within two years from the date of the commission of the offense, and not afterward. This rule is called the statute of limitations. When two or courts have concurrent jurisdiction of a criminal offense, the court in which the complaint is first filed retains jurisdiction. Art. 4.16, C.C.P.

Municipal courts occupy a unique position in the Texas judicial system. More citizens come into personal contact with municipal courts than with all other Texas courts combined. Though the reason for the vast majority of appearances is for a traffic citation, for most citizens–whether appearing as a defendant, witness, or juror–this may be their only personal contact with the judicial system. As such, this contact in municipal court will form a lasting impression of the justice system as a whole.
B. Cooperation Within the Judicial System

Each court is a member of the judicial branch of government that must conduct its business separately from and independently of the other two branches of government.

Courts are bound to interpret laws and apply them to the facts presented in the cases tried. They are bound by laws enacted by the Legislature and by rules like the Texas Rules of Evidence and Texas Rules of Appellate Procedure, promulgated by bodies given rule-making authority. Courts must also apply the principle of stare decisis, which makes legal precedent of higher courts binding on lower courts. It requires lower level trial courts to respect and follow the decisions of all Texas appellate courts and regional federal courts, when applicable, even when the individual judge disagrees with the decisions.

Courts must also be aware of and work with other agencies within the judicial system. For example, functions such as administrative adjudication of parking offenses or supervision of defendants performing community service are usually done by other persons or agencies—not the judge or the clerk. These functions, however, substantially impact the courts’ functions.

In summary, while it is true that courts must do their jobs relatively independently, it is equally true that courts do not operate in a vacuum. They must work within the framework of the judicial system and within the three-branch system of government.

C. Funding

The State of Texas provides full funding and salaries for the Texas Supreme Court and the Texas Court of Criminal Appeals and provides the salaries for the appellate and district judges of Texas. Some counties supplement this base salary. Counties pay the costs of “constitutional” county courts, county courts at law, justice of the peace courts, and the operating costs of district courts. Municipalities finance the operation of the municipal courts and the salaries of all municipal court personnel.

Q. 13. Define jurisdiction._______________________________________________________
______________________________________________________________________

Q. 14. What are the two highest appellate courts in Texas? ________________________
______________________________________________________________________

Q. 15. Explain the difference between a civil and criminal case. ______________________
______________________________________________________________________

Q. 16. Which is the highest Texas appellate court with jurisdiction over juveniles? ______
_____________________________________________________________

Q. 17. How are Texas appellate judges selected and how long are their terms? __________
______________________________________________________________________

Q. 18. How are appellate courts different from trial courts? ________________________
______________________________________________________________________

Q. 19. What is meant by trial de novo? ____________________________________________
______________________________________________________________________
Q. 20. Explain how the jurisdiction of justice courts is different from municipal courts.
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________

Q. 21. What kind of courts are municipal courts? ________________________________

Q. 22. Name the two types of municipal courts a city may choose to have. ______________
______________________________________________________________________
______________________________________________________________________

Q. 23. What kind of cases must be initiated in municipal court and not in any other court?
______________________________________________________________________

Q. 24. With which courts does municipal court share jurisdiction? _________________

Q. 25. Over which type of criminal offenses does municipal court share jurisdiction with the justice courts? ________________________________

Q. 26. What is the geographic jurisdiction of the municipal court? _________________

Q. 27. What are the penalty limits of offenses over which municipal courts have jurisdiction?
______________________________________________________________________

Q. 28. Why does municipal court have jurisdiction to hear cases where a conviction may result in the Department of Public Safety suspending the defendant’s driver’s license? ______

______________________________________________________________________

Q. 29. Give an example of an offense for which the penalty requires a sanction in addition to paying a fine. ________________________________

Q. 30. What is the maximum amount of a fine for a Class C misdemeanor offense in the Penal Code? ________________________________

Q. 31. What is the maximum amount of a fine for a class C misdemeanor outside of the Penal Code? ________________________________

Q. 32. What is the maximum penalty that a city council can establish for ordinance offenses involving public health and fire safety violations? ________________________________

Q. 33. If both the municipal and justice court have concurrent jurisdiction over a criminal case, which court retains jurisdiction? ________________________________

Q. 34. Why are lasting impressions of the American justice system often formed in municipal courts? ________________________________

______________________________________________________________________

Q. 35. What court(s) have jurisdiction in the cases described below:
   - An appeal from a district court: ________________________________
   - A divorce case: ________________________________
   - A speeding ticket: ________________________________
- A felony murder case: __________________________________________________
- An appeal from a municipal court: _______________________________________
- A child support or child custody case: _____________________________________
- An ordinance violation: _________________________________________________
- An appeal from justice courts: ____________________________________________
- A death penalty appeal: _________________________________________________
- An appeal from a municipal court of record: _______________________________

PART 3
THE MUNICIPAL COURT ROLE IN LOCAL GOVERNMENT

A. Revenue

While municipal courts serve the express function of preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal behavior, there is no denying the implicit, though significant, function of revenue generation. A common complaint regarding municipal courts is that they engage in “cash register justice.” A significant portion of the budget for many cities comes from fines collected in municipal court. But a judge may not consider the raising of revenue as an aspect of judicial duties. The judge should not increase fines for the purpose of enhancing his or her position before the city council as a revenue producer. Regardless of what portion of a city’s budget comes from fines and court costs, a municipal court should not be viewed by a public official or the public at large as being tantamount to a “cash cow” or ATM for local expenditures.

Section 720.002 of the Transportation Code prohibits state agencies and political subdivisions from imposing traffic revenue quotas on municipal or county court judges and justices of the peace. While the prohibition does not keep cities from getting budget information or projections from courts, it does forbid the establishment or maintenance of a system for evaluating, promoting, compensating, or disciplining these judges on the basis of revenues collected from traffic convictions.

In 2009, the Legislature repealed Subsection (c) of Section 720.002, which had previously provided that municipalities could consider the amount of money collected from a municipal court when evaluating that judge’s performance. Clearly, this subsection undermined the objective of an unbiased judiciary, and courts should be happy it is no longer in effect.

B. Relations with City Departments

Municipal courts should recognize the necessity for cooperating with the other departments in administrative and other areas wherever possible without compromising the independence or integrity of the judiciary. The following section outlines some of the more pertinent areas of interdepartmental relations for municipal courts.
1. Mayors and City Managers

Judges should be aware that mayors and city managers have to be concerned with revenues—both expenditures and collections—because as the executive branch, they are responsible for the city’s budget. Because the court’s budget comes out of the city’s budget and because some of the fines and fees collected by the court are deposited in the municipal treasury, judges and clerks have some concerns and responsibilities regarding revenue. The recording, handling, and reporting procedures must meet city approval and will be audited by the city.

Nonetheless, judicial decisions may only be made on the basis of facts proved by evidence presented at trial and the applicable law(s). For instance, a judge may not ignore evidence and law and assess a fine in a case solely because the city needs money. Likewise, if the city council passes an ordinance, council members should not ask the judge to apply the law selectively (i.e., charge one defendant the maximum, but let another go free). Council members also should not be attempting to set fines, other than setting a range in the ordinance. A mayor or council member must not privately tell the judge that a certain defendant is “a really bad guy” and should be assessed maximum punishment. The clerk must be careful to avoid becoming the messenger of these facts, thereby influencing the judge unethically.

2. City Attorneys and Prosecutors

The municipal court and the city attorney interact during the prosecution of municipal court cases. The city attorney or a deputy city attorney has a duty to prosecute the State’s case in municipal court. The county attorney of the county in which the municipality is located may also represent the State if he or she so chooses. Close coordination with the city attorney’s office is necessary, particularly in the scheduling and reviewing of cases and the preparing and reviewing of complaints.

It is the prosecutor who decides which complaints should be filed. The city attorney, not the judge, should advise and direct peace officers in preparing criminal cases. The court must remain apart from investigating or filing cases, to preserve impartiality for judging the evidence presented at trial. Although it is a common practice for court clerks to prepare complaints filed in court, it should be remembered that it is the responsibility of the State, through the city attorney, to decide which cases to prosecute.

3. Police

Law enforcement is part of the executive branch of government, and should be educated in the constitutional rights guaranteed to all citizens, even those accused of crimes. Police officers may look to the city attorney for advice in investigating and preparing for criminal cases.

In cities where the municipal court clerk also serves as police dispatcher or where the offices of the court are located in the same building as the police department, conflict is possible. Some municipalities believe it is convenient to position the court and police department adjacent to each other or in the same building to facilitate the transfer of prisoners to and from the jail. Judges, clerks, and police departments must exercise great care to honor the separateness of each department. The court should not be located within the confines of the police department; the appearance of collaboration between the two can be damaging. Imagine the perspective of a citizen accused of a traffic offense who might appear in court. If the court’s workplace is the same workplace as the officers who wrote the citation or filed the complaint, will citizens be
encouraged to believe they will get a “fair shake”—a hearing before a neutral and impartial judge? A more serious difficulty occurs when the judge or clerk fraternizes with the police officers who will be testifying in court. Will citizens be encouraged to believe that the court has not been influenced by officers’ comments either among themselves or to the court staff? In order to maintain independence and impartiality, neither the judge nor the clerk should ever discuss any case with a police officer outside the courtroom.

Intermingling creates the appearance of impropriety, if not actual impropriety, and adversely affects public perceptions of both offices. The separation emphasizes and enhances the integrity and impartiality of the court as well as the integrity of the police department.

Often citizens come to the court to file “citizen complaints.” When citizens wish to present complaints or file criminal charges, they should go to the police department or the prosecutor, but not directly to the court. The police have the power and duty to investigate, which the court lacks, and may make a professional determination of whether or not to recommend the filing of criminal charges. This procedure keeps the court from becoming embroiled in controversy or stepping outside the judicial boundaries. It also preserves the court’s impartiality for cases that result in trial. However, in municipal court, there is no limitation on who can file a complaint (or charging instrument). Cities should create a policy to uniformly apply to citizens wishing to file complaints.

Various city department officials may file code violation complaints in municipal court in addition to or in the absence of code enforcement officers. The acceptance of these complaints for prosecution is a matter for the prosecutor to determine, not the court. As in all cases, the court should remain impartial in hearing evidence in these cases. City employees are no more entitled to special consideration than are peace officers.

True or False
Q. 36. City managers may establish traffic revenue quotas as part of evaluating the court’s performance. ______
Q. 37. It is proper for a court to follow the recommendations of a city auditor regarding recording, handling, and reporting procedures for court costs and fines. ______
Q. 38. Judges may consider factors related to revenue for the city in determining the fine and court costs in an individual’s case. ______
Q. 39. Prosecutors help investigate and decide what complaints are filed in court. ______
Q. 40. The judge and clerk may help the prosecutor, police officer, and/or code enforcement officer investigate a crime. ______

PART 4
SUPPORTIVE AGENCIES AND ORGANIZATIONS

Various state agencies, in addition to the Texas Municipal Courts Education Center, are available to lend assistance to municipal courts. The diverse agencies and courts that comprise the Texas justice system must work cooperatively and yet with some measure of independence.
There is interaction and cooperation among municipal courts, various state agencies, and professional organizations where duties overlap and interface. Some of those agencies are profiled here.

A. Texas Municipal Courts Education Center (TMCEC)

The Texas Municipal Courts Education Center (TMCEC) was formed in 1984 by the Texas Municipal Courts Association (TMCA) to provide extensive, regular education and training programs for municipal judges and court support personnel. The TMCEC is financed by a grant from the Court of Criminal Appeals out of funds appropriated by the Legislature to the Judicial and Court Personnel Training Fund. In 2006, the TMCEC was incorporated as a 501(c)(3) non-profit corporation exclusively for charitable, literary, and education purposes of providing: (1) judicial education, technical assistance, and the necessary resource material to assist municipal judges, court support personnel, and city attorneys in obtaining and maintaining professional competence in the fair and impartial administration of criminal justice; and (2) information to the public about the Texas judicial system and laws relating to public safety and quality of life in Texas communities.

The TMCEC conducts courses in various locations throughout the State to facilitate compliance by municipal judges with the Court of Criminal Appeals’ order mandating continuing education on an annual basis. Courses are offered for judges, clerks, court administrators, bailiffs, warrant officers, prosecutors, and juvenile case managers.

The TMCEC publishes a quarterly journal, *The Recorder*, as well as a *Forms Book, Bench Book, Municipal Judges’ Book*, study guides, charts, and other materials to help judges and court support personnel perform their official duties, and understand and apply the law in its current form. TMCEC staff attorneys are available to judges and court personnel to answer questions about municipal court procedures through the toll-free number at 800.252.3718.

At this time, annual attendance at judicial education programs for court support personnel is not mandated, but is highly recommended. Clerks who are participating in the Texas Municipal Court Clerk Certification Program are required to obtain certain educational requirements through TMCEC, TMCA, the Texas Court Clerks Association (TCCA), or other approved providers. Specific course locations and dates may be obtained by writing or calling the TMCEC at 800.252.3718. The mailing address is 2210 Hancock Drive, Austin, Texas 78756. The TMCEC’s website is www.tmcec.com. Additionally, courses, webinars, and other vital information is available online at the Online Learning Center (OLC) at http://online.tmcec.com. Timely updates are also available by following TMCEC on Twitter and Facebook.

B. Attorney General’s Office (AG)

The current Attorney General for the State of Texas is Greg Abbott. The Attorney General’s Office (AG) publishes legal opinions on how laws might be interpreted when a provision is ambiguous or contradicts another part of the law. Copies of opinions are available online at the AG’s website at www.oag.state.tx.us. Although city officials do not have standing to request that the AG issue an opinion, the letter opinion process is available. Although less authoritative, it is quicker than the formal opinion process and still provides a source of guidance. The AG’s office can be contacted by phone at 512.463.2100.
The AG’s Office administers the Crime Victims Compensation Fund that provides benefits to crime victims. For additional information on the Crime Victims Compensation Fund, call 800.983.9933. Municipal courts are excellent local dissemination sites for information on crime victims’ compensation.

C. State Bar of Texas

The State Bar of Texas, an administrative agency of the State’s judicial branch, is charged with many responsibilities, including providing educational programs for legal professionals and the public, administering the mandatory continuing education for attorneys, and managing the attorney grievance procedure.

For additional information or to learn about the grievance process against attorneys, call 800.932.1900 or 512.427.1463. The State Bar sponsors the Texas Lawyers’ Assistance Program (TLAP), a peer assistance program for lawyers and judges with alcohol and drug abuse problems. To refer a lawyer or judge, contact 800.343.8527 or 800.219.6474. The State Bar’s website is www.texasbar.com.

D. State Commission on Judicial Conduct (SCJC)

The State Commission on Judicial Conduct (SCJC) investigates and resolves complaints filed against judges. Their work will be discussed at greater length in Chapter 3 (Ethics) of the Study Guide, but it is helpful to note that staff attorneys may be able to assist clerks in working through difficult ethical situations and issues they encounter. The SCJC also sponsors a peer assistance program for judges troubled by substance abuse. Contact the SCJC at 877.228.5750. The SCJC’s website is www.scjc.state.tx.us.

E. State Comptroller of Public Accounts

The State Comptroller of Public Account’s Office is ultimately responsible for the collection of court costs and for their final distribution. Municipal courts must report quarterly to the Comptroller. See Chapter 7 (State and City Reports) of the Study Guide for details on the quarterly report. The Comptroller has staff who are available to assist municipal courts and to answer questions about collecting and reporting state court costs on criminal convictions by contacting the Economic Development and Analysis Division toll-free at 800.531.5441, ext. 34679. The website is www.texasahead.org/lga/.

F. Texas Commission on Law Enforcement (TCOLE)

The Texas Commission on Law Enforcement (TCOLE) (formerly known as TCLEOSE) is the regulatory agency for commissioned peace officers, jailers, and telecommunicators in Texas. The TMCEC is contracted with TCOLE to provide continuing education training to licensed peace officers in Texas who work in the municipal courts. Many cities have created city marshal offices to employ officers who are available to assist the municipal court with service of process and in providing court security. Marshal offices must be created and regulated by TCOLE. Questions regarding peace officer certification or city marshal offices should be directed to TCOLE at 512.936.7700 or through its website at www.tcleose.state.tx.us.
G. **Texas Court Clerks Association (TCCA)**

The Texas Court Clerks Association (TCCA) is a non-profit organization established to increase the proficiency of judicial administrators and clerical personnel through education and networking. The TCCA offers:

- an annual meeting;
- regional seminars offered by its local chapters; and
- a legislative program.

The TCCA is an affiliate of the Texas Municipal League (TML). It sponsors the Municipal Court Clerks Certification Program in cooperation with the TMCEC and Texas State University.

For information on courses offered by the TCCA or its local chapters, contact the association through its website at www.texascourtclerks.org.

H. **Texas Department of Motor Vehicles (TxDMV)**

The Legislature created a Texas Department of Motor Vehicles (TxDMV) in 2009 to oversee the registration and titling of vehicles. Cities can contract with the TxDMV and their local tax assessor-collector to deny renewal of vehicle registration for certain defendants who have failed to appear in court or who have failed to pay a fine for certain traffic offenses. This program is commonly referred to as Scofflaw. More information on the TxDMV can be obtained at its website at www.txdmv.gov.

I. **Texas Department of Public Safety (DPS)**

The Transportation Code requires municipal courts to report all traffic convictions or bond forfeitures in traffic cases to the Texas Department of Public Safety (DPS). Sec. 543.201, T.C. This report should be made in a form acceptable to DPS. Sec. 543.203, T.C.

Through the Nonresident Violator Compact (NVC), compliance with traffic laws may be enforced even when citations are issued to motorists who live outside Texas. The police, municipal and justice courts, and DPS must cooperate to enforce the NVC. DPS is the Texas “licensing agency” responsible for receiving reports from local authorities on failure of out-of-state motorists to comply with the terms of traffic citations. Ch. 703, T.C.

DPS also provides and maintains statewide driving records. Such information may be helpful to the courts in assessing punishment or prescribing rehabilitative techniques for defendants. For information on reporting, call DPS at 512.424.2031 or email to data.submission@dps.texas.gov.

Cities may contract with DPS to deny renewal of the driver’s license of a person who has failed to appear in court or who has failed to pay a fine. For information on this program, commonly referred to as Omnibase, visit the website at www.omnibase.com.

DPS forms and more information can be obtained from DPS through its website at www.txdps.state.tx.us.
J. Texas Judicial Council/Office of Court Administration (OCA)

The Texas Judicial Council is the policy-making body for the State judiciary. The Council was created in 1929 by the 41st Legislature to continuously study and report on the organization and practices of the Texas judicial system. The Council’s membership consists predominantly of state judicial officers (including two municipal judges), legislators, and individuals appointed by the Governor and the State Bar of Texas. The Council studies methods to simplify judicial procedures, expedite court business, and better administer justice. It examines the work accomplished by the courts and submits recommendations for improvement of the system to the Legislature, the Governor, and the Supreme Court.

The Office of Court Administration (OCA) is a state agency and operates under the direction and supervision of the Supreme Court and the Chief Justice of the Supreme Court. All Texas courts are required to report various statistical data to the Texas Judicial Council on a monthly basis via OCA. The OCA also runs the Collection Improvement Program and provides assistance to courts with tools for collecting fines, fees, and costs. The data collected is published by the OCA in its Annual Report of the Texas Judiciary. The website for OCA is www.txcourts.gov/oca. The OCA can be reached at 512.463.1625.

K. Texas Municipal Courts Association

The Texas Municipal Courts Association (TMCA) is a 501(c)(4) non-profit association of municipal judges and court support personnel. Its primary purpose is to provide the municipal courts with an efficient organization for the purpose of continuing judicial education and to oversee the grant and programs of the TMCEC. The TMCA also hosts an annual meeting, an annual awards program for outstanding judges and clerks, and an active legislative program. The Board of Directors of the TMCA also serves as the Board of Directors for the TMCEC. For additional information, contact TMCEC at 800.252.3718 for the name of the regional director in your area or visit the TMCA website at www.txmca.com.

L. Texas Municipal League (TML)

The Texas Municipal League (TML) provides a variety of services to municipalities. The TML’s legal staff also provides assistance to courts on an “on call” basis. The TML monitors legislation proposed and passed by the Legislature to assure that the interests of municipalities are represented. Contact the TML at 512.231.7400. The TML’s website is www.tml.org.

Q. 41. Indicate which office(s) to call if you need assistance on:
- Training and written materials on how to run your court: __________________________
- The proper forms to report traffic convictions: __________________________
- Statistical data on other courts of your size: __________________________
- Driving records: __________________________
- Help with collecting the proper court costs: __________________________
- General information on city government: __________________________
- A question about judicial ethics: __________________________
- A question about the crime victims program: __________________________
- Questions about the court clerks’ certification program: ___________________________
- A legislative proposal regarding prosecutors in municipal court: ____________________

PART 5
SETTLING DISPUTES OUT OF COURT

Courts play an important role in resolving disputes in American society, although there are many other ways to settle conflicts. Not every dispute will result in a criminal or civil case in which courts would decide a resolution. Among the most common methods of alternative dispute resolution are negotiation, arbitration, and mediation. Community mediation services may be available in your area to resolve disputes between local residents in cases involving ordinance violations, such as barking dogs, disposal of trash, and disruptive conduct. These cases, without arising to the commission of a criminal act, would not appear before a municipal court. The State Bar of Texas maintains a list of community dispute resolution centers and can provide you with the name of area centers.
APPENDIX A: COURT STRUCTURE OF TEXAS

MARCH 1, 2013

Supreme Court
(1 Court — 9 Justices)
- Statewide jurisdiction
  - Final appellate jurisdiction in civil and juvenile cases.

Court of Criminal Appeals
(1 Court — 9 Justices)
- Statewide jurisdiction
  - Final appellate jurisdiction in criminal cases.

Courts of Appeals
(14 Courts — 80 Justices)
- Regional jurisdiction
  - Intermediate appeals from trial courts in their respective courts of appeals districts.

District Courts
(456 Courts — 456 Judges)
- State Trial Courts of General and Special Jurisdiction
  - (59 Districts Containing One County; and 97 Districts Containing More than One County)
    - Original jurisdiction in civil actions over $100, divorce, child custody, contested elections.
    - Original jurisdiction in felony, juvenile matters.
    - 13 district courts are designated criminal district courts; some others are directed to give preference to certain specialized areas.

County-Level Courts
(639 Courts — 509 Judges)
- State Trial Courts of Limited Jurisdiction
  - Constitutional County Courts (254)
    - (One Court in Each County)
      - Original jurisdiction in civil actions between $200 and $10,000.
      - Probate (contested matters may be transferred to District Court).
      - Exclusive original jurisdiction over libel, slander, and false imprisonment.
      - Juvenile matters.
      - Appeals de novo from lower courts or on the record from municipal courts of record.

Statutory County Courts (239)
- (Established in 81 Counties)
    - All civil, criminal, original, and appellate actions prescribed by law for constitutional county courts.
    - In addition, jurisdiction over civil matters up to $200,000 (some courts may have higher maximum jurisdiction amount).

Statutory Probate Courts (16)
- (Established in 10 Counties)
  - Limited primarily to probate matters.

Justice Courts*
(539 Courts — 519 Judges)
- Local Trial Courts of Limited Jurisdiction
  - (Established in Precincts Within Each County)
    - Civil actions of not more than $10,000.
    - Small claims.
    - Criminal misdemeanors punishable by fine only or confinement.
    - Magistrate functions.

Municipal Courts*
(526 Courts — 1,559 Judges)
- Local Trial Courts of Limited Jurisdiction
  - Criminal misdemeanors punishable by fine only or confinement.
  - Exclusive original jurisdiction over municipal ordinance criminal cases.
  - Limited civil jurisdiction.
  - Magistrate functions.

---

1. All justice courts and municipal courts are not courts of record. Appellate from these courts are by rule de novo in the county court or, in some instances in the district court.
2. Some municipal courts are courts of record — appeals from those courts are taken on the record in the county court. As of March 2013, 148 courts indicated they were a court of record; a list is posted at http://www.courts.state.tx.us/dca/judbop.asp.
3. An offense that arises under a municipal ordinance is punishable by a fine or confinement (3) $2,000 for ordinance that governs fiscal, zoning, and public health or (5) $500 for all others.
ANSWERS TO QUESTIONS

PART 1

Q. 1. An adversarial legal system is one in which the lawsuit or case is viewed as a struggle between two sides. Each side acts in its own interest, presenting its case in the best possible light to the court. The judge remains neutral and decides questions of law (a disputed legal contention) and, when there is no jury, questions of fact (a disputed factual contention). The theory of this process is that the trier of fact (the judge or the jury) will be able to determine the truth if the opposing parties present their best arguments and show the weaknesses in the other’s case. Decisions are based upon the evidence presented and the applicable law.

Q. 2. Common law refers to that body of law that developed in England and the American colonies before the American Revolution. Today it is viewed as the principles, customs, and rules of action that are accepted as part of the justice system. Many common law principles have been incorporated into current codes and statutes. For example, the waiver of trial by jury (Arts. 1.13 and 45.025, C.C.P.), the defense of necessity (Sec. 9.22, P.C.), and the defense of justification (Sec. 9.02, P.C.) all spring from the English common law.

Q. 3. The legislative branch enacts the laws; the executive enforces the laws; and the judiciary interprets and applies the laws.

Q. 4. The founding fathers believed that if legal power is divided into three branches, no one branch will be able to dominate the other two and impose its own theory of justice on an unconsenting public.

Q. 5. The Bill of Rights

Q. 6. 5th Amendment

Q. 7. 8th Amendment

Q. 8. 2nd Amendment

Q. 9. 1st (freedom of press) and 6th (public trial)

Q. 10. 4th Amendment

Q. 11. False

Q. 12. Texas Supreme Court, Texas Court of Criminal Appeals, intermediate courts of appeals, district courts, and justice courts.

PART 2

Q. 13. Jurisdiction is the authority and legal power to hear and decide cases.

Q. 14. Texas Supreme Court and Texas Court of Criminal Appeals

Q. 15. A civil case usually deals with private rights of individuals, groups, or businesses. A civil lawsuit can be brought when one person feels wronged or injured by another person. A criminal case is legal action brought by the government against a person charged with committing a crime.

Q. 16. Texas Supreme Court

Q. 17. They are elected for six-year terms in a partisan election.
Q. 18. The appellate courts hear cases based upon the “record” (a written transcription of the testimony given, exhibits introduced, and the documents filed in the trial court) and the written and oral arguments of the appellate lawyers. Unlike the trial courts, the courts of appeals do not receive testimony nor hear witnesses when considering cases on appeal.

Q. 19. When a case is appealed from a non-record municipal court, it is retried at the higher level as though it is a new case since there is no record of the case from the lower court. Hence, trial de novo means trying a matter anew; the same as if it had not been previously heard before and as if no decision had been rendered.

Q. 20. Justice courts do not have jurisdiction over city ordinances, except in one instance: a violation of a city ordinance that arises in a city’s extraterritorial jurisdiction involving signs. They have jurisdiction over foreclosure and forcible entry and detainer cases; municipal courts do not. Justice courts have much greater civil jurisdiction than do municipal courts.

Q. 21. Statutory courts

Q. 22. Court of record or court of non-record

Q. 23. Violation of city ordinances and the resolutions, rules, and orders of a joint airport board that occur in the territorial jurisdiction of the city and property owned by the city in the city’s extraterritorial jurisdiction (ETJ).

Q. 24. Justice courts and county courts. Some courts of record may share jurisdiction with district courts.

Q. 25. State law, fine-only offenses

Q. 26. Generally, within the territorial limits of the city.

Q. 27. Fine-only or other sanctions, authorized by law, that do not consist of confinement in the jail or imprisonment.

Q. 28. The imposition of a sanction or denial, suspension, or revocation of a privilege does not affect the original jurisdiction of the local trial courts in Texas.

Q. 29. Minor DUI: alcohol awareness class, community service, DL suspension

Q. 30. $500

Q. 31. As long as the offense is punishable by a fine only, maximum amount is set by the Legislature.

Q. 32. $2,000

Q. 33. The court in which the complaint (or citation) is first filed retains jurisdiction.

Q. 34. More citizens come into personal contact with municipal courts than with all other Texas courts combined. Persons in any court for the first time will form a lasting impression of the justice system. Public impression of the judicial system is affected and shaped in large measure by the proceedings of the municipal court.

Q. 35. The answers to the subparts of question 35 are found below:

- An appeal from a district court: Court of Appeals
- A divorce case: District Court
- A speeding ticket: Municipal or Justice of the Peace Court
• A felony murder case: District Court
• An appeal from a municipal court: County Court
• A child support or child custody case: District Court
• An ordinance violation: Municipal Court (with the exception of sign ordinance violations in the city’s extraterritorial jurisdiction which may also be in the justice court)
• An appeal from the justice courts: County Court
• A death penalty appeal: Court of Criminal Appeals
• An appeal from a municipal court of record: County Court

PART 3
Q. 36. False (Section 720.002 of the Transportation Code prohibits quotas on municipal courts).
Q. 37. True.
Q. 38. False (judicial decisions may only be made on the basis of facts in evidence and laws).
Q. 40. False (judges are neutral and unbiased).

PART 4
Q. 41. The answers to the subparts of question 41 are found below:
• Training and written materials on how to run your court: Texas Municipal Courts Education Center
• The proper forms to report traffic convictions: Department of Public Safety
• Statistical data on other courts of your size: Texas Judicial Council/Office of Court Administration
• Driving records: Department of Public Safety
• Help with collecting the proper court costs: State Comptroller of Public Accounts
• General information on city government: Texas Municipal League
• A question about judicial ethics: State Commission on Judicial Conduct
• A question about the crime victims program: Attorney General’s Office
• Questions about the court clerks’ certification program: Texas Municipal Courts Education Center or Texas Court Clerks Association
• A legislative proposal regarding prosecutors in municipal court: Texas Municipal Courts Association or Texas Municipal League
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INTRODUCTION

The single most important source of municipal court authority and jurisdiction is the Texas Constitution, which gives the Legislature the power to establish courts and set their jurisdiction where it sees fit. The Legislature exercised this power and created municipal courts in the Corporation Court Law of 1899, which has since been codified in the Government Code. The authority and jurisdiction of municipal courts can be found in various statutes and codes. In some instances, duties are prescribed by state law; in others, by city charter or city ordinance. However, most daily work assignments developed to discharge official duties are based on policies or procedures authorized by the judge and administered by the court clerk(s) and other officers of the court.

A “duty” is defined by *Black’s Law Dictionary* as any action, performance, task, or observance owed by a person in an official capacity. In the criminal justice system, there are several different categories of duties that may be performed by officers of the court; the key is in knowing who can legitimately perform these different duties. “Authority” is defined as governmental power or jurisdiction. Municipal judges are public officials who are authorized to perform judicial, magistrate, and ministerial duties. Judicial duties may not be delegated unless expressly authorized by law. If a judicial duty is delegated to a clerk, both the judge and the clerk may be subject to liability. Judges may, however, delegate ministerial duties that require no discretion and are generally administrative in nature.

The court clerk carries out the ministerial duties delegated by a judge and performs the administrative and managerial functions for the court. Because statutes do not provide much direction for court clerks, clerks can look at a judge’s judicial authority to get a clearer picture of the relationship between the authority of a judge and that of a clerk.

This guide introduces municipal court personnel to the different players who are considered officers of the court (the prosecutor, defense attorney, bailiff, warrant officer, clerk, and judge), the different types of duties (law enforcement, magistrate, prosecutorial, ministerial, and judicial), and who has the authority to engage in those types of duties.

PART 1
PLAYERS AND DUTIES

This part will briefly describe the qualifications, selection, and duties of officers of the court.

A. Basic Municipal Court Organization

Although some of the fundamental elements of municipal courts in Texas are authorized or required by law, municipalities have wide latitude in prescribing the organizational structure of the court. In Texas, cities are created under statutes that make them either home-rule or general-law cities. Home-rule cities are empowered to enact charter and ordinance provisions not inconsistent with state law; these provisions prescribe structural details of local court organization. A city must have a population of at least 5,000 in order to become a home-rule city. Texas statutes also provide general-law cities—those with a population of less than 5,000 or more than 5,000 without a charter—with some choices regarding the organization of the court. Thus, variations exist throughout the State with regard to court organization. The basic
organization of the municipal court personnel, however, consists of the following officers of the court: judge(s), court clerk(s), prosecutor(s), bailiff(s), warrant officer(s), and defense counsel.

B. The Judge

The judge is responsible for presiding over trials and other court proceedings, for performing certain magistrate functions, and for the general administration of the court. Municipal judges are public officials.

1. Qualifications and Selection

Separate statutory authorization for the selection of municipal judges exists for home-rule cities and for general-law cities. A home-rule city can designate in its city charter whether the municipal judge is elected or appointed. Sec. 29.004(a), G.C. The judge and any alternate judges of a municipal court in a home-rule city are selected under the city’s charter provisions. The judge shall be known as the “judge of the municipal court” unless the municipality by charter provides for another title. Sec. 29.004(a), G.C.

In a general-law city, the mayor is the ex-officio judge of the municipal court unless the city passes an ordinance providing for the election or appointment of a judge. If the municipality authorizes an election, the judge must be elected in the same manner and for the same term as the mayor. If the municipality authorizes an appointment, the mayor ceases to be judge on the enactment of the ordinance. The first elected or appointed judge serves until the expiration of the mayor’s term. Sec. 29.004(b), G.C.

If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation. Sec. 29.006, G.C.

There are no statutory qualifications for a municipal judge; in fact, about half of all municipal judges are not attorneys. The municipality may establish the qualifications for the judge by charter or ordinance. The only statutory qualifications apply to a municipal court of record, in which case the judge must be a resident of Texas, a U. S. citizen, a licensed attorney in good standing, and have two or more years of experience in the practice of law in this State. Sec. 30.00006, G.C.

Both courts of record and courts of non-record may appoint multiple judges. Secs. 29.007 and 30.00006. G.C. When there is more than one judge in a municipality, one judge is generally designated the presiding judge or the administrative judge. As the chief administrator for the court, the presiding judge is responsible for organizing and scheduling court activities, developing and maintaining policies and procedures, allocating the workload, assigning cases to the various courts, supervising court support personnel, and performing a variety of other administrative functions.

2. Term of Office

A municipal judge’s term of office is two years unless the municipality provides for a longer term—up to four years—pursuant to Article XI, Section 11 of the Texas Constitution and Section 29.005 of the Government Code. The term of office for judges in municipal courts of record is
established by the ordinance that created the office, for a definite term of two or four years. Sec. 30.00006, G.C.

A municipal judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the appointing authority, continue to serve for another term of office beginning on the date the previous term of office expired. Sec. 29.005, G.C.

If the office of the municipal judge becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. Sec. 29.011, G.C. If the office becomes vacant, the city secretary, or person responsible for maintaining the records of the city’s governing body, is required to notify the Texas Judicial Council of the vacancy or appointment within 30 days. Sec. 29.013, G.C.

More than one court of appeals has held that a municipal judge is not an employee. Regardless if contracts are utilized to specify compensation, benefits, and expectations, it is important for local governments to distinguish municipal judges from contract employees and at-will employees. As public officers, municipal judges may be removed from office, generally for incompetence, corruption, misconduct, or malfeasance in office. A municipal judge may also be removed from office by the Supreme Court through formal proceedings initiated by the State Commission on Judicial Conduct upon a finding of judicial misconduct. Art. V, Sec. 1-a, Tex. Const.

3. Compensation

Municipal judges are compensated by the municipality, and the municipality sets the compensation amount. Although municipal judges are considered “state judges” for a few statutory privileges (e.g., being able to withhold their home address from ad valorem tax records), they are not considered so for others (e.g., being able to withhold their home address from their driver’s license), including laws that set the compensation of county, district, or appellate judges.

4. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require all officials who are elected or appointed to take an oath of office. The oath is retained with the official records of the office, usually filed with the city secretary or the person responsible for maintaining the official records of the office. Before an elected or appointed official takes the oath of office, however, the official must swear to an anti-bribery statement, also retained with the records of the office. Art. XVI, Secs. 1(b) and 1(c), Tex. Const. The oath and statement must be sworn to and properly filed every time an official is reelected or reappointed. This includes when a judge continues to serve for another term because the city did not take action to reappoint a judge or appoint another judge by the 91st day following the expiration of a term of office. Before performing any official duties, the judge must swear to and file the anti-bribery statement of officer and oath of office. The wording of the oaths is included in Appendix A.

A person administering an oath of office or statement of officer must have the authority to administer an oath. Persons who have the authority to administer any oath are listed in Section 602.002 of the Government Code and include:

- a judge, retired judge, or clerk of a municipal court;
- a judge, retired judge, senior judge, clerk, or commissioner of a court of record;
• a justice of the peace or a clerk of a justice court;
• a notary public;
• the secretary of state or a former secretary of state;
• the lieutenant governor or a former lieutenant governor;
• the speaker of the House of Representatives or a former speaker of the House of Representatives;
• the governor or a former governor;
• a legislator or retired legislator;
• the attorney general or a former attorney general;
• the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or
• a peace officer only if the oath is administered when the officer is engaged in the performance of the officer’s duties and the administration of the oath relates to the officer’s duties

Presumably, a person would not be authorized to administer the oath until they themselves had taken an oath for their office.

5. **Duties**

Judges have the authority to perform judicial, magistrate, and ministerial duties. Judicial duties require an exercise of judgment, a decision of a question of law or fact, or a choice of alternatives. A question of law is an issue involving the application or interpretation of a law. A question of fact is an issue involving resolution of a factual dispute. The choices made by judges must be lawfully available choices or alternatives.

Judicial duties involve the exercise of discretion. “Judicial discretion” is defined as the exercise of judgment by a judge based on what is fair under the circumstances and guided by the rules and principles of law. A judge’s discretion to make decisions must be based on facts and guided by law. It is the power to determine what, under existing circumstances, is right or proper. Judicial discretion is not unrestrained, though, and must be exercised so as to give effect to the purpose of the law for the interest of justice.

In the capacity of a trial court judge, the judge must be impartial and ensure that justice is done. The judge is *not* an adversary and must decide questions only on the basis of law. He or she must never assume the role of prosecutor or of defense counsel nor act as a special advisor to the police or a rubber stamp for law enforcement. The judge must never be influenced by the city to produce revenue or to enforce laws selectively.

When cases proceed to trial, only the evidence presented and the applicable laws are legitimate bases for any judicial decision. Accordingly, the judge must allow the prosecution and the defense, as well as all other components of the system, to perform their duties vigorously, but always within the limits allowed by law.

All judges in Texas are magistrates. Art. 2.09, C.C.P. Magistrate authority is additional power granted by the Texas Legislature. Although magistrate duties are broad and scattered throughout various statutes and codes, the general duty of every magistrate is to preserve the peace within
his or her jurisdiction by issuing process intended to help prevent and suppress crime and to initiate the arrest of offenders in order that they may be brought to punishment. Art. 2.10, C.C.P. Magistrates act as the gatekeeper to the criminal justice system.

Case law provides that a magistrate’s authority is countywide. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973). In the municipal setting, a mayor is also a magistrate, but a mayor who is not acting as an ex officio municipal judge can only perform magistrate duties and not judicial duties.

The judge will rely heavily on administrative support by the clerk, but may not delegate judicial duties to the clerk or allow the clerk to influence any judicial decisions. While the judge establishes judicial policy and general court procedures, the clerk helps to implement those policies and procedures. Despite the close working relationship between the judge and clerk, there must be a clear separation between judicial and administrative functions.

C. The Court Clerk

Court clerks look to the judge for direction in matters pertaining to overall court policy and judicial procedures. The clerk’s primary responsibilities include processing the clerical work of the court; administering daily operations of the court; maintaining court records; coordinating the scheduling of cases; and performing other duties as may be outlined in the city charter or ordinances. In the absence of more detailed, written administrative duties for a clerk by the governing body, the judge may assign various administrative duties. The court clerk is required to “keep minutes of the proceedings of the court, issue process and generally perform the duties for the municipal court that a county clerk performs for the county court.” Sec. 29.010(c), G.C.

1. Qualifications and Selection

Court clerks are elected, appointed, or hired, depending on whether the city is a general-law or home-rule city and the court is a court of record or not.

For courts of non-record in a general-law city, the court clerk is elected in the same manner as the municipal judge if the judge is elected. However, some cities provide by ordinance that the city secretary serve as ex officio court clerk. The city secretary who serves in an ex officio capacity may be authorized to appoint a deputy to serve as court clerk. Sec. 29.010(a), G.C. In a home-rule city, the charter provides for the appointment of the court clerk. Sec. 29.010(d), G.C.

For a municipal court of record, the city by ordinance shall provide for the appointment of a clerk of the municipal court(s) of record. The city may provide deputy clerks, warrant officers, and other personnel as needed for the proper operation of the courts, and the clerks and other court personnel perform their duties under the direction and control of the presiding judge.

Cities have broad discretion in what to title the clerk, and titles vary across the State. Generally, there is one clerk of the court (either appointed or elected), and the city can hire additional clerks with titles such as clerk, deputy clerk, or even customer service representative.

The city council may establish the qualifications for the position of the court clerk. Qualifications vary greatly depending on the size and workload of the court, the nature of the cases processed, the size of the staff and how the workload is distributed, and whether the court’s work is done manually or by computer. Knowledge of court functions and procedures, advanced clerical skills, experience in dealing with the public, knowledge of accounting or bookkeeping,
office and personnel management skills, and knowledge of caseflow management are most desirable. Where courts have automated court records, clerks may also be required to possess certain computer skills.

2. **Term of Office**

The municipal court clerk serves a two-year term of office unless the municipality provides for a longer term pursuant to Article XI, Section 11 of the Texas Constitution. If the city secretary serves as clerk, the term of office is during the term of the city secretary. Sec. 29.010(b), G.C.

If the office of the municipal court clerk becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. Sec. 29.011, G.C. If the office becomes vacant, the city secretary, or person responsible for maintaining the records of the city’s governing body, is required to notify the Texas Judicial Council of the vacancy or appointment within 30 days. Sec. 29.013, G.C.

Appointed or elected court clerks, as opposed to hired clerks, may be removed from office for the same reasons as other city officials. State law governing general-law cities provides that city officials may be removed for incompetence, corruption, misconduct, or malfeasance in office. Removal may occur after providing the officer with due notice and an opportunity to be heard. Sec. 22.077(a), L.G.C. In addition, if the governing body lacks confidence in a municipal officer elected by the governing body, the governing body may remove the officer at any time. The removal is effective only if two-thirds of the elected aldermen vote in favor of a resolution declaring the lack of confidence. Sec. 22.077(b), L.G.C. Of course, the governing body of the municipality should exercise care in removing a municipal judge by the city council. Ch. 30, G.C. Accordingly, specific statutes and ordinances would need to be consulted.

3. **Compensation**

The salary of the court clerk can be prescribed by the city charter in home-rule cities. Such compensation is paid out of the city treasury. For all other cities—general-law or where the charter does not specify a compensation—the city council sets the court clerk’s salary, just as it does for other officers of the court.

4. **Oath of Office**

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require all officials who are elected or appointed to take an oath of office. The oath is retained with the official records of the office, usually filed with the city secretary or the person responsible for maintaining the official records of the office. Before an elected or appointed official takes the oath of office, however, the official must swear to an anti-bribery statement, also retained with the records of the office. Art. XVI, Secs. 1(b) and 1(c), Tex. Const. The oath and statement must be sworn to and properly filed every time an official is reelected or reappointed. The oath and statement must be taken before performing any duties of office. The wording of the oaths is included in Appendix A.
A person administering an oath of office or statement of officer must have the authority to administer an oath. Section 602.002 of the Government Code lists persons who have authority to administer any oath and includes:

- a judge, retired judge, or clerk of a municipal court;
- a judge, retired judge, senior judge, clerk, or commissioner of a court of record;
- a justice of the peace or a clerk of a justice court;
- a notary public;
- the secretary of state or a former secretary of state;
- the lieutenant governor or a former lieutenant governor;
- the speaker of the House of Representatives or a former speaker of the House of Representatives;
- the governor or a former governor;
- a legislator or retired legislator;
- the attorney general or a former attorney general;
- the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or
- a peace officer only if the oath is administered when the officer is engaged in the performance of the officer’s duties and the administration of the oath relates to the officer’s duties.

Presumably, a person would not be authorized to administer the oath until they themselves had taken an oath for their office.

Section 29.007(f) of the Government Code provides that in home-rule cities that have established the office of municipal court clerk (the clerk is either appointed or elected), the clerk has authority to administer oaths. This statute does not make any exceptions to this authority.

5. Duties

The court clerk can have a tremendous impact on participants’ perceptions of the justice system. Each participant has a right to know and understand the court’s procedures, thus the clerk should provide participants with information on court procedures while avoiding giving legal advice.

The responsibility of the court clerk’s position and the scope of duties have greatly increased in recent years. The professionalism, timeliness, and accuracy of the court clerk’s actions are important to the proper operation of the municipal court.

The court clerk must fulfill all duties impartially and competently. Within the role of administratively assisting the court as a whole, the court clerk is responsible for seeing that the court’s papers are accurate, orderly, and complete. While the clerk’s duty is to serve all participants equally in the legal system, the clerk must remain independent of any particular participant. This means that the clerk must be as courteous and helpful to defense lawyers as prosecutors and to defendants as police officers. The clerk must never attempt to influence the outcome of any case.
D. The Prosecutor

The prosecutor’s role is to seek justice. In the broad view, the prosecutor represents the public’s interest in enforcing the criminal law strictly but fairly. The prosecutor also has a duty to maintain public respect for the system. The Code of Criminal Procedure provides that it is the primary duty for municipal court prosecutors not to convict but to see that justice is done. Art. 45.201, C.C.P.

All prosecutions in municipal court shall be conducted by the city attorney or deputy city attorney. Some cities have in-house city attorneys; others contract with solo practitioners or law firms. Depending on the volume of complaints filed in a municipal court, prosecution may entail some or all of an attorney’s time. The prosecutor may also be the county attorney of the county in which the municipality is situated if the county attorney so desires. In this case, the county attorney is not entitled to receive any compensation. It should be emphasized that Article 45.201 of the Code of Criminal Procedure only requires an attorney representing the State to be present to conduct “prosecutions” at bench or jury trials. Tex. Atty. Gen. Op. GA-0067 (2003). Thus, prosecutors are not required to be present when a defendant makes an appearance to enter a plea.

1. Qualifications and Term of Office

The city attorney’s term, subject to conditions regarding removal, may be set by ordinance, charter, or the agreement for employment. Deputy city attorneys assigned as municipal court prosecutors work at the pleasure and discretion of the city attorney. As the prosecutor must be a city attorney or deputy city attorney, the prosecutor necessarily must be a licensed attorney in Texas.

2. Duties and Responsibilities

Just as municipal court clerks perform many of the same duties as their counterparts at the county and district levels, the city prosecutor performs basically the same role as the prosecuting attorney in other criminal trial courts. Although most cases in municipal courts are less complex than those in county and district courts, the volume of cases is much greater. The prosecutor’s time for case preparation and consultation with police officers, witnesses, and complainants is usually limited.

Because prosecutors, not judges, decide which complaints are filed in the court, only the prosecutor should advise and direct peace officers in preparing criminal cases. The prosecutor’s role is to seek justice, to screen out or to ask for dismissal of cases where there is insufficient evidence or evidence wrongly gathered, and to seek convictions fairly and only of the guilty. Judges should be mindful that prosecutors have discretion over which cases to prosecute and trial strategy. Prosecutors, however, should be mindful that they cannot dismiss charges or cases, except upon written grounds and with the judge’s approval. Arts. 45.201 and 32.02, C.C.P.

Duties of the city prosecutor are as follows:

- investigate the facts surrounding alleged offenses and decide whether to file charges;
- prepare and draft complaints (the clerk may assist the prosecutor in preparing routine complaints where that preparation is ministerial duty; however, the ultimate responsibility for the legal sufficiency and accuracy of complaints belongs to the prosecutor);
• administer oaths to persons filing complaints before the court (Art. 45.019(e), C.C.P.);
• prepare and present the State’s case at trial;
• arrange for the appearance of the State’s witnesses, including requests for subpoenas and attachments;
• file motions with the court that may be necessary to present cases;
• request dismissal of cases under proper circumstances;
• advise the police department in case preparation, legal procedures, and requirements, and other legal questions; and
• discuss pending cases with defendants or, if represented by counsel, with their attorneys prior to the courtroom hearing.

With the county attorney’s consent or assistance, prosecutors are statutorily allowed to prosecute cases on appeal out of a municipal court. Art. 45.201, C.C.P. The prosecutor may make arrangements with the county attorney or criminal district attorney and the county judge to prosecute municipal court appeals.

E. The Bailiff

Ultimately, the judge has responsibility for maintaining order in his or her courtroom. Section 21.001(b) of the Government Code provides that “a court shall require that proceedings be conducted with dignity and in an orderly and expeditious manner and control the proceedings so that justice is done.” It is, therefore, up to the judge to ensure that all users of the court are afforded safe and orderly proceedings. This is an impossible task to administer alone, however, so judges rely on the court bailiff to help.

1. Qualifications

Chapter 53 of the Government Code mandates the appointment of bailiffs in certain courts in Texas; however, there is no universal statutory requirement for municipal courts to have a bailiff. There are a few exceptions for cities that have statutory courts of record. Even though Texas law does not require the use of a bailiff in most municipal courts, it is the best practice to have at least one bailiff.

Just as there is no statutory requirement, there are also no statutory qualifications for bailiffs in municipal court. Minimum qualifications for the position of bailiff commonly include the following: high school graduation or G.E.D.; knowledge of the operations, procedures, and decorum of the municipal court; and experience in dealing with the public. Some cities require bailiffs to be at least 18 years of age, some 21. Many cities require the bailiff to be a licensed peace officer because peace officers possess arrest powers and can carry a weapon, while a non-peace officer’s authority to arrest, carry a firearm, or enforce contempt orders would be limited.

Some bailiffs are licensed peace officers dedicated to working with the court. Others are warrant officers or city marshals who also provide security for the court when court is in session, are peace officers who are “on loan” from the police department to the court when needed, or are retired peace officers. Other courts hire outside, private security companies or court security officers who are not peace officers.
2. **Duties and Responsibilities**

The bailiff is directly responsible to the judge and has the duty of maintaining order, security, and decorum while the court is in session. The bailiff generally opens and closes court sessions. He or she may be assigned other duties, including maintaining custody of and escorting those convicted to the clerk to arrange payment. Bailiffs also administer oaths to witnesses (if directed and authorized by the judge); attend to the jury, keeping them together and separate from all other citizens during deliberations; carry written communications between the jury and the judge; and inform the judge when a verdict has been reached. Bailiffs may also assist defendants and other citizens present by explaining court procedures and answering questions.

**F. The Warrant Officer**

It is the duty of every peace officer to preserve the peace within the officer’s jurisdiction through the use of all lawful means. Art. 2.13, C.C.P. Peace officers engage in various law enforcement duties when arresting offenders without a warrant (i.e., issuing a citation or making a custodial arrest for an offense committed in view), applying to a magistrate for an arrest warrant when the officer has probable cause to believe a person has committed an arrest, and executing lawful process issued to the officer by a magistrate or a judge.

The primary role of the warrant officer is to serve all processes or papers issued by a municipal court; in other words, to make arrests on warrants or capias pro fines or deliver summonses to the parties to whom they are addressed. The Code of Criminal Procedure provides that all process issuing out of the municipal court shall be served by a police officer or city marshal under the same rules that apply to service by sheriffs and constables of process issuing out of justice court. Art. 45.202, C.C.P. Failure, neglect, or refusal to serve process may make the responsible officer liable for a fine of $10 to $200 for contempt of court. Art. 2.16, C.C.P.

Some cities have city marshal departments that work under the court; often, the court administrator is the chief administrator of the law enforcement agency that is the marshal’s office. In most cities, the duty to serve process is often assigned to the police department and sometimes to those specially designated as warrant officers. As peace officers, warrant officers must comply with the minimum educational, training, physical, mental, and moral standards established by the Texas Commission on Law Enforcement (TCOLE).

**G. Defense Counsel**

The role of defense counsel is to represent a client zealously within the bounds of the law. Like the prosecutor, the defense counsel has a duty to maintain public respect for the system. Even citizens who have committed crimes are entitled to have their rights respected and to be treated fairly. Upon a guilty verdict, defense counsel has a duty to argue for fair punishment.

Most municipal court defendants appear pro se, or on their own behalf without an attorney. If a defendant does hire an attorney, the attorney should submit a letter of representation to the court, stating that the attorney represents that defendant. Once a court has a letter of representation, the court should communicate with the defendant through his or her attorney. While pro se defendants are not considered officers of the court, defense attorneys are.
True or False
Q. 1. The judge plays an adversarial role in court. ______
Q. 2. If there is not a prosecutor, the judge or the clerk should serve as the prosecutor and represent the State. ______
Q. 3. The prosecutor, with the consent of the judge, has the authority to dismiss a case. ______
Q. 4. The prosecutor is responsible for preparing and drafting complaints and may ask the clerk for assistance. ______
Q. 5. Both a bailiff and a warrant officer must comply with TCLEOSE training and standards. _____
Q. 6. How often must the statement of officer and oath of office be filed? ____________________________
Q. 7. Which must be filed first: the oath of office or the statement of officer? ____________________________

PART 2
AUTHORITY OF A JUDGE

As previously stated, judges have the authority to perform judicial, magistrate, and ministerial duties.

A. Judicial Duties

Judicial duties require an exercise of discretion. Judicial duties are found throughout the codes and statutes and prescribe an action to be done by the judge or the court. Judicial acts include accepting pleas, assessing fines, and dismissing cases when permitted by statute, issuing warrants and capiases, or granting driving safety courses. Tex. Atty. Gen. Op. H-386 (1974).

A judge is not permitted to delegate duties conferred by law unless there is express statutory or constitutional authorization permitting the judge to do so. Newsom v. Adams, 451 S.W.2d 948 (Tex. Civ. App.–Beaumont 1970); Tex. Atty. Gen. Op. H-386 (1974). Thus, unless there is clear language in the statutes permitting the judge to delegate duties to the clerk, the judge may not do so. The judge may not delegate to the clerk any action that the judge is statutorily bound to take on a case that requires an interpretation or application of law or determination of fact based upon the circumstances in any particular case. Put simply, if the law says a judge has to do something, or if a decision has to be made on the law or facts of a case, the judge may not delegate the task: the judge must decide. Hence, a judge is not permitted to delegate to a court clerk a duty such as taking a plea or setting a fine.

Other duties that judges may perform, such as ministerial duties, may be delegated to court clerks because ministerial duties require no discretion and are generally administrative in nature, such as keeping and maintaining a docket, preparing paperwork for the judge’s signature, maintaining files, and providing customer service to court users.
1. Judicial Duties that May Not be Delegated

The list below, although not exhaustive, sets out judicial duties that *may not* be delegated to a clerk.

<table>
<thead>
<tr>
<th>Judicial Duty</th>
<th>Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setting bail to secure the defendant’s appearance after a case has been filed in municipal court</td>
<td>Article 45.016, C.C.P.</td>
</tr>
<tr>
<td>Issue arrest warrants for defendants whose cases are filed in municipal court</td>
<td>Article 45.014, C.C.P.</td>
</tr>
<tr>
<td>Issue a capias for a defendant after a charge has been filed in municipal court</td>
<td>Article 23.04, C.C.P.</td>
</tr>
<tr>
<td>Issue a summons for a defendant when requested by the prosecutor</td>
<td>Article 23.04, C.C.P.</td>
</tr>
<tr>
<td>Issue a summons for the parent of a person under 17</td>
<td>Articles 45.0215 and 45.054, C.C.P.</td>
</tr>
<tr>
<td>Forfeit bail</td>
<td>Articles 4.14 and 45.044, C.C.P.; Section 29.003(e), G.C.</td>
</tr>
<tr>
<td>Take and accept pleas of guilty, nolo contendere, or not guilty</td>
<td>Articles 27.14, 27.16, 45.021, 45.0215, 45.022, and 45.024, C.C.P.; Attorney General Opinion H-386</td>
</tr>
<tr>
<td>Enter a plea of not guilty for a defendant who refuses to plead</td>
<td>Article 45.024, C.C.P.</td>
</tr>
<tr>
<td>Grant a motion for new trial made after a defendant entered a plea while detained in jail</td>
<td>Article 45.023, C.C.P.</td>
</tr>
<tr>
<td>Conduct pre-trial hearings</td>
<td>Article 28.01, C.C.P.</td>
</tr>
<tr>
<td>Grant continuances</td>
<td>Chapter 29, C.C.P.</td>
</tr>
<tr>
<td>Conduct trials</td>
<td>Article 45.025, C.C.P.</td>
</tr>
<tr>
<td>Issue a writ to summon a venire (jury panel)</td>
<td>Article 45.027, C.C.P.</td>
</tr>
<tr>
<td>Rule on challenges to the array (membership) of the jury pool</td>
<td>Article 36.07, C.C.P.</td>
</tr>
<tr>
<td>Form the jury and administer the oath</td>
<td>Article 45.030, C.C.P.</td>
</tr>
<tr>
<td>Charge the jury</td>
<td>Article 45.033, C.C.P.</td>
</tr>
<tr>
<td>See that the verdict is in proper form and render judgment and sentence following a jury trial</td>
<td>Article 45.036, C.C.P.</td>
</tr>
<tr>
<td>Enter judgments</td>
<td>Article 45.041, C.C.P.</td>
</tr>
<tr>
<td>Action</td>
<td>Article/Section Details</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Setting fines</td>
<td>Article 45.041, C.C.P.; Attorney General Opinion H-386</td>
</tr>
<tr>
<td>Grant deferred disposition</td>
<td>Article 45.051, C.C.P.</td>
</tr>
<tr>
<td>Grant a driving safety course</td>
<td>Article 45.0511, C.C.P.</td>
</tr>
<tr>
<td>Grant teen court</td>
<td>Article 45.052, C.C.P.</td>
</tr>
<tr>
<td>Determine how a defendant pays fine and costs (time payment, extensions, community service)</td>
<td>Articles 45.041 and 45.049, C.C.P.</td>
</tr>
<tr>
<td>Grant community service or tutoring in satisfaction of fine or costs for juvenile defendants</td>
<td>Articles 45.049 and 45.0492, C.C.P.</td>
</tr>
<tr>
<td>Grant jail-time credit</td>
<td>Articles 42.03, 45.041, and 45.048, C.C.P.</td>
</tr>
<tr>
<td>Determine indigence</td>
<td>Articles 43.091, 45.046, 45.048, and 45.049, C.C.P.</td>
</tr>
<tr>
<td>Waive fine and court costs after a defendant defaults and the judge determines that the defendant is indigent and that performing community service would be an undue hardship</td>
<td>Article 43.091, C.C.P.</td>
</tr>
<tr>
<td>Rule on a motion for new trial</td>
<td>Article 45.038, C.C.P.; Section 30.00014, G.C.</td>
</tr>
<tr>
<td>Set and approve appeal bonds</td>
<td>Article 45.0425, C.C.P.</td>
</tr>
<tr>
<td>Issue a capias pro fine</td>
<td>Article 45.045, C.C.P.</td>
</tr>
<tr>
<td>Commit a defendant to jail for unpaid fines/costs</td>
<td>Article 45.046, C.C.P.</td>
</tr>
<tr>
<td>Conduct stolen or seized property hearings</td>
<td>Chapter 47, C.C.P.</td>
</tr>
<tr>
<td>Dismiss cases when required by law or upon prosecutor motion</td>
<td>Article 32.02, C.C.P.</td>
</tr>
<tr>
<td>Inform a juvenile and any parent in open court of the juvenile’s expunction rights and provide them with a copy of the law</td>
<td>Article 45.0216, C.C.P.</td>
</tr>
<tr>
<td>Order convictions and records expunged</td>
<td>Articles 45.0216 and 45.055, C.C.P.; Section 106.12, A.B.C.; Section 161.255, H.S.C.</td>
</tr>
<tr>
<td>Hold a person in contempt</td>
<td>Article 45.050, C.C.P.; Section 21.002, G.C.</td>
</tr>
</tbody>
</table>

2. **Consequences of Delegating Judicial Duties**

If a judge delegates a judicial duty to a court clerk, there can be consequences. A number of cases illustrate such consequences.
In the case *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984), a City of Houston municipal court clerk issued a capias for violating the “motorcycle helmet safety law.” The defendant was later arrested on the capias and as a result of this arrest was charged with and convicted of possession of methamphetamine. The defendant appealed the possession case. The appellate court held that the deputy court clerk did not have authority to issue a capias. Because a magistrate (judge) failed to direct the issuance of the capias and to determine probable cause, the defendant’s arrest was illegal; thus, the evidence discovered as a direct result of the arrest had to be suppressed.

The procedure to prosecute in Houston was initiated with an officer’s citation for the helmet offense. According to the established procedures, if the defendant failed to appear in court to answer the charge, the clerk was delegated the authority to stamp the judge’s name and issue the capias. The Court of Criminal Appeals reviewed this procedure and found that, although Texas municipal clerks were empowered to perform ministerial tasks such as preparing process under the direction of the judge, they were neither authorized nor trained to determine probable cause to support a warrant ordering a citizen to be arrested. There was no evidence that a judge intervened at any point in the process. The Court of Criminal Appeals concluded that since a judge did not determine whether there was probable cause to issue the arrest warrant (capias) and since a judge did not direct the issuance of the capias, the defendant’s arrest was illegal. Hence, all evidence obtained from the arrest was excluded.

*Crane v. Texas*, 759 F.2d 412 (5th Cir. 1985) points out civil liability when a judge allows someone else to devise a policy delegating a judicial duty. In this case, a district attorney and county attorney were held civilly liable and denied governmental immunity because they devised a policy authorizing the county clerk rather than the judge to issue misdemeanor capiases.

In *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987), a justice of the peace delegated his authority to affix his rubber stamped signature to a mental health warrant outside his presence. He reviewed the warrant and adopted it the next business day. The court cited favorably Attorney General Opinion JM-373 (1985), which states that a judge may not delegate authority to affix her or his signature unless the signature is affixed under the judge’s personal supervision. Generally, judges have absolute immunity for damages for acts performed in their judicial capacity. This case found, however, that since the judge delegated a judicial duty to his clerk and the clerk performed the duty, neither was immune from civil liability.

In *Daniels*, the court discussed the approved factors for determining whether a particular action is a judicial action that would be entitled to immunity. The issuance of a mental commitment order is a judicial act, but the manner in which it was issued prevented the act from being covered by judicial immunity. The factors for determining whether a particular action is judicial are:

- whether the precise act complained of is a normal judicial function;
- whether the act occurred in the courtroom or appropriate adjunct spaces such as the judge’s chambers;
- whether the controversy centered around a case pending before the court; and
- whether the act arose directly out of a visit to the judge in his or her official capacity.
B. Magistrate Duties

It is important that when acting in an official capacity, all judges are able to differentiate between judicial and magistrate duties and authorities. Regardless of which hat (judge or magistrate) a municipal judge is wearing, he or she must be impartial, ensure that justice is done, and base decisions on the law as applicable to the facts.

Magistrate duties, like judicial duties, cannot be delegated to municipal court clerks.

The following is a list, although not exhaustive, of magistrate duties that a municipal judge has the authority to perform as a magistrate.

<table>
<thead>
<tr>
<th>Magistrate Duties</th>
<th>Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue emergency protection orders for an offense involving family violence</td>
<td>Article 17.292, C.C.P.</td>
</tr>
<tr>
<td>Issue a warrant when any person informs the judge, under oath, of an offense about to be committed</td>
<td>Article 7.01, C.C.P.</td>
</tr>
<tr>
<td>Conduct peace bond hearings</td>
<td>Article 7.03, C.C.P.</td>
</tr>
<tr>
<td>Verbally order a peace officer to arrest, without warrant, when a felony or breach of the peace is committed in the presence or within the view of a magistrate</td>
<td>Article 14.02, C.C.P.</td>
</tr>
<tr>
<td>Accept complaints (probable cause affidavit) and issue arrest warrants and summonses (these complaints are for Class A and B misdemeanors and felony offenses)</td>
<td>Article 15.17, C.C.P.</td>
</tr>
<tr>
<td>Give magistrate warnings after arrest</td>
<td>Article 15.17, C.C.P.</td>
</tr>
<tr>
<td>Take a plea and set and collect a fine when a defendant is arrested on an out-of-county warrant for a fine-only offense</td>
<td>Article 15.18, C.C.P.</td>
</tr>
<tr>
<td>Conduct examining trials in felony cases to determine probable cause</td>
<td>Article 16.01, C.C.P.</td>
</tr>
<tr>
<td>Determine the sufficiency of sureties</td>
<td>Chapter 17, C.C.P.</td>
</tr>
<tr>
<td>Order a defendant to submit to an examination in a mental health facility determined by a local mental health authority on that authority’s request</td>
<td>Article 16.22, C.C.P.</td>
</tr>
<tr>
<td>Set and accept bail, including personal bonds</td>
<td>Chapter 17, C.C.P.</td>
</tr>
<tr>
<td>Issue search warrants; mere evidence may issue only from an attorney judge</td>
<td>Chapter 18, C.C.P.</td>
</tr>
<tr>
<td>Move to dispose of the weapon (destroy or sell) if no prosecution or conviction will occur when a weapon has been seized</td>
<td>Article 18.19, C.C.P.</td>
</tr>
<tr>
<td>Direct a peace officer to prevent a person from leaving a facility to prevent the spread of communicable disease</td>
<td>Section 81.162, H.S.C.</td>
</tr>
</tbody>
</table>

C. Ministerial Duties

Ministerial duties are duties in which there is nothing left to discretion. They are generally administrative in nature, pertain to effectively and efficiently managing the cases filed in the court, and are imposed by law. Although Canon 3C(1) of the Code of Judicial Conduct requires judges to diligently and promptly discharge administrative responsibilities and to maintain
professional competence in judicial administration, judges typically delegate ministerial and administrative duties to the clerks.

Statutes provide little guidance regarding ministerial duties. It is only in understanding judicial duties and knowing what a judge cannot delegate that courts determine what duties are ministerial and administrative. Generally, ministerial and administrative duties include the following tasks, which can be performed by either judges or clerks:

- records management;
- financial management;
- office management;
- preparation of processes (warrants, capias, capias pro fine, judgments, summonses, subpoenas, orders);
- preparation of paperwork for defendants requesting a driving safety course or being granted a deferred disposition;
- preparation of the budget;
- collection of data for and timely submission of state reports;
- coordination of trial processes;
- coordination of community service and other alternative sentencing options; and
- coordination of orders with the police department.

D. Judicial Authority

Although judges are empowered to perform a variety of judicial, magistrate, or ministerial duties, there are few duties that deserve special mention.

1. Administering Oaths

Article 45.019 of the Code of Criminal Procedure grants power to administer oaths to a person swearing to a complaint before the municipal court. The following court officials have authority to administer this oath:

- municipal judge;
- clerk of the court;
- deputy court clerk;
- city secretary;
- city attorney; and
- deputy city attorney.

Section 602.002 of the Government Code provides authority for a judge, retired judge, or clerk of a municipal court to administer any oath. In general-law cities, Section 29.006 of the Government Code provides that a judge appointed to act for the municipal judge, who is temporarily unable to act, has all powers and duties of the office. In home-rule cities, Section 29.007 of the Government Code provides that associate judges have the same powers as the presiding judge. Therefore, associate or alternate judges may administer oaths. It makes sense
that a judge could administer an oath because the judge themselves would have taken an oath upon appointment or election.

2. Dismissing Cases

a. In General

Prosecutors typically have the power to dismiss cases, absent specific statutory authority to the contrary. Texas law generally follows that common law rule, but includes judges in the dismissal process. Art. 32.02, C.C.P. In the Texas model, dismissals may occur through constitutional or statutory authority vesting a trial court with dismissal power, or on the motion of the prosecuting attorney. *State v. Morales*, 804 S.W.2d 331 (Tex. App.—Austin 1991). Typically, courts may not dismiss without the prosecutor’s consent, and prosecutors cannot dismiss without the court’s approval. *State v. Johnson*, 821 S.W.2d 609 (Tex. Crim. App. 1991).

If the prosecutor decides not to prosecute a case, the prosecutor must provide a reason in writing for the dismissal. The prosecutor’s motion to dismiss is filed with the court. Article 32.02 of the Code of Criminal Procedure requires judicial consent or approval for a case to be dismissed, also known as, the judicial veto. Generally, a judge cannot dismiss a case, except by consenting to and granting a prosecutor’s motion and grounds presented. *Flores v. State*, 487 S.W.2d 122 (Tex. Crim. App. 1972).

b. Mandatory v. Discretionary Judicial Duty to Dismiss

Some statutes create a mandatory judicial duty to dismiss a criminal charge. These include where the defendant is entitled to a dismissal pursuant to law, such as upon successful completion of a deferred disposition, driving safety course, or teen court program. Arts. 45.051, 45.0511, and 45.052, C.C.P. In these instances, judges shall dismiss the charge in the absence of a prosecutor’s motion. Arguably, a judge could also dismiss a case without involvement from the prosecutor when the court lacks jurisdiction over the offense because it is either not a fine-only offense or was committed outside the court’s territorial jurisdiction.

Other statutes give the judge discretion to decide whether or not a case could be dismissed, even without involvement from the prosecutor. These statutes are commonly referred to as “compliance dismissals” and are available when the defendant remedies certain defects. Most of the compliance dismissals available to defendants are discretionary, meaning it is up to the judge whether to accept the proof of remedying the defect and dismiss upon payment of some administrative fee set by statute. However, there are a few compliance dismissals that provide for a mandatory dismissal if the defendant meets certain criteria. Compliance dismissals are discussed at length in the *Traffic Law* chapter of this Study Guide as the statutes that authorize such dismissals are located in the Transportation Code.

Judges should be cautious whenever exercising their power to dismiss. The general rule is that a judge’s authority to dismiss is limited, and without express authority to dismiss, the judge should never dismiss without a motion from the prosecutor. Remember, it is the prosecutor’s case on behalf of the State of Texas; therefore, the only person who can choose to dismiss is the prosecutor. In no case should the clerk or a peace officer attempt to dismiss a case. Such practice could amount to a federal and state crime for “ticket fixing.”
3. Controlling the Courtroom

Section 21.001 of the Government Code provides courts with all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders. It also provides that the court shall require that proceedings be conducted with dignity in an orderly and expeditious manner so that justice is done. This is referred to as the court’s inherent power. To maintain control, judges have contempt power to regulate conduct in the courtroom. Sec. 21.002, G.C. Contempt power must be reasonably exercised and not be arbitrary; it is often a last resort. Persons in a courtroom should understand the type of conduct required and the consequences of not complying. Judges should establish rules and procedures for courtroom conduct and notify the public of those rules.

4. Marriages

Section 2.202 of the Family Code outlines who has the authority under Texas law to perform a marriage ceremony. It took more than 30 years for municipal judges to be added to that list, but in 2009, the Legislature did provide municipal judges with the authority to conduct a marriage ceremony. Under a similar line of reasoning as used to determine which judges can administer an oath, it is common understanding that any municipal judge can conduct a marriage ceremony, although judges would be smart to consider the practical, legal, and ethical implications of being authorized to do so.

In 2013, the Legislature again amended Section 2.202 to provide that a retired municipal judge may also conduct a marriage ceremony. A retired judge is defined as a former judge who is vested in the Judicial Retirement System of Texas Plan One or Two or who has an aggregate of at least 12 years of service as a judge or justice of any type of court listed in Subsection (a)(4) of Section 2.202.

Judges who are interested in conducting marriage ceremonies should review the laws associated with the marriage license and ceremony found in Chapter 2 of the Family Code.

E. Disqualification and Recusal

Defendants in criminal trials have the right to a fair trial. In order for a trial to be fair, the judge presiding must be neutral and detached. The authority of a judge to preside over a criminal case is tempered by recusal and disqualification provisions found in the Texas Constitution and under state statutory law. Article V, Section 11 of the Texas Constitution provides three grounds for disqualifying a judge from sitting in any case:

- the judge was counsel in the case;
- the judge “may be interested” in the outcome of the case; or
- one of the parties is related to the judge.

Similarly, Article 30.01 of the Code of Criminal Procedure provides instances in which the judge is disqualified regardless of the judge’s discretion. The judge is disqualified as a matter of law when a judge:

- is the injured party;
- has been counsel for the State or the accused; or
- is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined by Chapter 573 of the Government Code.

While disqualification is mandatory, recusal lies in the judge’s honest appraisal of the individual situation. Judges must recuse themselves if they feel they have a conflict of interest that would affect their ability to be fair and impartial. Canon 3B(5), Code of Judicial Conduct. While this determination can only be made in light of the specifics of a situation, Texas Rule of Civil Procedure 18b(2) states that a judge shall recuse when:

- the judge’s impartiality might reasonably be questioned;
- the judge has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;
- the judge or a lawyer with whom the judge previously practiced law is a material witness;
- the judge participated as counsel, adviser, or material witness in the matter in controversy or expressed an opinion concerning the merits of it while acting as an attorney in government service;
- the judge, judge’s spouse, or a person within the 3rd degree of relationship to either the judge or judge’s spouse is:
  o a party to the proceeding or an officer, director, or trustee of a party;
  o known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
  o to the judge’s knowledge likely to be a material witness in the proceeding; or
- the judge, judge’s spouse, or a person within the 1st degree of relationship to either the judge or judges’ spouse is acting as a lawyer in the proceeding.

While the Court of Criminal Appeals has not expressly held Rule 18b(2) (the grounds for recusal) to be applicable in criminal proceedings, it has implicitly done so. More than one court of appeals has cited Rule 18b(2) in criminal cases on recusal questions.

The procedures for replacing a judge that has been disqualified or recused have changed significantly and it is critical that the court becomes familiar with the new laws. In 1999, the Legislature passed Section 29.012 of the Government Code, which provided that a municipal judge that is disqualified or recused can have a judge from another municipal court located in an adjacent city sit for that judge. In 2011, the Legislature repealed Section 29.012 and replaced it with a comprehensive set of procedures now located in Subchapter A-1 of Chapter 29. These new procedures took effect June 17, 2011. These procedures, adapted from Texas Rule of Civil Procedure 18a, are designed to accommodate all sizes of municipal courts and strike a balance between uniformity in application of the law and judicial efficiency. They are intended for use in any kind of criminal or civil case in which a municipal court has jurisdiction.

Q. 8. When can a mayor in a general-law city be the *ex officio* municipal judge?

_______________________________________________________________________
Q. 9. What governs the selection of municipal judges in a home-rule municipality?

_______________________________________________________________________

Q. 10. What must a general-law city do when a municipal judge is temporarily unable to act?

_______________________________________________________________________
_______________________________________________________________________
_______________________________________________________________________

Q. 11. What is a question of law?  ___________________________________________

Q. 12. What is a question of fact?  ___________________________________________

Q. 13. What is judicial discretion?  ___________________________________________

Q. 14. When does a judge not have discretion to perform an action?  _______________

_______________________________________________________________________
_______________________________________________________________________

Q. 15. Which kind of duty may a judge delegate to a court clerk?  __________________

_______________________________________________________________________

True or False

Q. 16. Clerks may set and take bail from a defendant. _____

Q. 17. The clerk may ask the defendant how he or she wants to plea. _____

Q. 18. When a defendant calls the court to request that the clerk reset his or her case to another trial date, the clerk may grant the continuance and reset the case. _____

Q. 19. Clerks may not conduct trials. _____

Q. 20. Clerks may set fines. _____

Q. 21. Clerks may grant extensions and time payment plans to defendants. _____

Q. 22. Clerks may require a defendant to pay a fine by performing community service. _____

Q. 23. The judge has authority to waive the fine and costs after the defendant defaults on payment, is indigent, and unable to perform community service. _____

Q. 24. Clerks may not issue arrest warrants. _____

Q. 25. Municipal court clerks have the authority to issue a capias. _____

Q. 26. Only a judge may issue a summons for a defendant. _____

Q. 27. When a judge is not available, the clerk may grant deferred disposition or teen court. _____

Q. 28. Judges can permit clerks to perform judicial duties and then later adopt the actions of the clerk. _____

Q. 29. Municipal court clerks may stamp the judge’s signature on court documents when the judge is on vacation. _____

Q. 30. When a judge is in the office part-time, the clerk may use the judge’s signature stamp to sign judgments on cases in which a defendant pays a fine at the clerk’s office. _____

Q. 31. Municipal court clerks may stamp the judge’s signature on mental health commitments when the judge is not available and it is an emergency. _____

Q. 32. Municipal court clerks cannot be held liable for performing a judicial duty if the judge
Q. 33. Municipal judges are magistrates. _____
Q. 34. Municipal judges may perform duties that a magistrate has the authority to perform. _____
Q. 35. Municipal judges, acting as magistrates, may issue emergency protection orders for an offense involving family violence. _____
Q. 36. Only justices of the peace may conduct peace bond hearings. _____
Q. 37. Municipal judges, acting as magistrates, may accept a complaint (probable cause affidavit) for a felony. _____
Q. 38. Municipal court clerks may give magistrate warnings after a defendant is arrested when the municipal judge is not available. _____
Q. 39. Municipal judges, acting as magistrates, may issue search warrants. _____
Q. 40. Only justices of the peace may conduct license suspension hearings. _____
Q. 41. Usually, clerks are responsible for establishing and maintaining a financial management program for the court. _____
Q. 42. Although presiding judges have authority to administer the oath to someone swearing to a complaint, associate judges do not. _____
Q. 43. A municipal judge may dismiss a case filed by a citation if the peace officer asks for the dismissal. _____
Q. 44. When defendants present proof that they renewed an expired driver’s license, the clerk may dismiss the case. _____
Q. 45. Clerks may dismiss cases in which defendants renew an expired inspection certificate. _____
Q. 46. Clerks may dismiss an offense for failure to maintain financial responsibility if the judge is on vacation. _____
Q. 47. What power does a judge use to exercise control in the courtroom? ______________________________________________________________________
Q. 48. What Code gives municipal judges the authority to conduct marriage ceremonies? ______________________________________________________________________

PART 3
AUTHORITY OF A COURT CLERK

A. Duties

Clerks have the authority to perform ministerial and administrative duties. Section 29.010(c) of the Government Code provides the general ministerial duties of a municipal court clerk, and requires the clerk to keep minutes of court proceedings, issue process, and generally perform the duties for the municipal court that a county clerk performs for a county court.
1. **General Duties**

Because statutes do not contain many specific duties for municipal court clerks, it helps to look at the general duties of the county court clerk. As can be seen in the chart below of general county clerk duties, there can be an analogy made with municipal court clerk duties. This list does not include every county clerk duty because many of their duties are specific to the county court and do not apply to municipal court. Set out in the following chart is a list of general duties of county court clerks and duties in municipal court that correspond.

<table>
<thead>
<tr>
<th>County Clerk Duties</th>
<th>Corresponding Municipal Clerk Duties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposit fines and fees in the county treasury.</td>
<td>Deposit fines and fees in the city treasury.</td>
</tr>
<tr>
<td>Make a statement of fines and fees collected on the last day of each term of court.</td>
<td>Make reports to the city council of fines and fees.</td>
</tr>
<tr>
<td>Show from whom fees are received.</td>
<td>Keep records of money collected.</td>
</tr>
<tr>
<td>List jurors’ names and length of service.</td>
<td>Keep records of names and length of service of citizens who serve on municipal court juries.</td>
</tr>
<tr>
<td>Transfer cases.</td>
<td>A transfer of a case is generally not applicable to municipal courts except when transferring a juvenile case to the juvenile court, or when a change of venue for a person allowed to participate in a teen court program has been granted.</td>
</tr>
<tr>
<td>Destroy archived, inactive records.</td>
<td>Destroy municipal court records retained for a period of time required by the State. (Check with the city secretary for a copy of the city’s ordinance approved by the State Library and Archives Commission governing the retention and destruction of records. Without it, the clerk must get permission from the State Library to destroy records.)</td>
</tr>
<tr>
<td>Maintain fee books.</td>
<td>Keep a record of all fines, fees, court costs, and restitution collected by the court and prepare a bill of costs showing the defendant what fees and costs are payable.</td>
</tr>
<tr>
<td>Report monthly court statistics to the Office of Court Administration.</td>
<td>Report monthly court statistics to the Office of Court Administration.</td>
</tr>
</tbody>
</table>

2. **Required Duties**

The following is a list, although not exhaustive, of duties that court clerks are required to perform:
<table>
<thead>
<tr>
<th>Required Clerk Duties</th>
<th>Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>The judge or clerk shall keep a docket containing certain case information: the style and file number of each criminal case; offense charged; the defendant’s plea and the date it was entered; the date the warrant, if any, was issued and returned; the date the trial, if any, was held and whether it was a bench or jury trial; the jury’s verdict, if applicable, and the date; the judge and sentence of the court and the date given; the motion for new trial, if any, and the court’s decision; and whether an appeal was taken and the date of that action.</td>
<td>Article 45.017, C.C.P.</td>
</tr>
<tr>
<td>The clerk of a court that does not provide online internet access to its criminal case records shall post in a designated public place in the courthouse notice of a prospective criminal court docket setting as soon as the clerk is notified of the setting.</td>
<td>Article 17.085, C.C.P.</td>
</tr>
<tr>
<td>Every clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. Magistrates and judges of non-record courts are required to keep these, but it is usually delegated to the clerk.</td>
<td>Section 543.201, T.C.</td>
</tr>
<tr>
<td>The clerk of every court in which there is a conviction or forfeiture of bail in a case involving a traffic offense must report it to the Department of Public Safety within seven days of the conviction or forfeiture. Judges and magistrates are also required to report.</td>
<td>Section 543.203, T.C.</td>
</tr>
<tr>
<td>When a jury shuffle is requested, the clerk randomly selects jurors by computer or another unbiased process and prints the names in the order selected on a new jury list. The clerk then delivers a copy of the list to the prosecutor and the defendant or his or her attorney.</td>
<td>Sections 62.107(c) and 62.108(a), G.C.; Article 35.11, C.C.P.</td>
</tr>
<tr>
<td>When a person files with the court a permanent exemption from jury duty, the clerk is required to promptly deliver a copy of the permanent exemption to the county tax assessor-collector.</td>
<td>Sections 62.107(c) and 62.108(a), (c), and (d), G.C.</td>
</tr>
<tr>
<td>When a defendant appeals, the clerk is required to forward the record to the appellate court.</td>
<td>Whitsitt v. Ramsay, 719 S.W.2d 333 (Tex. Crim. App. 1986)</td>
</tr>
<tr>
<td>When a forfeiture has been declared upon a bond, the judge or clerk shall docket the case upon the scire facias (a special docket for bond forfeitures) or upon the civil docket.</td>
<td>Article 22.10, C.C.P.</td>
</tr>
<tr>
<td>If a victim of family violence is not present when a magistrate’s order of emergency protection is issued, the clerk must send him or her a copy.</td>
<td>Article 17.292(g), C.C.P.</td>
</tr>
<tr>
<td>If a magistrate suspends a concealed handgun license when issuing a magistrate’s order of emergency protection, the judge or the</td>
<td>Article 17.293, C.C.P.</td>
</tr>
</tbody>
</table>
clerk is required to immediately notify the Texas Department of Public Safety.

| A magistrate’s clerk is the custodian of any arrest warrants or affidavits made in support of the warrant. The warrants and affidavits are public information and the clerk has an affirmative duty to make a copy of the warrants and supporting affidavits available for public inspection after the warrants are executed. | Article 15.26, C.C.P. |
| The clerk is required to make a copy of the affidavit for a search warrant after it has been executed and have it available for public inspection in the clerk’s office during normal business hours. | Article 18.01(b), C.C.P. |

3. **Administrative Functions**

Municipal court clerks generally perform administrative functions of the court, including:

- preparing process (complaints, warrants, capiases, summons, subpoenas, etc.) and coordinating with law enforcement;
- preparing correspondence and notices;
- processing fine payments and bonds (appearance and appeal bonds);
- maintaining accounting records of the court;
- managing the office and personnel;
- coordinating trials and appearances (includes juvenile cases);
- maintaining records;
- producing reports;
  - monthly reports to the Texas Judicial Council/Office of Court Administration;
  - notice of final convictions and bond forfeitures (reported to DPS);
  - notice of the completion date of driving safety course (reported to DPS);
  - teen court dismissals (reported to DPS);
  - quarterly court costs reports (reported to State Comptroller’s Office);
  - notice of violation of *Nonresident Violator Compact* (reported to DPS);
  - reports to city council, city manager, and judge;
- coordinating alternative sentencing (driving safety courses, deferred disposition, teen court);
- coordinating community service;
- coordinating juvenile cases and rehabilitative sanctions;
- processing dismissals;
- coordinating administrative and other hearings;
- processing bond forfeitures;
- overseeing budget;
- accepting complaints and entering on docket; and
• performing any other ministerial function that may be delegated by the judge.

B. Authorities

1. Summoning the Jury

   When a defendant does not waive a trial by jury, the judge must issue a writ commanding the proper officer to summon a venire (a list of prospective jurors) from which six qualified persons shall be selected to serve as jurors in the case. The judge may command the court clerk to summon jurors. Art. 45.027, C.C.P.

2. Administering the Oath to Jurors

   The judge may direct the court clerk to administer the oath to venire persons (potential jurors) for voir dire (questioning of jurors under oath to determine their qualifications for jury service). Art. 35.02, C.C.P. After six jurors are selected, the court may also direct the clerk to administer an oath to the jurors to properly try the case. Arts. 45.030 and 35.22, C.C.P.

3. Administering the Oath to Complainant

   Article 45.019 of the Code of Criminal Procedure grants the power to administer the oath to a person swearing to a complaint before the municipal court. The following court officials have the authority to administer this type of oath:
   • municipal judge;
   • clerk of the court;
   • deputy court clerk;
   • city secretary;
   • city attorney; and
   • deputy city attorney.

   Section 602.002 of the Government Code provides authority for a judge, retired judge, or clerk of a municipal court to administer any oath. Section 29.007(f) of the Government Code also provides authority for a clerk in a home-rule municipality who is an appointed or elected clerk to administer oaths. It makes sense that a clerk who has previously taken the oath of office upon election or appointment would have the authority to administer an oath under both the Government Code provisions and Article 45.019.

4. Issuing Subpoenas

   The issuance of an arrest warrant, summons, capias, or capias pro fine is a judicial duty that cannot be delegated to the clerk. However, a criminal defendant has the right to have some type of compulsory process (subpoena) for obtaining witnesses. Art. 1.05, C.C.P. As there is no discretion regarding whether to issue a subpoena, a municipal court clerk has the authority to issue a subpoena. In fact, a clerk must issue a subpoena if requested. Edmondson v. State, 43 Tex. 230 (1875).
Article 24.01(d) of the Code of Criminal Procedure states that a judge or a clerk issuing a subpoena shall sign the subpoena and indicate on it the date it was issued, but the subpoena need not be under seal. Art. 45.012(g), C.C.P.

5. **Authenticating Acts**

Article 45.012(g) of the Code of Criminal Procedure requires non-record 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. Section 30.000125 of the Government Code governs the use of the court seal for courts of record. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, issued out of the court 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, 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.

Neither of the two statutes provides for the appearance of the seal. Before 1999, there was a statute requiring 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 no longer have guidance on the appearance of the seal, most courts have retained the appearance that was once required.

Both the judge and the clerk have the authority to impress the court seal on documents issuing out of the court.

C. **Custodian of the Funds**

Article 17.02 of the Code of Criminal Procedure requires peace officers to deposit cash bond money with the custodian of the funds of the court. Generally, the court clerk is designated as the custodian of the funds of the court. The officer receiving the funds shall receipt the funds, and if the bond is to be refunded, the bond should be refunded to the person whose name is on the receipt. If a receipt cannot be produced, the bond may be refunded to the defendant.

Clerks are also often designated as the officer to receive or collect payment of fines and costs. Chapter 103 of the Code of Criminal Procedure and Chapter 133 of the Local Government Code provide procedures and requirements for officers who receive or collect payments of court costs and fines.

D. **Fraudulent Documents**

When a court clerk has a reasonable basis to believe in good faith that a document or instrument previously filed, recorded, offered, or submitted for filing is fraudulent, the clerk shall: (1) notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered; or (2) if the document or instrument purports to create a lien on real or personal property, notify the aggrieved person in writing at the stated or last known address of the person named in the document. The clerk is required to provide this written notice no later than the second business day after the date that the document or instrument is offered or submitted for filing. Sec. 51.901, G.C.
The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk’s office stating:

IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT.
Section 51.904, Government Code

E. Standing Orders

Many clerks will read the above sections in fear that they are improperly performing judicial duties because they have orders in their court allowing the clerk to grant a continuance or set the fine or grant a driving safety course. These orders are called “standing orders” and are an excellent tool to help improve the court’s efficiency when used correctly. Standing orders are written orders from the judge directing court staff on how to perform a specific procedure. They must be signed by the judge and should be accessible to all court staff to ensure they are being followed.

Although judges may not delegate judicial duties to court clerks, many processes in the municipal court setting are adversely affected when the volume of cases is so large to prevent every case from appearing before the judge or when the judge is only at the court part-time. To combat these issues, standing orders direct the court staff on how the judge will rule in a particular and specific set of circumstances to allow the clerk to go ahead and process the case as though the judge had entered that order. Some examples of standing orders include:

- Allowing the clerk to process a driving safety course request if the defendant meets specific criteria. The judge will still have to grant the request by signing the order/interim judgment prepared by the clerk.
- Allowing the clerk to process a deferred disposition order if the defendant meets specific criteria. Again, the judge will still have to grant the deferral by signing the order prepared by the clerk.
- Allowing the clerk to reschedule a trial or hearing upon receipt of a motion for continuance. Many courts allow one continuance per side or some other formula so that the clerk knows exactly when the judge will grant the continuance.
- Window fines or standard fines that allow the clerk to inform the defendant what the fine will be upon a plea of guilty or no contest without that defendant having to appear before the judge for sentencing.

Allowing the clerk to set the defendant up on a payment plan without having to see the judge. Most of these standing orders set a formula requiring the defendant to pay so much down and limit the length of the plan to a set number of months.

Judges have complete discretion over whether or not to utilize standing orders. Those judges who are interested in issuing some standing orders should consult with other judges or contact TMCEC for examples.
Q. 49. What is a general-law city? ________________________________
______________________________________________________________________

Q. 50. In a general-law city, is the municipal court clerk hired, appointed, or elected? ______
__________________________________________________________________________

Q. 51. What is a home-rule city? ________________________________
__________________________________________________________________________

Q. 52. In a home-rule city is the municipal court clerk hired, appointed, or elected? ______
__________________________________________________________________________

**True or False**

Q. 53. City secretaries may never hold the office of court clerk. _____

Q. 54. In a general-law city, a court clerk automatically serves for a two-year term unless the city provides by ordinance for a longer term. _____

Q. 55. In a general-law city, the city manager may fill a vacancy for the unexpired term of a court clerk’s office. _____

Q. 56. Every time someone is elected, appointed, or reappointed, he or she is required to swear to an anti-bribery statement and to take an oath of office. _____

Q. 57. An elected or appointed official may perform official duties before filing the anti-bribery statement with the official records of the office. _____

Q. 58. List the general duties of the municipal court clerk. ________________________________
__________________________________________________________________________
______________________________________________________________________

Q. 59. If a city does not have an ordinance governing the destruction of records and a clerk wants to destroy records, what must the clerk do? ________________________________
__________________________________________________________________________

**True or False**

Q. 60. Both clerks and judges may establish and maintain a financial management program for the court. _____

Q. 61. Court clerks may prepare warrants but not sign them._____

Q. 62. Only judges may grant driving safety courses, but clerks may give defendants the paperwork on court requirements for processing their cases. _____

Q. 63. What type of records is a municipal court clerk of a court of record required to keep regarding traffic offenses? ________________________________

Q. 64. In non-record courts, who is required to keep records of traffic offenses? __________
__________________________________________________________________________
| Q. 65. | Who is required to report convictions and bond forfeitures of traffic offenses to the Department of Public Safety? |
| Q. 66. | When a prospective juror files a permanent exemption with the municipal court clerk, what is the clerk required to do? |
| Q. 67. | When either the defense or prosecution demands a jury shuffle, what is the clerk required to do? |
| Q. 68. | When a defendant appeals his or her case, what is the clerk required to do? |
| Q. 69. | What is a clerk required to do when a bond forfeiture has been declared? |
| Q. 70. | What is a clerk required to do when the victim is not present when an emergency order of protection is issued? |
| Q. 71. | What must a clerk or magistrate do when the magistrate suspends a concealed handgun license in an emergency protection order? |
| Q. 72. | What is a clerk required to do after warrants have been executed? |
| Q. 73. | Who is custodian of the funds of the court in your city? |
| Q. 74. | When a defendant does not waive a jury trial, when may the clerk summon prospective jurors? |
| Q. 75. | When may the clerk administer the oath to prospective jurors for voir dire? |
| Q. 76. | What information is required to be entered on the docket? |
| Q. 77. | Why may judges delegate the maintenance of the docket to the clerks? |
| Q. 78. | List what a clerk is required to do concerning fraudulent documents. |
| Q. 79. | True or False: Court clerks, deputy court clerks, and city secretaries may administer an oath to someone swearing to a complaint. |
Q. 80. Municipal court clerks may administer an oath pertaining to any matter in municipal court. _____

Q. 81. Judges may ask the clerk to administer the oath to the six persons chosen for a jury. _____

Q. 82. Why do municipal court clerks have authority to issue subpoenas? ______________________

Q. 83. What wording goes on a non-record municipal court seal? _________________________

Q. 84. What is the wording on a municipal court of record seal? _________________________

Q. 85. What is the purpose of the municipal court seal? _______________________________

PART 4
IMAGE OF THE COURT

A. Public Perception

Image is an important part of public perception. Although the image of the municipal court is affected by many different factors, professionalism and impartiality of the court staff are perhaps the most important traits that command respect.

B. Court Decorum

It is essential that judges and clerks conduct themselves and their courts with the utmost decorum and dignity. Decorum requires observance of correct judicial procedure and custom, as well as exercising courtesy before everyone who appears in court. For the court to be effective, it must deserve the respect of the people. Courteous behavior does not guarantee that every person will reciprocate, but it does entitle the court to command that people behave correctly when they are treated with respect.

The fact that the judge and court staff must remain neutral does not mean that they should be detached from the public. Many courts have adopted an innovative management style to running their courts where all defendants, witnesses, attorneys, victims, and staff from cooperating departments are viewed as customers.

C. Court Operations

The court must strive to be accessible to perform its ministerial, clerical, judicial, and magisterial functions by adopting regular hours and being on call for hardship or emergency cases. The court should inspect the physical site and ensure that it is accessible to persons with disabilities.
The physical appearance of the municipal court significantly influences the attitudes of those appearing before the court and the morale of the officials of the court. The court should have facilities that encourage public respect and confidence in the judicial system.

The location of the municipal court is a matter for each city to decide according to its local conditions and needs. An ideal location would be in a separate public building or portion of city hall. An alternative might be to utilize the city council chambers or a city auditorium for the courtroom. The court should not be located within the confines of the police department.

In the case of part-time judges, the court should not be situated in the judge’s other place of employment, in the judge or clerk’s home, or in any other place that might discourage public attendance or respect. Court should be held in a place, even though it may be humble, that is separate from other operations and devoted for that time only to hearings to determine facts, apply laws, and administer justice.

Q. 86. Explain, in your own words, court decorum. ______________________________________
________________________________________________________________________
________________________________________________________________________

Q. 87. If a court is located near the police department, what are some steps that you can take to maintain a clear separation between the court and law enforcement?  __________________
________________________________________________________________________
________________________________________________________________________

CONCLUSION

After reading this guide, clerks should have a clearer picture of the judicial system and their role in it. Although the judge is responsible for guiding the court, it is the clerk who manages the day-to-day operations of the court, ensuring that the ministerial and administrative duties are properly performed. Because clerks see and assist more defendants than do judges, they must understand the differences between judicial and ministerial duties so that they do not overstep the boundaries of their authority.

The clerk serves as a buffer between defendants and the judge. Many defendants do not understand that the judge may not hear their side of the story unless it is at trial or unless the defendant wants to plead guilty or nolo contendere. To help these defendants understand court procedures, clerks should be good communicators and understand court processes and procedures to be able to properly explain them to defendants.

Many Texas cities require the judge to also be the clerk for the court. These judges who do not have a clerk in the court must themselves perform the ministerial and administrative work typical of clerks. When a judge does not have a clerk, the judge sees all of the defendants who come to the court facility. Without the buffer of a clerk, the proper handling of defendants who do not understand the ethical standards required of judges requires good communication skills. Judges acting as the clerk must also be concerned with the potential appearance of impropriety when preparing complaints based off of a citation, coordinating peace officers’ filing of tickets and the officers’ trial appearances, or providing the prosecutor information needed to prosecute cases. The judge who does not have a clerk must understand the requirements of state reporting, as
there may be financial consequences if not properly and timely prepared and submitted. The judge must also have knowledge of financial management in order to properly handle money received by the court.

Although these functions are necessary to the operation of the court, a judge performing them must do so very cautiously, remembering the Code of Judicial Conduct’s requirement to abstain from the appearance of impropriety.

There are other Texas cities that choose to appoint the clerk as an alternate or associate judge. Remember that although Texas cities may distinguish a judge as an alternate or associate judge, or a part-time judge, a judge is still a judge 24 hours a day for purposes of following the canons in the Code of Judicial Conduct. Clerks who are appointed as a judge must be mindful of the potential appearance of impropriety when preparing complaints, dealing with defendants on the telephone or at the window, or at any proceedings before a plea has been entered.
APPENDIX A:
STATEMENT OF OFFICER AND OATH OF OFFICE

It is imperative that each appointed or elected official swear to and sign a statement of officer and an oath of office upon each appointment or election and upon reappointment or reelection.

Anti-Bribery Statement of Officer

Before assuming the duties of office, all appointed or elected judges and clerks of the court must first file a sworn statement of officer with the records of the office. Usually, the city secretary maintains these records.

Appointed judges and clerks of the court must swear to and sign the following statement:

_I, ____________________________, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money, or thing of value, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God._

Elected judges and clerks of the court must swear to and sign the following statement:

_I, ____________________________, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected, so help me God._

Oath of Office

After filing one of the above statements, the official, whether elected or appointed, must swear to the following oath of office:

_I, ____________________________, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of ____________________________ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God._
## APPENDIX B: WHOSE JOB IS IT?

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<thead>
<tr>
<th>Activity</th>
<th>Magistrate</th>
<th>Judge</th>
<th>Clerk</th>
<th>Prosecutor</th>
<th>Other</th>
</tr>
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<tbody>
<tr>
<td>Issue search warrants</td>
<td>x</td>
<td></td>
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<tr>
<td>Issue arrest warrants</td>
<td>x</td>
<td>x</td>
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<tr>
<td>Review probable cause for Class A &amp; B misdemeanor &amp; felony warrants</td>
<td>x</td>
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<tr>
<td>Administer oath to affiant swearing to complaint – A &amp; B misdemeanors &amp; felonies</td>
<td>x</td>
<td></td>
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<td></td>
<td>District and County Attorney</td>
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<tr>
<td>Administer magistrate warnings</td>
<td>x</td>
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<tr>
<td>Issue MOEPs</td>
<td>x</td>
<td></td>
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<tr>
<td>Set bail</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td>Peace Officer (in limited circumstances)</td>
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<tr>
<td>Determine sufficiency of bail</td>
<td>x</td>
<td>x</td>
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<td></td>
<td></td>
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<tr>
<td>Issue citation</td>
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<td></td>
<td>x Peace Officer</td>
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<tr>
<td>File sworn complaint (charging instrument)</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td>x Any person</td>
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<td>Approve charges and dictate language in charging instrument</td>
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<td>Prepare complaint (charging instrument)</td>
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<td>Administer oath to affiant swearing to complaint in municipal court</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x City Secretary, City and Deputy City Attorney</td>
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<tr>
<td>Request summons</td>
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<td>Prepare summons</td>
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<tr>
<td>Issue summons</td>
<td>x</td>
<td>x</td>
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<tr>
<td>Issue capias</td>
<td></td>
<td></td>
<td>x</td>
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<tr>
<td>Maintain docket</td>
<td>x</td>
<td>x</td>
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<tr>
<td>Formally accept plea from defendant</td>
<td>x</td>
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<tr>
<td>Enter not guilty plea when defendant fails to enter plea</td>
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<td>Authority</td>
<td>Actions</td>
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<td>2014</td>
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<tr>
<td>Plea bargaining</td>
<td>Accept plea bargain</td>
<td>x</td>
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<td></td>
<td>Set fines</td>
<td>x</td>
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<td></td>
<td>Determine how fine is paid</td>
<td>x</td>
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<td></td>
<td>Prepare judgment</td>
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<td>Sign judgment</td>
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<td>Process DSC request</td>
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<td></td>
<td>Grant DSC</td>
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<td></td>
<td>Grant deferred</td>
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<td></td>
<td>Process paperwork for deferred</td>
<td>x</td>
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<td></td>
<td>Set case for show cause hearing</td>
<td>x</td>
<td>x</td>
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<tr>
<td></td>
<td>Grant continuances</td>
<td></td>
<td>x</td>
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<tr>
<td></td>
<td>Rule on motions</td>
<td></td>
<td>x</td>
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<tr>
<td></td>
<td>Request subpoenas</td>
<td></td>
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<td></td>
<td>Issue subpoenas</td>
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<td></td>
<td>Serve subpoenas</td>
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<tr>
<td></td>
<td>Deliberate on evidence for determination of guilt</td>
<td>x</td>
<td>x</td>
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<tr>
<td></td>
<td>Issue writ of venire</td>
<td></td>
<td>x</td>
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<tr>
<td></td>
<td>Summon prospective jurors</td>
<td>x</td>
<td>x</td>
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<tr>
<td></td>
<td>Administer oath to venire and/or jury panel</td>
<td>x</td>
<td>x</td>
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<td></td>
<td>Grant extensions for payment</td>
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<td></td>
<td>Grant community service</td>
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<td></td>
<td>Grant credit for time served</td>
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<td>x</td>
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<tr>
<td></td>
<td>Waive fines/costs</td>
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<td>x</td>
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<td></td>
<td>Dismiss cases</td>
<td>x</td>
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*Defendant*  
Peace Officer or a Non-party at least 18yoa  
*Jurors*  
*Bailiff*
<table>
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<th>Task</th>
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<tbody>
<tr>
<td>Prepare capias pro fine</td>
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<tr>
<td>Issue capias pro fine</td>
<td>x</td>
<td></td>
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<tr>
<td>Execute warrant, capias, summons, capias pro fine</td>
<td></td>
<td>x</td>
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<tr>
<td>Prepare file for appellate court</td>
<td>x</td>
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Peace Officer
ANSWERS TO QUESTIONS

PART 1
Q. 1. False
Q. 2. False
Q. 3. False
Q. 4. True
Q. 5. False
Q. 6. Every time appointment, election, reappointment, or reelection occurs; with each new term of office.
Q. 7. The statement of the officer.

PART 2
Q. 8. In a general-law city, the mayor is the *ex-officio* judge of the municipal court. The mayor continues as municipal judge during his or her term as mayor unless the municipality, by ordinance, authorizes the election of a judge or provides for the appointment and qualifications of a judge by ordinance. After the ordinance is adopted by the city council, the mayor ceases to act in the capacity of a judge, even if the position of judge is vacant.
Q. 9. The city’s charter.
Q. 10. If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation.
Q. 11. A question of law is an issue involving application or interpretation of a law.
Q. 12. A question of fact is an issue involving resolution of a factual dispute.
Q. 13. Judicial discretion is the exercise of judicial judgment. Judges’ discretion to make decisions must be guided by law and be based on facts and is the power to determine what, under existing circumstances, is right or proper.
Q. 14. When a law prescribes a certain way to perform a certain action, the judge has no discretion.
Q. 15. Judges can delegate a ministerial duty to the clerk.
Q. 16. False.
Q. 17. False.
Q. 18. False.
Q. 20. False.
Q. 22. False.
Q. 23. True.
Q. 24. True.
Q. 25. False.
Q. 27. False.
Q. 29. False.
Q. 30. False.
Q. 31. False.
Q. 32. False.
Q. 33. True.
Q. 34. True.
Q. 35. True.
Q. 36. False.
Q. 37. True.
Q. 38. False.
Q. 40. False.
Q. 41. True.
Q. 42. False.
Q. 43. False. (Only a prosecutor may request a case be dismissed.)
Q. 44. False.
Q. 45. False.
Q. 46. False.
Q. 47. Contempt power.

PART 3

Q. 49. A general-law city is one with a population under 5,000 or with a population of more than 5,000 that does not have a home-rule charter and is, therefore, governed by the general laws of the state.
Q. 50. In general-law cities, the municipal court clerk may be either appointed or elected.
Q. 51. A home-rule city is one that has a charter that governs it, and, therefore has a measure of self-government.
Q. 52. In a home-rule city, the municipal court clerk may be hired, appointed, or elected.
Q. 53. False.
Q. 54. True.
Q. 55. False.
Q. 56. True.
Q. 57. False.
Q. 58. Answer:
- keep minutes of the court proceedings;
- issue (prepare) process; and
- generally perform the duties for the municipal court that a county clerk performs for a county court.
Q. 59. The clerk must get permission from the State Library and Archives Commission to destroy the records.
Q. 60. True.
Q. 61. True.
Q. 62. True.
Q. 63. Municipal court clerks of courts of records are required to keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways.
Q. 64. In non-record courts, judges and magistrates are required to keep records of traffic offenses. Keeping these types of records is a ministerial duty that judges may delegate to the clerk.
Q. 65. Municipal court clerks, judges, and magistrates are required to report convictions and bond forfeitures of traffic offense to the Department of Public Safety.
Q. 66. The clerk is required to deliver a copy of the permanent exemption to the county tax assessor/collector.
Q. 67. The clerk is required to randomly select jurors by computer or another process of random selection and shall write or print the names in the order selected on the jury list. The clerk shall deliver a copy of the list to the prosecutor and to the defendant or his or her attorney.
Q. 68. The clerk has a mandatory ministerial duty to forward the appeal to the appellate court.
Q. 69. When a forfeiture has been declared, the judge or clerk shall docket the case upon the scire facias (a special docket for bond forfeiture) or upon the civil docket.
Q. 70. The clerk is required to send a copy of the order to the victim.
Q. 71. The clerk or judge must immediately notify the Texas Department of Public Safety.
Q. 72. Keep a copy of the warrants and supporting affidavits on file for public viewing.
Q. 73. Answer may vary from city to city.
Q. 74. A clerk may summon prospective jurors when the judge issues a writ commanding the clerk to summon a list of citizens from which six qualified persons shall be selected.
Q. 75. The clerk may administer the oath to prospective juror for voir dire when directed to do so by the judge.
Q. 76. Answer:
- 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 of trial was held, and if a trial was held, whether it was by 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.

Q. 77. Since judges are required to keep a docket and there is no discretion as to the information required to be maintained, judges may delegate this duty to the clerk.

Q. 78. A municipal court clerk is required to notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered. If the document or instrument purports to create a lien on real or personal property, the clerk is required to notify in writing the person named in the document at his or her stated or last known address. The clerk is required to provide this written notice not later than the second business day after the date that the document or instrument is offered or submitted for filing. The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk’s office stating: IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT.

Q. 79. True. This authority is found in Art. 45.019, C.C.P.

Q. 80. True.

Q. 81. True.

Q. 82. Municipal court clerks have the authority to issue subpoenas because there is no discretion in issuing a subpoena. Defendants have a right to some type of compulsory process compelling the attendance of witnesses at a trial.

Q. 83. The statute requiring the seal does not provide the wording of the seal.

Q. 84. “Municipal Court of/in ___________, Texas.”

Q. 85. The purpose of the court seal is to authenticate the acts of the judge and clerk.

PART 4

Q. 86. Decorum includes observing correct judicial procedures and customs, as well as exercising courtesy before everyone who appears in court. Starting on time, allowing time to permit full hearings, being courteous to all who appear in court, and being firm are examples. (Answer varies from clerk to clerk)

Q. 87. If possible, have the municipal court in a separate public building or in a separate portion of city hall. Have separate entrances into the court and into the police department. The court should not be located within the confines of the police department. (Answer varies from clerk to clerk)
Insert Tab 3
# Ethics

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INTRODUCTION

Ethics is defined in Black’s Law Dictionary as “of or relating to moral action, conduct, motive, or character…professionally right or befitting; conforming to professional standards of conduct.” Ethics is one of the most important topics for clerks to study because of the contact that they have with the judge, the parties to a case, and the public. In every court, incidents occur daily that require clerks to make ethical judgments over what to do or what to say.

The court clerk plays an essential role in assuring the integrity and efficiency of the courts and in maintaining public confidence in the fairness of the Texas judicial system. Clerks not only perform the administrative work of the courts (e.g., caseflow and records management, filing, collecting court costs and fines), but they also help shape the public’s perception of the Texas judicial system by acting as a liaison between the public and judiciary. They must find the proper balance among responsibilities as public servants, as court clerks, as city employees, and as individuals. In addition to the difficulty in maintaining this delicate balance, non-judicial employees are expected to abide by the same rules that apply to the judges as outlined in the canons of the Code of Judicial Conduct. The term “canon” refers to a standard of ethical conduct for members of the judiciary. The Code of Judicial Conduct, which is promulgated by the Texas Supreme Court, states basic standards and assists judges and clerks in establishing and maintaining high standards of judicial and personal conduct.

As clerks read this study guide, they will find that the ethical standards found in the Code of Judicial Conduct were written to be broad and flexible enough to offer guidance to judges and clerks in all Texas courts. Because ethical rules cannot address every situation, personal integrity and judgment are crucial to the judicial system.

Q. 1. Define canon. ___________________________________________________________

Q. 2. What is the intent of the Code of Judicial Conduct? ____________________________

PART 1
ETHICS AND INTEGRITY

Generally, when a person thinks about ethics, he or she thinks of what is right or wrong. Webster’s Dictionary defines ethics as “the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles or values.”

What a person considers to be ethical depends on that person’s value system. A value system consists of personal beliefs developed through life experiences and teachings. A person’s values are standards in which he or she believes strongly; a person generally does not change or compromise their values unless there is a very good reason to do so.

To better serve the judicial system, municipal court clerks should strive for high personal integrity. Webster’s Dictionary defines integrity as “strict personal honesty and independence.” Essentially, integrity is adhering to one’s moral values or putting into practice one’s values and
beliefs. The following is a list of suggestions to help clerks attain and maintain integrity and professionalism.

- Have a positive attitude.
- Carry out responsibilities in as courteous a manner as possible.
- Support open communication, hard work, and dedication.
- Avoid conflicts of interest.
- Respect privileged information.
- Do not attempt to use the official position to secure unwarranted privileges or exemptions.
- Keep up-to-date on the laws.
- Eliminate fraud and mismanagement of funds.
- Eliminate verbal or nonverbal manifestations of bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.
- Adopt time and stress management skills.
- Be committed to the standards in the Code of Judicial Conduct.

Q. 3. Define ethics. 

Q. 4. Define integrity. 

PART 2

STATE COMMISSION ON JUDICIAL CONDUCT

The State Commission on Judicial Conduct (the Commission) is charged with promoting public confidence in the integrity, independence, competence, and impartiality of the judiciary and with encouraging judges to maintain high standards of conduct both on and off the bench.

The Commission’s objectives are threefold:

- preserve the integrity of all judges in the State;
- ensure public confidence in the judiciary; and
- encourage judges to maintain high standards of both professional and personal conduct.

To achieve these objectives, the Commission not only issues sanctions or secures the removal of judges from office who violate legal or ethical standards, but also offers assistance to judges who have an underlying personal impairment that may be connected to the misconduct. In addition, the Commission members and staff participate as faculty members in continuing education programs at all levels of the judiciary.

The Commission issues annual reports, available online at www.scjc.state.tx.us. The information in this guide uses the Commission’s annual reports through the most current report, 2012.
The Commission’s authority is exercised over more than 3,900 judges and judicial officers in Texas, including appellate judges, district judges, county judges, justices of the peace, municipal judges, masters, magistrates, and retired and former judges who are available for assignment as visiting judges. The Commission does not have jurisdiction over federal judges and magistrates, administrative hearing officers for state agencies or the State Office of Administrative Hearings, or private mediators or arbitrators. The Commission is an agency of the judicial branch of state government and administers judicial discipline, but the Commission does not have the power or authority of a court.

A. Authority for Operation of the Commission

The Commission was created by an amendment to the Texas Constitution in 1965. Article V, Section 1-a of the Texas Constitution and Chapter 33 of the Government Code are the sources of authority under which the Commission operates.

B. Procedures

The constitutional and statutory provisions, together with the Procedural Rules for the Removal or Retirement of Judges promulgated by the Texas Supreme Court, make up the procedural framework within which the Commission operates.

1. Complaints

A file is initiated by a written complaint. Prior to filing a written complaint, the complainant may contact the Commission by telephone. If the caller is interested in filing a complaint, the caller is sent an outline of policies and procedures together with an affidavit form. While the complaint may be sworn to, the Commission also considers letters and news clippings as a basis for opening a file. The Commission may initiate an inquiry on its own motion, particularly in a case where the actions of a judge are reported by the news media and appear to be possible misconduct or appear to bring discredit upon the judiciary.

A complainant may request that the Commission keep his or her identity confidential. The Commission must notify complainants of the actions taken on their complaints. However, if a complaint goes to formal proceedings, the judge does have a right to confront witnesses, including the complainant.

When a complaint is received, a file is established and reviewed by the executive director. The case is analyzed and assigned to a staff attorney who reviews the allegations. A preliminary screening determines if further investigation is appropriate. On occasion, an individual will complain to the Commission about the actions of law enforcement officers, corrections officials, lawyers, or even the federal judiciary. In these instances, no case is opened and the individual is notified that the Commission has no jurisdiction in the matter. In other cases, the complainant may be disgruntled with a judge’s decision, particularly in emotionally charged litigation such as divorce/custody cases, contested probate cases, or criminal trials. Such matters are properly matters for appeal. In all cases, the complainant is notified by mail that the complaint has been received. If the complaint is vague in its allegations, the complainant may be asked for more specific detail or additional documentation.

If further inquiry is appropriate, the judge is informed in writing that an investigation has commenced and of the nature of the matter being investigated. The judge may be requested to
respond in writing to specific inquiries or to explain the judge’s authority for the actions in question. Facts may be further investigated on-site or through telephone interviews. At times, the Commission may request investigative assistance from other agencies such as the Department of Public Safety, the Texas Ranger Service, or a district attorney’s office. The Commission has the right to subpoena judges to appear or to produce documents and to depose witnesses.

Each complaint is briefed by staff along with any investigative results and presented to the Commission at its regularly scheduled meeting in Austin every other month. On occasion, the Commission will convene special meetings. There, the Commission may request further investigation, or it may ask that the judge provide further information. The Commission may also dismiss the case at its first presentation.

At the conclusion of every case, the complainant is notified of the final outcome in accordance with statutory requirements. If the complaint is dismissed, the Commission must explain in plain and easily understandable language, why the conduct alleged in the complaint failed to constitute judicial misconduct. In situations where a public sanction has been issued, the complainant is provided with a copy.

2. Confidentiality

The Commission is not governed by the Texas Public Information Act (Chapter 552 of the Government Code), the Open Meetings Act (Chapter 551 of the Government Code), or the Texas Administrative Procedures Act (Chapter 2001 of the Government Code), as it has its own constitutional and statutory provisions regarding the confidentiality of papers, records, and proceedings. However, the Legislature, in 2013, passed legislation requiring the Commission to hold an open public meeting at least once every even-numbered year to seek public input on the Commission’s mission and operations.

a. Records and Information

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas Constitution, and the Texas Government Code.

Generally information is confidential (Sections 33.032, 33.0321, and 33.0322 of the Government Code), but there are some exceptions such as:

- public sanctions;
- suspension orders and proceedings;
- voluntary agreements to resign in lieu of disciplinary proceedings;
- papers filed in formal proceedings when formal charges are filed;
- if issues concerning a judge or the Commission is made public by sources other than the Commission, the Commission may make a public statement; and
- the Commission may not withhold from the Sunset Advisory Commission staff access to any confidential document, record, meeting, or proceeding to which Sunset staff determines access is necessary for a review.
b. **Proceedings**

Commission proceedings are confidential and privileged until the convening of a formal hearing unless:

- a judge who is appearing before the Commission elects to have the hearing open to the public or to persons designated by the judge;
- the Commission issues a public admonition, warning, reprimand, or requirement that a person obtain additional training or education, in which case, all papers, documents, evidence, and records considered by the Commission shall be public; or
- the judge appeals a private sanction.

When the Commission determines that formal proceedings are in order, confidentiality ends upon the convening of a formal proceeding, and such a hearing is public.

3. **Meeting with the Commission**

Although the meeting with the Commission is confidential in accordance with constitutional requirements, the judge has the right to waive confidentiality and open the meeting. The judge may be represented by legal counsel. If the judge wishes to introduce the testimony of others, it must, at this point, be written. Only the judge may present oral testimony under oath.

4. **Possible Actions by the Commission**

The following information explains the possible actions of the Commission.

a. **Dismissal**

Prior to the decision to dismiss, the Commission often expends considerable resources in fact collection. The Commission may choose to dismiss a case for a variety of reasons, including:

- the judge took corrective action;
- finding of no misconduct;
- lack of proof;
- no jurisdiction over the complaint because the actions were within the judge’s judicial discretion;
- the judge’s action did not rise to the level of judicial misconduct; or
- the judge agreed to voluntarily resign from judicial office in lieu of disciplinary action.

A complainant may request reconsideration of a dismissal of a complaint. The request must be received within 30 days of notification of the dismissal and must contain new evidence or factual material. Reconsideration can be requested only once.

b. **Amicus Curiae Program**

Amicus Curiae is a judicial disciplinary and educational program initially funded by the Legislature in 2001. Amicus Curiae (Amicus), which means “friend of the court,” provides authority for the Commission to order additional training and education when a judge has been found to have violated a canon of judicial conduct. It does not replace the regular disciplinary
procedures, but rather supplements them. The Amicus program also helps identify sources of diagnosis and treatment for impaired judges. A referral to Amicus by the Commission through the disciplinary process is confidential, but does not protect a judge from sanctions if the Commission has deemed that a judge has violated a canon.

Amicus also provides the opportunity for judges who need help to seek assistance through the Amicus program outside of the disciplinary process. This program helps all judges, attorney and non-attorney. For assistance, contact the Commission on Judicial Conduct at 877.228.5750 or the Amicus Program Manager at 512.463.7769.

c. Sanctions

In cases of judicial discipline, the Commission considers the purpose of a sanction not to secure vengeance, retribution, or punishment, but to deter any similar misconduct by judges in the future, to promote proper administration of justice, and to reassure the public that the judicial system in this State neither permits nor condones misconduct. The judicial officers of this State, even those sanctioned, are dedicated to the principle of government through rule of law and are deserving of continued confidence in their honor and integrity.

No sanction is issued by the Commission unless the judge involved has been advised of the nature of the allegations and has been afforded an opportunity to respond. No public sanction is issued unless the judge has been afforded an opportunity to appear.

Any sanction issued by the Commission may be appealed by the judge to a special court of review composed of three justices from courts of appeals selected by the Chief Justice of the Supreme Court. The review is de novo under rules of law, evidence, and procedure for civil actions. The special court of review may dismiss or affirm the Commission’s decision. It may also impose a lesser or greater sanction or institute formal proceedings.

Causes for sanction of a judge may be due to willful or persistent conduct that is clearly inconsistent with the proper performance of duties or casts public discredit upon the judiciary or administration of justice. Improper conduct includes, but is not limited to:

- failure to execute the business of the court in a timely manner;
- incompetence in the performance of the duties of office;
- willful violation of a provision of the Texas Constitution, the Penal Code, or the Code of Judicial Conduct, or persistent or willful violation of the Rules of the Supreme Court of Texas;
- inappropriate or demeaning courtroom conduct (i.e., yelling, profanity, gender bias, or racial slurs);
- improper communication with only one of the parties or attorneys in a case;
- failure to disqualify in a case where the judge has an interest in the outcome (a financial interest or a case in which the parties or attorneys are within a prohibited degree of kinship to the judge);
- using the prestige of judicial office to advance the private interests of the judge or others;
- public comment regarding a pending case;
• alcohol, drug, or mental health problems;
• failure to cooperate with the Commission or abide by an agreement entered with the Commission; and
• out-of-court behavior, such as sexual harassment, official oppression, bribery, theft, driving while intoxicated, making threats, making racist comments, or endorsement of a specific political candidate.

The Commission does not have authority to change decisions of any court or to act as an appellate review board. The Commission does not give legal advice, issue advisory opinions, or sanction judges who act in good faith in reaching a legal decision, making findings of fact, or applying the law as the judge understands it.

The Commission may impose the following sanctions:

(1) Additional Training

Requiring a judge to obtain additional continuing education is a sanction that the Commission believes is especially effective. Such an order can be tailored to remedy any particular problem area in the judge’s understanding of the judicial process.

(2) Private Admonition

A written private admonition is the least onerous of all sanctions that may be imposed by the Commission. A private admonition indicates to the judge that his or her actions were inappropriate and suggests a preferred approach to handling similar situations.

(3) Private Warning or Reprimand

A written private warning is stronger than an admonition, and a private reprimand is stronger still, spelling out the findings of fact and specifying the standards of law or ethics violated.

(4) Public Admonition or Warning

A public admonition or warning is similar to a private admonition or warning except that it is released to the public. This is meant to instruct other members of the judiciary and to reassure the public that their interests are being protected and that the high standards of the Texas judiciary are being maintained.

(5) Public Reprimand

The most serious of all sanctions that can be issued, other than formal proceedings, is the public reprimand. This sanction is issued when the Commission believes that a judge has committed serious misconduct, and both the public and the judiciary would be best served by a public statement of the judge’s misconduct.

(6) Suspension

A judge, indicted with a felony offense or charged with a misdemeanor involving official misconduct, may be suspended from office with or without pay pending resolution of the criminal charges. In a situation where a judge is suspended because of pending criminal charges, the Commission undertakes its own examination. The Commission does not proceed in the
manner of a criminal case and does not determine guilt or innocence by the evidentiary standard of beyond a reasonable doubt; rather, by using the preponderance of the evidence standard, the Commission determines whether or not the judge has brought discredit upon the judiciary or engaged in willful or persistent conduct that is clearly inconsistent with the proper performance of judicial duties.

(7) **Removal or Censure**

The Commission may seek the removal or censure of a judge through formal proceedings which essentially amount to a public trial. Subpoena power is provided to enable the Commission to carry out its work.

C. **Formal Proceedings**

When the Commission determines that formal proceedings are in order, confidentiality ends. A formal proceeding is an adjudicative proceeding in which the judge is entitled to due process of law in the same manner as any person whose property rights are in jeopardy. The Commission seeks the appointment of a master by the Supreme Court. After a public hearing, with the master presiding, the master makes findings of fact. The Commission may then dismiss the complaint, publicly censure the judge, or forward the findings with a recommendation for removal. Public censure following a formal proceeding is “tantamount to denunciation of the offending conduct,” and a more severe action than remedial sanctions that may be issued prior to a formal proceeding. In the event of a recommendation for removal, the Supreme Court appoints a seven-judge tribunal made up of justices from courts of appeal throughout Texas. Appeal from a decision of the tribunal is directly to the Supreme Court, which considers the case under the substantial evidence rule.

Section 33.038 of the Government Code provides for automatic removal of judges who are convicted or given deferred adjudication for felony offenses or misdemeanor offenses involving official misconduct.

Judges who are removed or involuntarily retired may be prohibited from holding a judicial office in the future. In addition, district and appellate judges who are removed by the Commission may not be eligible for judicial retirement benefits.

At the conclusion of every case, the complainant is notified of the final outcome in accordance with statutory requirements. In situations where a public sanction has been issued, the complainant is provided a copy.

The 83rd Legislature passed a resolution authorizing a constitutional amendment to be submitted to the voters in the November 2013 general election. If approved, the Commission could issue a public sanction (admonition, warning, reprimand, or order of education) following a formal proceeding, in addition to its authority to issue a public censure or recommend removal or involuntary retirement.
Q. 5. What are the three objectives of the Commission on Judicial Conduct? ________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

Q. 6. How does the Commission endeavor to achieve its objectives? ________________
_________________________________________________________________________

Q. 7. What provides authority for the Commission on Judicial Conduct to operate? ______
_________________________________________________________________________

True or False
Q. 8. A file is initiated with the Commission on Judicial Conduct when the Commission receives
a telephone complaint. ____
Q. 9. Complainants may request the Commission on Judicial Conduct keep their identity
confidential. ____
Q. 10. Information gathered by the Commission on Judicial Conduct may never be made public.
____
Q. 11. All proceedings of the Commission on Judicial Conduct are conducted publicly. ____
Q. 12. The Commission on Judicial Conduct may dismiss a case if a judge took corrective action in
the case against him or her. ____
Q. 13. Amicus Curiae is a special program developed by the Commission on Judicial Conduct to
address judicial impairments. ____
Q. 14. Improper conduct includes failure to conduct court business in a timely manner. ____
Q. 15. Judges could be reprimanded for incompetence in the performance of their duties. ____

Q. 16. Rank the following actions by the Commission in order of severity. (1= the most)
_____ Removal-Censure
_____ Private Admonition
_____ Public Reprimand
_____ Public Admonition

PART 3
ETHICS COMMITTEE

The Ethics Committee of the Judicial Section of the State Bar of Texas issues advisory opinions
on ethical issues faced by Texas judges. Be careful; although the reasoning of these opinions is
insightful and usually parallels the Commission, the opinions of the Ethics Committee are not
binding on the Commission. Some of these opinions are noted in the commentary following the
canons of the Code of Judicial Conduct provided in Part 4 of this guide. These opinions may also
be accessed online at www.courts.state.tx.us/judethics/ethicsop.asp.
PART 4

CODE OF JUDICIAL CONDUCT

Canon 1 of the *Code of Judicial Conduct* requires judges to participate in establishing, maintaining, and enforcing high standards of conduct to uphold the integrity and independence of the judiciary. Canon 3C(2) says that judges should require staff, court officials, and others subject to the judge’s direction and control to observe the same standards of fidelity and diligence that apply to the judge. Consequently, clerks should observe the same professional standards as the judge.

This part of the study guide includes portions of the Code that relate to municipal courts. Due to the structure and jurisdiction of the municipal courts, some canons do not apply to the municipal and justice courts, and have not been included here.

The *Code of Judicial Conduct* can be obtained from the Commission or downloaded from www.scjc.state.tx.us/pdf/txcodofjudicialconduct.pdf. The text is laid out in the following pages. The code consists of specific rules set forth in sections under broad captions—called canons—following an introductory preamble. Commentary has been added to help clerks gain a better understanding of the canons.

**Preamble**

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should be governed in their judicial and personal conduct by general ethical standards. The code is intended, however, to state basic standards, which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Although the Preamble does not specially mention court support personnel, Canon 3C(2) says that a “judge should require staff, court officials, and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.” Also, Canons 3B(4), 3B(6), and 3B(10) specifically mention court staff and personnel under the judge’s direction and control. Although the Commission does not accept complaints against a clerk, the judge may be held responsible for the clerk’s actions in a disciplinary proceeding.

Q. 17. Upon what principle is our legal system based? ___________________________________
Q. 18. Why should clerks observe the same professional standards as judges? ________________
                                                                                     ________________
Q. 19. What might happen if a clerk’s conduct is improper?

________________________________________________________________________

Canon 1: Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this code are to be construed and applied to further that objective.

An honorable judicial system is one that is held in high esteem. It is a system that people respect. It is a system built on the principle of an independent judiciary.

It may be difficult for municipal courts to appear independent when they work in close proximity to law enforcement. Therefore, municipal courts should be separate from and not show favoritism to the police. If the court is located in the same building as the police department, the court should have a separate entrance. The court should have its own telephone line that is answered “Municipal Court.” Having a separate room to conduct court business helps the court avoid the appearance of impropriety.

If a clerk is supervised by someone not a part of the municipal court, such as a finance director or a police captain, he or she might have a difficult time appearing and acting independent. In this instance, the supervisor could be more interested in revenue or prosecuting a case than in impartial justice. Also, some clerks wear different hats; they may be the police secretary or dispatcher in addition to their duties as court clerk. When conducting the business of the court, however, clerks should always exhibit behavior that reflects the independence and impartiality of the judicial system. Remember that public access to the justice system usually occurs through a direct encounter with court personnel.

True or False

Q. 20. The judicial system is built on the principle of being independent from the other branches of government. ____

Q. 21. When the telephone for the court is answered “police department,” it may give the public the impression that they will not be treated fairly or impartially. ____

Q. 22. Having a separate room away from the public where peace officers may swear to complaints and conduct other court business helps the court avoid any appearance of impropriety. ____

Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge’s Activities

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of
the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

Judges are required to conform to the standards of behavior established by the code and must avoid even the appearance of impropriety. Impropriety is improper conduct not in accordance with fact, truth, correct procedures, and ethical standards. The commission of criminal acts, including driving while intoxicated and disorderly conduct, has been the basis of past sanctions against judges. Judges are required to conform to these standards both on and off the bench, and in their personal lives.

Neither a judge nor a clerk should abuse the power inherent in his or her position over other persons. Misuse of office would include:

- using the position or even letterhead showing the position to seek special privileges for himself, herself, or others;
- accepting gifts, favors, or loans for promises to influence official actions;
- doing favors for friends or family;
- endorsing a particular driving safety course;
- offering preferential treatment;
- accepting donations to charity or the city in exchange for dismissing citations;
- retaliating against another using the powers of the court; and
- misusing public resources, letterhead stationary, or equipment.

Remember that clerks and judges are in positions of public trust, and as such, should be concerned about both actual impropriety and the appearance of impropriety (e.g., stating personal views about people or issues that may be pending before the court or allowing the police officer to take a coffee break in the clerk’s office). The canons should govern your behavior in and out of the courtroom.

True or False

Q. 23. A municipal judge may use court letterhead to write members of a fraternity urging them to join the local chapter. ____

Q. 24. A municipal judge may voluntarily testify for someone else as a character witness. ____

Q. 25. A municipal judge or clerk may be a member of the Ku Klux Klan. ____

Q. 26. Indicate whether the following behaviors are proper or improper for a clerk.

(P=Proper; I=Improper)

____ Telling the judge about the belligerent attitude of a defendant scheduled for a bench trial.

____ Recommending a specific driving safety school to a defendant.

____ Using court stationary to offer a product or service for purchase to earn extra money.
Looking up your girlfriend’s traffic record.
____ Drinking beer while working overtime at the office.
____ Asking an officer to not file a traffic ticket against a friend.
____ Closing the court or decreasing fines to put pressure on the city council to increase salary and benefits for court personnel.

**True or False**

Q. 27. The *Code of Judicial Conduct* governs a municipal judge and clerk’s behavior in and out of the courtroom. ____

---

**Canon 3: Performing the Duties of Judicial Office Impartially and Diligently**

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge’s other activities. Judicial duties include all the duties of the judge’s office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

   (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

   (2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

   (3) A judge shall require order and decorum in proceedings before the judge.

   (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge’s direction and control.

   (5) A judge shall perform judicial duties without bias or prejudice.

   (6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not knowingly permit staff, court officials, and others subject to the judge’s direction and control to do so.

   (7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

Note: Canon 3B(8) which deals with ex parte is not included here because municipal court judges do not have to comply with that section of Canon 3. Instead, they have a specific canon, Canon 6C(2), dealing with ex parte communications.
(9) A judge should dispose of all judicial matters promptly, efficiently, and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge’s court in a manner which suggests to a reasonable person the judge’s probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge’s direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court’s judgment, a written opinion, or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities

(1) A judge should diligently and promptly discharge the judge’s administrative responsibilities, without bias or prejudice, and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials, and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities

(1) A judge who receives information clearly establishing that another judge has committed a violation of this code should take appropriate action. A judge having knowledge that another judge has committed a violation of this code that raises a substantial question as to the other judge’s fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.
(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

Canon 3B(1) refers to disqualification and recusal (the process by which a judge is disqualified or recuses himself or herself from hearing a case because of interest or prejudice). There are several provisions in Texas law that should be read along with Canon 3.

- Article V, Section 11 of the Texas Constitution. No judge shall sit in any case wherein the judge may be interested, or where either of the parties may be connected with the judge, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge shall have been counsel in the case…
- Section 21.005 of the Government Code. A judge or a justice of the peace may not sit in a case if either of the parties is related to him by affinity or consanguinity within the third degree…
- Article 30.01 of the Code of Criminal Procedure. No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been counsel for the State or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree…

Thus, disqualification is required in a criminal case if the accused or the plaintiff is related to the judge by consanguinity or affinity within the third degree. Black’s Law Dictionary defines consanguinity to mean “blood relationship; the connection of persons descended from the same stock or common ancestor.” Affinity means “relation which one spouse because of marriage has to blood relatives of the other.” Appendix B includes a graphical representation of those relations within the third degree.

Canon 3B(2) requires judges to be faithful to the law and to maintain professional competence in it. Likewise, clerks should be conscientious in learning about the law that governs ministerial duties and court procedures. They should maintain professional competence by attending regular judicial education seminars for court support personnel.

Canon 3B(3) requires the judge to maintain order and decorum in proceedings. Clerks may help by informing participants in court proceedings about proper conduct. The court may want to develop a pamphlet of do’s and don’ts on courtroom behavior to hand out to court participants.

Canon 3B(4) requires the judge to “be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others… and should require similar conduct of… staff.” The conduct of the staff reflects the attitude of the court toward court participants. Being patient, dignified, and courteous lets defendants know that the court is impartial and fair. Sometimes this may be hard to do when defendants are being difficult because they are emotional or fearful of the judicial process. Having a pamphlet about court procedures, understanding that this is a stressful situation for citizens, remaining calm, and handling the defendant patiently and courteously helps citizens get through the process and maintain confidence in the judicial system. Trial
judges have been sanctioned for non-verbal expressions of bias against a party and for yelling at attorneys.

Canon 3B(6) specifically lists many of the groups that one must be careful not to show bias or prejudice towards. Remember that clerks represent the court system to the public. If a witness, defendant, victim, attorney, or other user of the court perceives that a court employee is biased against certain types of persons based on their characteristics, that person may assume that the entire system is biased and unfair.

Bias and discrimination can be overt (in the open) or covert (hidden). Treating persons of one racial group rudely is an example of improper overt behavior. Holding certain assumptions about individuals based on race, sex, religion, or other characteristics, and letting these assumptions influence the way you react to those individuals is a hidden form of bias. The clerk should balance neutrality with sensitivity for the needs and mental states of persons appearing in court. Determining the needs of persons with disabilities, language barriers, and victims in family violence cases, for example, should be evaluated on a case-by-case basis.

Canon 3B(9) requires judges to be prompt, efficient, and fair in all judicial matters. The actions of the clerk have a great impact on the judge’s administration of justice because administrative functions of the clerk’s office often determine how efficiently cases progress through the judicial system. The case Chapman v. Evans, 744 S.W.2d 133 (Tex. Crim. App. 1988), highlights the importance of why the court must efficiently manage cases. The Court of Criminal Appeals held that “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… Over-crowded trial dockets alone cannot justify the diminution of the criminal defendant’s right to a speedy trial.” To efficiently manage the workload of the court, clerks should be knowledgeable of court procedures and processes, records management, financial management, and office management. Clerks and judges together should develop an operations and procedures manual for the court to increase efficiency and give clerks guidance on how to manage office functions.

Canon 3B(10) provides that neither the judge nor the clerk should make comments about cases pending before the court. Commenting would make it appear to the public that a decision has already been made about the case before the judge heard the evidence and arguments. In addition, neither can make comments about a case on appeal. When controversial cases appear in the court, there may be public criticism of the court’s handling of the case. It must be accepted silently or handled by the city’s public information department or public officials not in the judicial branch. Although clerks and judges may not comment on cases, they can explain court procedures.

Canon 3C(1) requires judges to diligently and promptly discharge administrative responsibilities and to cooperate with other judges and court officials in the administration of court business. Hence, judges and clerks should work together to ensure that cases, all processing, and the management of the day-to-day operations of the court are proper, effective, and prompt.

Canon 3C(2) provides that judges require court staff to observe the standards of fidelity and diligence that apply to the judge. Fidelity means a quality or state of being faithful and accurate in details. Diligence is steady, earnest, and energetic application and effort; in other words, it is a persevering application of the standards of the Code of Judicial Conduct.
Canon 3C(5) requires judges to comply with Rule 12 of the Rules of Judicial Administration and provides that failure to do so would be a violation of the Code of Judicial Conduct. Rule 12 concerns judicial records and provides which judicial records are open to public review and which records are exceptions. The text of Rule 12 can be found online at www.tmcec.com/Programs/Judges/Rule_12.

True or False
Q. 28. A municipal judge has a duty to take some action against another judge who is violating the Code of Judicial Conduct. ____
Q. 29. A municipal court clerk has a duty to report to his or her judge unethical conduct of another court employee. ____
Q. 30. A municipal judge should report an attorney who presented false evidence to the court. ____
Q. 31. A judge would be disqualified from hearing her brother’s speeding ticket because they are related by consanguinity within the second degree. ____
Q. 32. A judge should not hear her husband’s speeding ticket because they are related by affinity within the first degree. ____
Q. 33. A municipal court clerk may use racial epithets to refer to witnesses. ____
Q. 34. A municipal court administrator may participate in a trip paid for by an attorney who practices before a municipal judge for whom the clerk works. ____
Q. 35. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
   ___ Informing defendants how to properly conduct themselves in court.
   ___ Shouting at a belligerent defendant.
   ___ Telling sexual or racial jokes to jurors while they are waiting to be called into the courtroom.
   ___ Not explaining all the court options to members of a certain ethnic group.
   ___ Responding to a news reporter who asks you to review an article for legal accuracy. It contains information about a Class C misdemeanor assault that appeared in your court and is part of a larger civil suit for sexual harassment.
   ___ Developing a records management program to help the court manage the progress of the cases through the court.
   ___ Sending the required monthly reports to the State late because the city manager wants the warrants updated so the city can attempt to collect that revenue.
   ___ Working with the judge to oversee the administration of the court.
   ___ Providing information requested under Rule 12.

Canon 4: Conducting the Judge’s Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-judicial Activities in General. A judge shall conduct all of the judge’s extra-judicial activities so that they do not:
   (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; or
B. Activities to Improve the Law. A judge may:

(1) speak, write, lecture, teach, and participate in extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this code; and

(2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge’s impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization’s fund raising events.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge’s impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or office holder expenses as permitted by law.

Note: Municipal judges do not have to comply with Canon 4D(2) or 4D(3).

(4) Neither a judge nor a family member residing in the judge’s household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for
official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a family member residing in the judge’s household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge’s household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;

(d) a gift, award or benefit incident to the business, profession, or other separate activity of a spouse or other family member residing in the judge’s household, including gifts, awards and benefits for the use of both the spouse or other family member and judge, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

Note: Municipal judges do not have to comply with Canon 4E (Fiduciary Duties).

Note: Municipal judges do not have to comply with Canon 4F (Service as Arbitrator or Mediator) unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation.

Note: A municipal judge does not have to comply with Canon 4G (Practice of Law) except: An attorney judge shall not practice law in the court on which he or she serves or in a proceeding in which he or she has served as a judge or in any proceeding related to a proceeding in which he or she has served as a judge.

Note: Municipal court judges do not have to comply with Canon 4H: Extra-Judicial Appointments.

I. Compensation, Reimbursement, and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge’s performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge’s family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.
This canon provides guidance on judges’ activities and avoiding impropriety in their activities, including civic, charitable, and community events. The prestige of the court should never be used for fundraising or to promote membership in organizations that the judge or clerk supports. Examples of improper conduct are shown below:

- The court’s letterhead may not be used to promote charitable activities, personal financial matters, or the private interests of others.
- No member of the court staff or his or her immediate family may accept any gift, bequest, favor, or loan if the donor is a party or person whose interests have come or are likely to come before the court.
- The judge or any member of the court staff may not solicit funds for any educational, religious, charitable, fraternal, or civic organizations. For example, clerks should not sell candy or other products for their children to raise money for such things as band, girl scouts, or boy scouts at the court.

Permitted Activities:
- receiving a gift incidental to a public testimonial;
- receiving books or other material supplied by publishers on a complimentary basis for official use;
- accepting ordinary social hospitality;
- accepting a gift, bequest, favor, or loan from a relative;
- accepting a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; and
- accepting free passes to movies, football games, college plays, etc., only if the gift is from an entity whose interests have not come and are not likely to come before the judge, and if it is clearly understood that the gift is not an effort to seek a favor.

The following checklist of questions helps judges and clerks to reflect on the requirement of maintaining impartiality and avoiding impropriety.

- Does the activity reflect adversely on the impartiality of the court?
- Does the activity detract from the dignity of the office?
- Does the activity involve considerable controversy?
- Does the activity have the appearance of improper political endorsement?
- Does the activity involve membership or leadership in an organization that frequently comes before the court?
- Does the activity involve the use of the prestige of the judicial office to promote the private interest of others?
- Is the judicial office being used for fund-raising or membership solicitation?
- Does the activity involve membership in an organization that illegally discriminates?
- Will the proposed activity or involvement interfere with the proper performance of judicial or ministerial duties?
Q. 36. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)

____ Writing, with the judge, a weekly column about legal matters and court activity for the local newspaper.
____ Teaching classes for the Texas Municipal Courts Education Center.
____ Speaking to high school students in a government class on “Your Rights in Traffic Court.”
____ Selling tickets for your daughter’s booster club to a group taking a driving safety course.
____ Traveling free to Las Vegas on a law firm’s private plane. The law firm frequently handles traffic tickets in your court.
____ Accepting gifts from a friend or a relative on special occasions when the friend or relative is not before the court.
____ Accepting free legal publications from TMCEC.
____ Accepting an invitation to a Christmas party that is being conducted by a company that has a pending case in your court.
____ Using court stationary to write a letter to a company that has failed to provide you with promised service.
____ Having your title as court clerk listed by your name on a letter being sent by a local charity organization that is soliciting toys for disadvantaged children.

Canon 5: Refraining from Inappropriate Political Activity

(1) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this canon and Canon 3B(10).

Note: Municipal judges do not have to comply with Canon 5(3).

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act…shall not knowingly commit an act for which he or she knows the Act imposes a penalty…

While political activism is a right of citizens, clerks must be careful not to use the courthouse as a forum for their political ideas. Wearing or displaying political buttons and stickers or allowing a candidate to place political brochures or advertisements in the court can lead to the actual or apparent loss of independence. Ethics Opinion 234 says “The code does not prohibit political
activities by the administrator, provided that she engages in them away from the courthouse, during non-court hours, on her own time, and without giving the impression that she speaks for the judge. The administrator must remember that the judge for whom she works cannot lend the prestige of his office to advance... political interest.”

Q. 37. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)

<table>
<thead>
<tr>
<th></th>
<th>Making public statements in the local restaurant about persons running for city council.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Commenting privately to your spouse as to whom would be the best candidate for mayor.</td>
</tr>
<tr>
<td></td>
<td>Wearing political T-shirts and buttons for local political races while at work.</td>
</tr>
<tr>
<td></td>
<td>Talking to defendants about who will be the best candidate for mayor.</td>
</tr>
</tbody>
</table>

Canon 6: Compliance with the Code of Judicial Conduct

Note: The text of Canon 6, Sections A, B, and D through G are not included here.

Canon 6C: Justices of the Peace and Municipal Court Judges.

(1) A justice of the peace or municipal court judge shall comply with all provisions of this code, except the judge is not required to comply:

(a) with Canon 3B(8) pertaining to ex parte communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;

(b) with Canons 4D(2), 4D(3), 4E, or 4H;

(c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of matter or parties involved in the arbitration or mediation; or

(d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in proceeding in which he or she has served as a judge or in any proceeding related thereto.

(e) with Canon 5(3).

(2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider ex parte or other communications concerning the merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:

(a) uncontested administrative matters;

(b) uncontested procedural matters;

(c) magistrate duties and functions;

(d) determining where jurisdiction of an impending claim or dispute may lie;

(e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum;

(f) mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense; or
(g) any other matters where ex parte communications are contemplated or authorized by law.

Canon 6H: Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this code, is subject to disciplinary action by the State Bar of Texas.

Ex parte communication includes any communication to the judge involving less than all parties who have a legal interest in a pending case. It may be oral or written. For example, judges are prohibited from engaging in the following conduct:

- meeting with either the prosecutor or defense to privately discuss the merits of a pending case;
- personally investigating the facts of a case, for example: driving by the scene of the accident before the case is heard (or sending the clerk to the scene);
- talking with a defendant on the telephone about the merits of the defendant’s case;
- dismissing a ticket without a hearing and a prosecutor’s motion because it is an old friend;
- hearing the defendant’s side of the story privately outside of trial;
- reading correspondence from defendants who write to the judge to tell their side of the story; or
- reading an officer’s notes on the back of a citation.

The clerk is often in a role to protect the judge from ex parte communication by screening the mail and telephone calls. Also, clerks may not initiate ex parte communication with defendants or their attorneys. If a defendant blurts out information about the case, clerks must not pass it along to the judge. The public does not always understand that a judge cannot talk to one side without the other side being present. Clerks must remember that Canon 3B(4) requires clerks to be courteous, patient, and dignified with defendants.

How often have you heard a defendant say, “I just have one question for the judge.” However, once the defendant sees the judge, the defendant may attempt to explain what happened. When screening whom a judge sees, clerks should know that a defendant who is not contesting the case but is pleading guilty or nolo contendere may talk to the judge about mitigating circumstances after the plea. Canon 6C(2) does not prohibit communications concerning uncontested administrative or procedural matters and determining if the court has jurisdiction of a case. Remember that defendants and/or persons wishing to file a case should be referred to the prosecutor’s office.

Clerks should talk with their judges to establish a policy and procedure for assisting defendants who do not understand the problems with ex parte communication. The court may want to establish a plea docket for those defendants who want to plead guilty or no contest but want to talk to the judge. When judges review case files, clerks should not tag correspondence to the file that presents evidence. If a judge does not have a clerk and must see the public and answer the telephone, he or she should immediately tell citizens that he or she cannot hear the facts of the case except at trial.
True or False

Q. 38. When a citizen wants to file a case and the clerk is unsure whether the municipal court has jurisdiction, the judge may talk to the person to see if the case should be filed in municipal court. ____

Q. 39. A judge may talk with a person who wants to file a claim in municipal court for restitution for $700 for a fence that was damaged by a vehicle that lost control and drove through it. ____

Q. 40. A letter to the judge from a defendant telling the defendant’s side of his or her case is not considered ex parte communication. ____

Q. 41. The officer’s notes on the back of a citation are not considered ex parte communication. ____

Q. 42. A judge may talk with a defendant on the telephone about his or her case, because a telephone conversation is not an official court appearance. ____

Q. 43. It is not ex parte communication to tell the judge about a death threat made by a defendant to the victim. ____

Q. 44. It is not ex parte communication to inform the judge about information from a defendant relating to the defendant’s case pending in the court. ____

Canon 7: Effective Date of Compliance

A person to whom this code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

Canon 8: Construction and Terminology of the Code

A. Construction

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called canons.

The sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances. The code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The code is designed to provide guidance to judges and candidates for judicial office to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the code would be subverted if the code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is
a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

B. Terminology

Note: Not all terms are included here.

(1) “Shall” and “shall not” denotes binding obligations the violation of which can result in disciplinary action.

(2) “Should” or “should not” relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

(3) “May” denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

(7) “Knowingly,” “knowledge,” “known,” or “knows,” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(8) “Law” denotes court rules as well as statutes, constitutional provisions, and decisional law.

(9) “Member of the judge’s (or the candidate’s) family” denotes a spouse, child, grandchild, parent, grandparents, or other relative or person with whom the candidate maintains a close familial relationship.

(10) “Family member residing in the judge’s household” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides at the judge’s household.

(11) “Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control.

True or False

Q. 45. If a canon says a judge shall or shall not conduct him or herself in a certain manner, the judge does not have discretion in that matter. _____

Q. 46. “May” means that the judge has permissible discretion. _____

Q. 47. If a rule requires certain conduct of others, the judge must exercise reasonable direction and control over the conduct of anyone who is subject to the judge’s direction and control. _____

PART 5

IMPROPER AND PROPER CONDUCT

Some of the examples of proper and improper conduct listed here are extracted from the Commission on Judicial Conduct’s website. The examples pertain to judges, but they also have relevance for municipal court clerks. Other examples are the opinions of the author, and are based upon an understanding of judicial and ministerial duties and required statutory duties.
Cases of misconduct must be evaluated on their own merits and the relevant facts. Clerks and judges can call the Commission on Judicial Conduct at 888.228.5750 to discuss problems as they arise.

A. Improper Conduct

The following examples of misconduct are stated in general terms as improper conduct for a municipal court clerk. Clerks should not:

- consume alcohol while working in the court;
- use racial slurs to refer to defendants;
- ask the judge to issue a warrant for someone’s arrest that is motivated by personal bias or animosity;
- improperly select a jury (one prejudiced for or against the defendant);
- refuse to allow an individual to see the court records;
- fail to report traffic convictions to the Department of Public Safety;
- fail to properly maintain court records;
- preside over trials;
- talk about pending or impending cases outside of court;
- use profanity when assisting defendants;
- refuse to allow a defendant to have a jury trial or a bench trial;
- attempt to talk a defendant out of requesting a trial;
- talk with the judge about the case (discussing the attitude of the defendant in an effort to influence the judge’s decision);
- tell a defendant that the judge always does this or that with a particular case or make the defendant believe that the judge has already prejudged the cases;
- fail to establish and maintain proper financial management procedures;
- sign a judge’s name or use a judge’s signature stamp when not in the presence of and at the direction of the judge;
- use their influence with the judge to get special treatment for friends or family;
- use court stationery for personal use;
- set fines and grant time pay or extensions, continuances, deferred disposition, or make a decision about a case that requires the exercise of judgment (all of these processes require that the judge make a decision; clerks do not have authority to make these types of decisions);
- give legal advice to defendants or to anyone such as friends or family members;
- dismiss cases; or
- refuse to send an appealed case to the appellate court.
B. Proper Conduct

The following examples of proper conduct for a municipal court clerk include not only examples of proper behavior, but also ministerial duties that clerks have the authority to perform. Clerks may:

- explain court procedures;
- establish proper office procedures for handling defendants;
- maintain court records;
- develop and perform financial management procedures;
- prepare state reports properly and file them timely;
- refuse to discuss the merits of a case with a defendant;
- receive fine money and transmit the money to the judge to make a decision about whether or not to accept;
- receive appearance bonds after the judge has approved the bond;
- administer oaths to persons filing complaints in the court;
- prepare and issue subpoenas;
- prepare court processes (warrants, writs, summons, judgments, other orders, etc.) at the direction of the judge;
- compile statistical reports for the judge and city officials;
- properly authenticate official documents of the court by affixing the court seal;
- coordinate trial calendars to facilitate the speedy trial of cases;
- work with the judge to establish proper office procedures to help facilitate the administration of the court;
- coordinate community service;
- maintain the court docket; and
- attend yearly educational programs for professional development.

Q. 48. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)

___ Reporting only moving traffic convictions to the Department of Public Safety.
___ Refusing to gossip with a friend about your neighbor’s son who has a minor in possession of alcohol charge pending in your court.
___ Telling a defendant if he or she wants a jury trial, the defendant will have to appeal the case.
___ A defendant who doesn’t want to contest his case but wants to talk to the judge about the amount of the fine is belligerent to the clerk because the judge is not available. The clerk sets the defendant for a hearing at a later date and then tells the judge to set a higher fine.
___ Telling a defendant who calls on the telephone that the judge always gives extensions of time to pay. “All the defendant has to do is ask.”
___ Stamping the judge’s signature in the docket because the judge only comes in once a month and doesn’t have time to sign the docket.
____ Asking the judge to grant a driving safety course (DSC) under the discretionary provisions of the DSC statute to a friend who is not eligible under the mandatory provisions.
____ Seeing prisoners on the weekend to tell them what they are charged with and set their fines because the judge is on vacation.
____ As a clerk for a court with a part-time judge, granting deferred disposition to defendants who ask for it. When the judge comes in a couple of weeks later, the judge signs her name to all the clerk’s paperwork for these defendants.
____ Establishing and maintaining a records management program to ensure the proper processing of cases.
____ Telling a friend that the judge is sensitive to defendants who have children who are not good drivers because his son has a “heavy foot” and is likely to grant her daughter the right to take a driving safety course under the discretionary provisions.
____ When turning over a deposit to the accounting department, asking them to count the money and sign for the deposit.
____ Receiving fine money through the mail and then presenting the case to the judge to accept and sign a judgment.
____ Issuing subpoenas when requested by the State or defense.
____ Asking a peace officer to sign a complaint without administering an oath to him or her.
____ Maintaining competence in court procedures by attending regular educational programs for professional development.
____ Working with the police department to establish a security plan for the court.

PART 6
LEGAL ADVICE VS. LEGAL INFORMATION

Clerks are frequently asked by defendants, victims, attorneys, news media, and other court users for advice about how the court works. Clerks must be careful, however, not to give legal advice. The clerks’ role is to explain procedures, not give advice on the best way to use the court processes. There are several reasons why clerks should not give legal advice.

- Giving legal advice if not a licensed attorney is prohibited as the unauthorized practice of law and may subject the person to criminal charges or liability.
- Giving such advice might advantage the person(s) and compromise the court’s impartiality.
- The advice could be incorrect or damaging.
- The clerk may wrongfully assume a judicial, rather than a ministerial, function.

Some guidelines to help ensure that clerks are giving only legal information and not legal advice are shown below.

- Only explain court processes and procedures.
- Establish a procedure with the judge to release information requested by the public.
- Answer questions concerning deadlines or due dates.
• Do not advise citizens on how to bring their problems before the court or what remedies to seek.
• Have a procedures pamphlet available that explains the court processes and the defendants’ obligations and rights in the process.
• Never give information for the purpose of giving one party an advantage over the other. Remember the absolute duty of impartiality.
• Avoid advising a defendant who asks the question “I can’t decide whether to see the judge. What do you think?” Instead, explain court processes and procedures, and inform the person how to properly bring his or her problems before the court for resolution.
• Avoid helping defendants complete their legal forms, as this assistance is considered to be legal advice (i.e., avoid assisting with appeal bond forms).
• Have a procedure for handling persons who want to communicate improperly with the judge to present their side of the case before a trial. This is called ex parte and is prohibited by the Code of Judicial Conduct.
• Contact the city prosecutor so that he or she may make a decision about how to handle a case if there is an error on the citation or complaint.

The Office of Court Administration has an excellent article on distinguishing legal advice from legal information. This article is reprinted in Appendix C with permission.

True or False
Q. 49. A clerk may give legal advice if he or she is certain that the advice is correct. _____
Q. 50. If a clerk gives legal advice it may compromise the impartiality of the court. ______
Q. 51. If a court provides a sample form to a defendant, the court is obligated to assist that defendant to complete the form. ______
Q. 52. If a clerk determines that there is an error on a traffic citation, the clerk should tell the judge so that the judge can dismiss the case. _____
Q. 53. What may a clerk do when a defendant is unsure how to handle his or her case? __________

PART 7
PENAL OFFENSES AND OTHER RELEVANT CODES

This section of the study guide includes excerpts from the Penal Code, Title 8: Offenses Against Public Administration (Chapters 36-39) and provisions from the Government Code, which deal with official misconduct and nepotism prohibitions. Only the most relevant portions of the law are included here.

A. Penal Code Offenses
Section 1.07: Definitions (in part)
(a) In this code:

(38) “Person” means an individual, corporation, or association.

(41) “Public servant” means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;
(B) a juror or grand juror; or
(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or
(D) an attorney at law or notary public when participating in the performance of a governmental function; or
(E) a candidate for nomination or election to public office; or
(F) a person who is performing a governmental function under a claim or right although he or she is not legally qualified to do so.

True or False
Q. 54. A municipal court clerk is a public servant. _____
Q. 55. A deputy court clerk is a public servant. _____
Q. 56. A part-time employee of the court is a public servant. _____
Q. 57. Municipal court jurors are public servants. _____
Q. 58. An attorney representing a client in municipal court is not a public servant. _____
Q. 59. A bailiff is not a public servant. _____

1. **Chapter 36, Bribery and Corrupt Influence**

   **Section 36.01: Definitions** (in part)

   In this chapter:

   (3) “Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any person in whose welfare the beneficiary has a direct and substantial interest.

   **Section 36.02: Bribery**

   (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

   (1) any benefit as consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

   (2) any benefit as consideration for the recipient’s decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;
(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he or she had not yet assumed office or he or she lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

(e) An offense under this section is a felony of the second degree.

Section 36.07: Acceptance of Honorarium

(a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant’s official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

(b-1) Transportation, lodging, and meals described by Subsection (b) are not political contributions as defined by Title 15, Election Code.

(c) An offense under this section is a Class A misdemeanor.

Section 36.08: Gift to Public Servant by Person Subject to His Jurisdiction

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal’s decision, commits an offense if he solicits, accepts, or
agrees to accept any benefit from a person the public servant knows is interested or likely
to become interested in any matter before the public servant or tribunal.

(h) An offense under this section is a Class A misdemeanor.

(i) A public servant who receives an unsolicited benefit that the public servant is
prohibited from accepting under this section may donate the benefit to a governmental
entity that has the authority to accept the gift or may donate the benefit to a recognized
tax-exempt charitable organization formed for educational, religious, or scientific
purposes.

Section 36.10 exempts certain gifts and benefits. The prohibition in Sections 36.08 (Gift to
Public Servant) and 36.09 (Offering Gift to Public Servant) does not apply to:

- a fee prescribed by law to be received by a public servant or any other benefit to
which the public servant is lawfully entitled or for which he gives legitimate
consideration in a capacity other than as a public servant;
- a gift or other benefit conferred on account of kinship or a personal, professional, or
business relationship independent of the official status of the recipient;
- an item with a value of less than $50, excluding cash or a negotiable instrument as
described by Section 3.104, Business and Commerce Code;
- an item issued by a governmental entity that allows the use of property or facilities
owned, leased, or operated by governmental entity; or
- transportation, lodging, and meals described by Section 36.07(b).

True or False
Q. 60. A municipal court clerk violates Section 36.02 of the Penal Code when he or she accepts
money from a citizen to destroy, conceal, or remove traffic citations from the court files
even though the clerk never did destroy, conceal, or remove the citations. _____

Q. 61. A municipal court clerk may accept payment for making a speech that he or she has been
asked to make because he or she is a court clerk. _____

Q. 62. A municipal court clerk may accept food, transportation, and lodging from an organization
for whom he or she is making a speech. _____

Q. 63. A municipal judge or clerk may accept free tickets to a college football game from the dean
of a private college that is in the city where the municipal judge’s court is located. _____

Q. 64. A municipal court clerk may accept gifts from his or her mother. _____

2. Chapter 37, Perjury and Other Falsification

Section 37.01: Definitions (in part)

In this chapter:

(2) “Governmental record” means:
(A) anything belonging to, received by, or kept by government for information, including a court record; 
(B) anything required by law to be kept by others for information of government; 
(C) a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States; 
(D) a standard proof of motor vehicle liability insurance form described by Section 601.081, Transportation Code, a certificate of an insurance company described by Section 601.083 of that code, a document purporting to be such a form or certificate that is not issued by an insurer authorized to write motor vehicle liability insurance in this state, an electronic submission in a form described by Section 502.046(i), Transportation Code, or an evidence of financial responsibility described by Section 601.053 of that code; or 
(E) an official ballot or other election record… 

(3) “Statement” means any representation of fact. 

Section 37.10: Tampering with Governmental Record 

(a) A person commits an offense if he: 

(1) knowingly makes a false entry in, or false alteration of, a governmental record; 
(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; 
(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record; 
(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully; 
(5) makes, presents, or uses a governmental record with knowledge of its falsity; or 
(6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully. 

(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code. 

(c)(1) Except as provided by Subdivisions (2), (3), and (4) and by Subsection (d), an offense under this section is a Class A misdemeanor unless the actor’s intent is to defraud or harm another, in which event the offense is a state jail felony. 
(2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was 

(A) a public school record, report, or assessment instrument required under Chapter 39, Education Code, data reported for a school district or open-enrollment charter school to the Texas Education Agency…or was a license,
certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor’s intent is to defraud or harm another, in which event the offense is a felony of the second degree;

(B) a written report of a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action; or

(C) a written report of the certification, inspection, or maintenance record of an instrument, apparatus, implement, machine, or other similar device used in the course of an examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action.

(3) An offense under this section is a Class C misdemeanor if it is shown on the trial of the offense that the governmental record is a government record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.

(4) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the governmental record is a written appraisal filed with an appraisal review board… that was performed by a person who had a contingency interest in the outcome of the appraisal review board hearing.

(d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:

(1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;

(2) a felony of the third degree if the offense is committed under:

(A) Subsection (a)(1), (3), (4), or (6); or

(B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and

(3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor’s intent in committing the offense was to defraud or harm another.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government’s purpose for requiring the government record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.
(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 (Simulating Legal Process) or 37.13 (Record of a Fraudulent Court), the actor may be prosecuted under any of those sections.

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

(j) It is not a defense to prosecution under Subsection (a)(2) that the record, document, or thing made, presented, or used displays or contains the statement “NOT A GOVERNMENT DOCUMENT” or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

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True or False

Q. 65. Municipal court complaints are governmental records. ____
Q. 66. Correspondence received from the defendant is a governmental record. ____
Q. 67. The Office of Court Administration’s monthly reports are governmental records. ____
Q. 68. Copies of state reports retained by the court are governmental records. ____
Q. 69. A municipal court clerk is in violation of Section 37.10, Tampering with a Government Record, if he or she types a false statement in an arrest warrant before giving it to the judge to sign. ____
Q. 70. A municipal court clerk is in violation of Section 37.10, Tampering with a Government Record, if he or she erases and corrects a mistake he or she made in entering information on a docket. ____

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3. Chapter 38, Obstructing Governmental Operation

Section 38.122: Falsely Holding Oneself Out As a Lawyer

(a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person holds himself or herself out as a lawyer, unless he or she is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) Final conviction of falsely holding oneself out to be a lawyer is a serious crime for all purposes and acts, specifically including the State Bar Rules.

Section 38.123: Unauthorized Practice of Law

(a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person:
(1) contracts with any person to represent that person with regard to personal causes of action for property damages or personal injury;

(2) advises any person as to the person’s rights and the advisability of making claims for personal injuries or property damages;

(3) advises any person as to whether or not to accept an offered sum of money in settlement of claims for personal injuries or property damages;

(4) enters into any contract with another person to represent that person in personal injury or property damage matters on a contingent fee basis with an attempted assignment of a portion of the person’s cause of action; or

(5) enters into a contract with a third person which purports to grant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding.

(b) This section does not apply to a person currently licensed to practice law in this state, another state, or a foreign country and in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(c) Except as provided by Subsection (d) of this section, an offense under Subsection (a) of this section is a Class A misdemeanor.

(d) An offense under Subsection (a) of this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (a) of this section.

4. **Chapter 39, Abuse of Office**

**Section 39.01: Definitions** (in part)

In this chapter:

(1) “Law relating to a public servant’s office or employment” means a law that specifically applies to a person acting in the capacity of a public servant that directly or indirectly:

   (A) imposes a duty on the public servant; or
   
   (B) governs the conduct of the public servant.

(2) “Misuse” means to deal with property contrary to:

   (A) an agreement under which the public servant holds the property;
   
   (B) a contract of employment or oath of office of the public servant;
   
   (C) a law, including provisions of the General Appropriations Act specifically related to government property, that prescribes the manner of custody or disposition of the property; or
   
   (D) a limited purpose for which the property is delivered or received.
Section 39.02: Abuse of Official Capacity (in part)

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant’s office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than $20;

(2) a Class B misdemeanor if the value of the use of the thing misused is $20 or more but less than $500;

(3) a Class A misdemeanor if the value of the use of the thing misused is $500 or more but less than $1,500;

(4) a state jail felony if the value of the use of the thing misused is $1,500 or more but less than $20,000;

(5) a felony of the third degree if the value of the use of the thing misused is $20,000 or more but less than $100,000;

(6) a felony of the second degree if the value of the use of the thing misused is $100,000 or more but less than $200,000; or

(7) a felony of the first degree if the value of the use of the thing misused is $200,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

Section 39.03: Official Oppression

(a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.
(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, “sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person’s exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor, except that an offense is a felony of the third degree if the public servant acted with the intent to impair the accuracy of data reported to the Texas Education Agency through the Public Education Information Management System...

Section 39.06: Misuse of Official Information

(a) A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that has not been made public, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;

(2) speculates or aids another to speculate on the basis of the information; or

(3) as a public servant, including as a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:

(1) he has access to by means of his or her office or employment; and

(2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

(1) the public servant has access to by means of his office or employment; and

(2) has not been made public.

(d) In this section, “information that has not been made public” means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

True or False
Q. 71. The Code of Judicial Conduct is a law relating to a public servant’s office or employment.
Q. 72. The Code of Criminal Procedure is a law relating to a public servant’s office or employment. _____
Q. 73. A municipal judge or clerk may use a car furnished by the city for a vacation trip. _____
Q. 74. A municipal judge may use a city telephone to make local personal telephone calls. _____
Q. 75. A municipal court clerk may use court letterhead to write a cover letter for an application for a job for which the clerk is applying. _____
Q. 76. A municipal court clerk may use court letterhead to write a recommendation for a deputy court clerk seeking another job. _____
Q. 77. A municipal judge may make a court clerk address the judge’s Christmas cards for him or her during the clerk’s workday. _____
Q. 78. A municipal judge may make listening to his or her dirty jokes a condition of employment for a court clerk. _____
Q. 79. A municipal court clerk who learns in a city staff meeting that the city wants to acquire a certain piece of property for a park may pass that information on to a friend who is a real estate agent. _____


A chart showing consanguinity and affinity relationships can be found in Appendix A.

1. Public Officials

Section 573.001: Definitions (in part)

In this chapter:

(2) “Position” includes an office, clerkship, employment, or duty.

(3) “Public official” means:

(A) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state;

(B) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or

(C) a judge of a court created by or under a statute of this state.

True or False
Q. 80. A public official includes a judge of a court created by or under a statute of this State. _____

2. Consanguinity and Affinity

Section 573.022: Determination of Consanguinity (Blood Relationships)

(a) Two individuals are related to each other by consanguinity if:

(1) one is a descendant of the other; or

(2) they share a common ancestor.
(b) An adopted child is considered to be a child of the adoptive parent for this purpose.

Section 573.023: Computation of Degree of Consanguinity (Blood Relatives)

(a) The degree of relationship by consanguinity between an individual and the individual’s descendant is determined by the number of generations that separate them. A parent and child are in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.

(b) If an individual and the individual’s relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

1. the number of generations between the individual and the nearest common ancestor of the individual and the individual’s relative; and
2. the number of generations between the relative and the nearest common ancestor.

(c) An individual’s relatives within the third degree by consanguinity are the individual’s:

1. parent or child (relatives in the first degree);
2. brother, sister, grandparent, or grandchild (relatives in the second degree); and
3. great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

True or False

Q. 81. A parent and her child are related by consanguinity. _____
Q. 82. A parent and his adopted child have a degree of consanguinity between them. _____

Q. 83. Who are a municipal judge’s relatives within the first degree by blood? ________________

Q. 84. Who are a municipal judge’s relatives within the second degree by blood? ________________

Q. 85. Who are a municipal judge’s relatives within the third degree by blood? ________________

Q. 86. List your own living relatives within the third degree by consanguinity. ________________

Section 573.024: Determination of Affinity (Relationship by Marriage)

(a) Two individuals are related to each other by affinity if:

1. they are married to each other; or
(2) the spouse of one of the individuals is related by consanguinity to the other individual.

(b) The ending of a marriage by divorce or death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

Q. 87.  Is a municipal court clerk’s spouse related to him or to her by consanguinity or by affinity?
________________________________________________________________________

Q. 88.  Is a municipal court clerk’s spouse’s sister related to the clerk by consanguinity or by affinity?
________________________________________________________________________

Q. 89.  If the municipal judge’s spouse dies and the municipal judge has no living children, how is the dead spouse’s sister related to the municipal judge?
________________________________________________________________________

Section 573.025: Computation of Degree of Affinity (Relatives by Marriage)

(a) A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(b) An individual’s relatives within the third degree by affinity are:

(1) anyone related by consanguinity to the individual’s spouse in one of the ways named in Section 573.023(c); and

(2) the spouse of anyone related to the individual by consanguinity in one of the ways named in Section 573.023(c).

Q. 90.  List the municipal judge’s relatives within the first degree by marriage. Second degree by marriage. Third degree by marriage.
________________________________________________________________________
________________________________________________________________________

Q. 91.  List your own living relatives within the third degree by affinity?
________________________________________________________________________
________________________________________________________________________

3.  Subchapter C: Nepotism Prohibitions

Section 573.041: Prohibition Applicable to Public Official

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

(1) the individual is related to the public official within a degree described by Section 573.002; or
(2) the public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within a degree described by Section 573.002.

**Section 573.044: Prohibition Applicable to Trading**

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual’s services are under the public official’s direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

1. the individual is related to another public official within a degree described by Section 573.002; and
2. the appointment, confirmation of the appointment, or vote for appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other public official appointing, confirming the appointment, or voting for the appointment of an individual who is related to the first public official within a degree described by Section 573.002.

Note that Section 573.041 does not apply to:

- an appointment or employment of a personal attendant by an officer of the state or political subdivision of the state for attendance on the officer who, because of physical infirmities, is required to have a personal attendant; or
- an appointment or employment of a person by a municipality that has a population of less than 200.

**Section 573.062: Continuous Employment (in part)**

(a) A nepotism prohibition prescribed by Section 573.041 or by a municipal charter or ordinance does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

1. the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related in a prohibited degree; and
2. that prior employment of the individual is continuous for at least:
   - 30 days, if the public official is appointed;
   - six months, if the public official is elected at an election other than the general election for state and county officers; or
   - one year, if the public official is elected at the general election for state and county officers.

(b) If, under Subsection (a), an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status,
compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

**Section 573.081: Removal in General** (in part)

(a) An individual who violates Subchapter C [Sections 573.041 and 573.044 printed here] or Section 573.062(b) shall be removed from the individual’s position…

(b) A removal from a position shall be made immediately and summarily by the original appointing authority if a criminal conviction against the appointee for a violation of Subchapter C or Section 573.062(b) becomes final…

**Section 573.083: Withholding Payment of Compensation**

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible.

**Section 573.084: Criminal Penalty**

(a) An individual commits an offense involving official misconduct if the individual violates Subchapter C [Sections 573.041 and 573.044 printed here] or Sections 573.062(b) or 573.083.

(b) An offense under this section is a misdemeanor punishable by a fine not less than $100 or more than $1,000.

True or False

Q. 92. A municipal judge may hire his or her spouse’s sister as a municipal court clerk. _____

Q. 93. A municipal judge may hire his or her brother’s daughter to file a backlog of municipal court documents and pay her with the judge’s own money. _____

Q. 94. The presiding municipal judge may hire the child of a sister of an alternate municipal judge to type the docket sheets. _____

Q. 95. A municipal judge may hire the mayor’s daughter as a municipal court clerk in exchange for a job as the mayor’s secretary for the municipal judge’s first cousin. _____

Q. 96. A city with a municipal judge who is disabled and uses a wheelchair may hire the judge’s daughter to be the judge’s aide and pay her out of city funds. _____

Q. 97. If a person is about to be appointed municipal court clerk for a city and the prospective clerk’s aunt is the city secretary, how long must the aunt have worked in that position to be able to keep her job after the municipal court clerk is appointed? ______________________

Q. 98. If the municipal court clerk’s aunt stays with the city, may the aunt fill out the clerk’s merit raise evaluation? _____

True or False

Q. 99. Generally, the city council has a choice about retaining an appointed municipal court clerk who is convicted of official misconduct in the form of nepotism. _____
Q. 100. A violation of the nepotism statute is an offense involving official misconduct. ____

Q. 101. What may happen to a municipal judge convicted of hiring his or her niece as a municipal court clerk? ______________________________________________________________
______________________________________________________________________

PART 8
ETHICAL DILEMMAS

A dilemma is a choice or a situation between equally unsatisfactory alternatives, or a difficult or perplexing situation. Generally, people try to rationalize or deny the wrongness of a situation, or they see what they want to see. Resolution can only be reached if the problem is viewed objectively so that the person can determine the correct course of action.

A. Identifying Ethical Dilemmas

- Identify the issue or problem.
- Determine the kind of problem it really is. Is it an ethical problem or some other issue such as training?
- Break the problem down into workable elements.
- Determine whose problem it is.
- Document problems and issues, communications, and efforts to resolve situation.

B. Solving Ethical Dilemmas

- Decide not to overlook the issue. Issues do not go away, and eventually someone may be hurt. Handle the problem immediately.
- Know and understand the Code of Judicial Conduct and how it applies to court clerks. Abide by these standards.
- If you have a problem and do not know how to handle it, go to someone who does, or seek outside help from the Commission on Judicial Conduct.
- Do not have the attitude “It’s all or nothing.” Develop more than one resolution to ethical problems.
- Decide whether the choice is one that you can live with.
- Consider others that may be involved in the dilemma. Are there any choices that you know that others cannot live with?
- Realize that communication is the best way to solve most problems.
- Determine if more than one option is available.
- Evaluate the options.
- Select the most workable solution and act on your choice.
Unless a written standard or law is broken, sometimes ethical standards are hard to assess because they cannot be adequately measured. Clerks should assess their attitudes and values and follow the steps above to work through an issue or problem.

C. Reporting Ethical Dilemmas

Every year the news media reports several scandals related to municipal courts in Texas. Sometimes the scandal is “ticket-fixing;” other times it is embezzlement. It is the responsibility of every member of the court staff to be on the lookout for wrongdoing and report it to the proper authority.

Minor violations of the canons of judicial conduct should usually be brought to the attention of the individual, the court administrator, and/or presiding judge, before reporting to the Commission on Judicial Conduct. Intentional and knowing violations should be reported to the Commission immediately, as well as to local officials. All allegations should be well documented and reported to superiors.

The Commission staff is also available to discuss problems that may arise and to clarify the canons. Violations of the Penal Code and Government Code should be directed to the police department, city management, or the county or district attorney.

Q. 102. A clerk who had a personality clash with another employee went to her supervisor and said that the other employee did not know how to do the job. Is there an ethical problem here? If so what is it? What should the clerk have done?

Q. 103. A city secretary who supervises the deputy clerks is not familiar with many legal requirements; this causes a clash between the clerks and city secretary. Is this an ethical problem? What should the clerks do?

Q. 104. Before trial, the judge comes to the clerk’s office and wants to know if there is any information she should know about the cases before going to trial. What information may the clerk tell the judge that would not be considered ex parte communication?

Q. 105. A deputy court clerk, with whom you have become good friends, uses the judge’s signature stamp to dismiss a case against her boyfriend. You find out about it. What do you do?
Q. 106. Should a municipal court clerk report to the Commission on Judicial Conduct a judge’s willful violation of the Code of Judicial Conduct?
APPENDIX B: CONSANGUINITY AND AFFINITY

Figure 1 – Relation by Consanguinity

Figure 2 – Relation by Affinity
Legal Information vs. Legal Advice

Guidelines and Instructions for Clerks and Court Personnel
Who Work with Self-Represented Litigants
in Texas State Courts

Edited for use in Texas by:
Texas Office of Court Administration
Texas Access to Justice Commission
Texas Access to Justice Foundation
Texas Legal Services Center
June 2010
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Introduction

Each year thousands of people represent themselves in Texas courts. It is crucial that clerks and court personnel understand how to help the self-represented without giving legal advice. This manual will help explain the difference between legal information and legal advice.

You are the face and voice of justice in Texas. How you respond to questions about the court system affects how people feel about justice, as well as their access to justice. If someone does not understand how to use the court system, and you do not provide available and needed information, that person may be denied access to the courts and to justice.

This manual is specifically intended for the use of clerks and court personnel who provide telephone and counter assistance. It is recommended that you keep the manual in a place where it is easily accessible. Of course, it cannot anticipate all the possible questions that self-represented parties might ask. If you are unsure if your response to a question would constitute giving legal advice, refer to this manual. You can also check with your supervisor.

The manual also contains a one-page list of some things clerks and court personnel can and cannot do (see page 21). This list is designed to be used as a handout or a sign posted at the clerk’s counter or public window so that people can read and understand the guidelines that you are required to follow.

The law is complicated and confusing. Encourage people to talk to a lawyer about their situation. The Resources and Referral Information section of this manual describes a variety of ways people can get help.
Roles and Responsibilities of Clerks and Court Personnel

PROVIDE ACCESS TO THE COURTS

- One of the basic principles of the American justice system is that the doors of our courthouses are open to everyone.

- Most members of the public, however, are not familiar with courts or court procedures and require some level of assistance.

- Access to justice is, in effect, denied if members of the public do not know how to use the court system, and the courts do not assist them in some meaningful way.

- The court is obligated to explain court processes and procedures, to provide quality service, and to provide accurate information to all members of the public.

- An understanding of what information can be provided to the public will significantly affect access to the courts and the administration of justice.

PROVIDE SERVICE WITH ACCURATE INFORMATION

- Accessibility to the judicial system is affected by the accuracy of information provided by the court to members of the public, along with the manner in which it is presented.

- Clerks and court personnel are responsible for giving court users the service they need and deserve by providing accurate information in a competent, cooperative, and timely manner.

- The public’s first and only contact with the judicial system may be with clerks and court personnel, whose responses have an impact on how people view their court experience.

- The court should treat all court users fairly and equally: attorneys, defendants, self-represented litigants, and others. In other words, clerks and court personnel should feel comfortable providing the same information to self-represented litigants that they provide on a routine basis to attorneys. All members of the public are entitled to the same information. Providing information to a lawyer that would not be provided to a self-represented litigant is not equal. Similarly, providing information to a self-represented litigant that would not be provided to a lawyer is not equal.
- Clerks and court staff should learn the rules about *ex parte* (one-sided) communication with the judge, and should not let members of the public use them to circumvent that principle.

- Effective service may reduce the number of times court users must come to the courthouse, and thus reduce stress on the court system.

- Provide accurate information because even seemingly small mistakes can affect people's lives or the outcome of court cases. It is better to be honest and say "I don't know" than to give incorrect information.
Why Clerks and Court Personnel Must Not Give Legal Advice, 
But Should Provide Legal Information

CLERKS AND COURT PERSONNEL MUST REMAIN NEUTRAL

- Remain neutral and do not promote or recommend a particular course of action to court users.
- Although you may have processed many similar types of cases, you do not know what is in a court user's best interest. Only they or their attorneys can make that determination.

CLERKS AND COURT PERSONNEL MUST REMAIN IMPARTIAL

- Impartiality is similar to neutrality, but focuses on equal treatment of court users.
- Court knowledge must be shared fairly and equally.
- Never give advice or information that favors one side or the other.
- Do not disclose confidential information or become involved in or facilitate an ex parte communication.

CLERKS AND COURT PERSONNEL MUST NOT ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW

- Only attorneys licensed to practice by the Supreme Court may give legal advice.
- Do not engage in the unauthorized practice of law by providing legal advice.
- Even court personnel who themselves are licensed attorneys may not give legal advice to court users because doing so would violate the principles of neutrality and impartiality.

The unauthorized practice of law statute, Section 81.101 of the Texas Government Code, states:

(a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or

Page 5
other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

(b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.

c) In this chapter, the “practice of law” does not include the design, creation, publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

The above statute does not provide an exhaustive list of what constitutes the practice of law. The Supreme Court of Texas has held that the courts ultimately decide what is and is not the practice of law.
What is Legal Advice?

Court users are asking for legal advice when they ask whether or not they should proceed in a certain fashion. *Telling a member of the public what to do rather than how to do it may be giving legal advice.*

Legal advice is a written or oral statement that:

- Interprets some aspect of the law, court rules, or court procedures;
- Recommends a specific course of conduct a person should take in an actual or potential legal proceeding; or
- Applies the law to the individual person’s specific factual circumstances.

What Is Legal Information?

Clerks and court personnel may:

- Provide public information contained in dockets, calendars, case files, indexes, and other reports.
- Recite common, routinely-employed court rules, court procedures, administrative practices, and local rules, and explain generally how the court and judges function.
- Refer self-represented litigants to a law library or the court’s website for statutes, court rules, or forms.
- Explain the meaning of terms and documents used in the court process.
- Answer questions concerning deadlines or due dates (without calculating due dates).
- Identify and refer self-represented litigants to court forms.

Clerks and court personnel may NOT:

- Recommend whether to file a certain pleading.
- Recommend wording or content for a pleading.
- Recommend specific people against whom to file pleadings.
- Recommend specific claims or arguments to assert at trial.
- Recommend what type of damages to seek or from whom to seek them.
o Recommend techniques for presenting evidence in pleadings or at trial.
o Recommend which objections to raise or which motions to file.
o Recommend whether a party should ask for a continuance.
o Recommend whether or not parties should try to settle their dispute prior to trial.
o Interpret applications of statutes.
o Perform legal research for a party by researching case law, statutes, opinions, etc.
o Predict the outcome of a case.
What is *Ex Parte* Communication?

*Black’s Law Dictionary* defines *ex parte* as “on one side only; by or for one party; done for one party only.”

*Ex parte* refers to situations in which only one party appears before a judge or communicates with a judge.

With few exceptions, the court rules require that all documents filed with the court must be given to all other parties in the case so that the other parties have an opportunity to respond. Thus, it is improper to give information to the judge unless that information has been provided to the other parties in the case.

If a party submits a written *ex parte* communication for a judge, ask the judge what the judge would like to do with the communication. The judge will say either to send a copy to all the parties before the judge reviews it or to send it back to the individual who submitted the document. Check for any other local policies on this issue.

If a party asks to talk to a judge, suggest that they write down what they want to say and file it with the court. This written communication should:

- Include a proper heading, including the case number.
- Be dated and signed, with the name printed under signature.
- Include the party’s address and telephone number over the heading.
- Be copied to the opposing party or counsel following Texas Rules of Civil Procedure.

The original should be submitted to the clerk and the party should keep a copy for their records.

If the party has an emergency situation and there is no time to submit a written request, communicate with the judge if allowed by local rules. The party should be warned that the request may not be granted.
Quality Service:
Strategies for Answering Difficult Questions

It may not always be clear that it is appropriate to answer a member of the public’s question. However, there are several things that can be done to assist court users and make it easier to identify whether the question is asking for legal information or legal advice.

LISTEN CLOSELY AND ASK QUESTIONS

- Let members of the public ask their questions and listen carefully to what they are asking.
- Be an active listener and respond reflectively. If necessary, repeat or rephrase the question to state what you think they are asking.
- Take the time to clarify what court users need. If someone asks a question that is not clear, ask follow-up questions to clarify what they mean.
- Ask court users if they have completely read any paperwork they may have.

BE PATIENT

- Think how much the court user will appreciate someone taking the time to answer questions and explain an unfamiliar process.
- Coming to court can be stressful, confusing, and intimidating; so take the time to welcome and greet court users.
- The same questions may have been asked many times before, but remember that this is the first time for this particular court user.
- Remain calm even when the court user is not. Attitude is key. Some people may just need to vent. Take it professionally, not personally.

EXPLAIN ANSWERS and GIVE REASONS

- Providing the reasons why certain information cannot be given helps minimize people’s frustration and increases their understanding of the court system. If a question cannot be answered, explain how important it is that clerks and court personnel remain neutral and impartial. Always be clear and concise when providing information. Ask the person how they would feel if the clerk or court personnel gave legal advice to the other side.

- The phrase “I cannot give legal advice” should never be used as an excuse not to provide service. Politely state that clerks and court personnel cannot explain or interpret the law or say how it would apply to a case because that would be giving legal advice. Also, explain that clerks and court personnel do not have legal training and if
the clerk tries to give information about which they are not completely informed, it might jeopardize the outcome of the case for the party.

- If a question cannot be answered, try to give a good referral such as to a local lawyer referral service, legal clinic, the court's website, or TexasLawHelp, www.TexasLawHelp.org. Remember: do not recommend specific attorneys; remain neutral and impartial at all times.
Procedural Explanations vs. Procedural Recommendations

Provide procedural information and explanations on how to accomplish various actions within the court system. Explaining various procedures increases the public’s understanding of the court system and provides greater access to the courts.

Do not make any recommendation that would indicate a direct advantage or disadvantage of a particular procedure. It is not appropriate to tell court users what is the best course of action for them to take, nor is it appropriate to give opinions about the probable outcome of a case.

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<tr>
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<th>Procedural Explanations</th>
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<td><strong>Question:</strong></td>
<td>Can you tell me how to file a small claims action?</td>
<td><strong>Question:</strong></td>
<td>Can you tell me whether it would be better to file a small claims action or a civil action?</td>
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<tr>
<td><strong>Response:</strong></td>
<td>Yes. You need to fill out a sworn small claims statement and file it with the clerk’s office. When you file the affidavit, you will have to pay a filing fee. The clerk will issue you a case number and issue paperwork called the citation. Tell the clerk where the person you are suing may be found because the person must be served before the court can grant you any relief. The small claims form is on the court’s website.</td>
<td><strong>Response:</strong></td>
<td>I cannot tell you which process would be best for your situation because I cannot give you legal advice. You may want to talk to an attorney about this issue to determine which process best fits your situation. You may also contact other legal resource organizations in your area, or you may conduct research at the local law library.</td>
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General Information about Court Operations

vs.

Confidential or Restricted Information about Court Operations

Answer questions about court policies and procedures if the information could not be inappropriately used to affect the status or outcome of a case. It is important not to disclose information that would allow one party or another to have an unfair advantage.

As a general rule, it is appropriate to provide information on how to do something, but it is not appropriate to answer the “how” question when it involves the disclosure of confidential or restricted information.

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<th>CAN PROVIDE General Information About Court Operations</th>
<th>CANNOT PROVIDE Confidential or Restricted Information About Court Operations</th>
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<tr>
<td><strong>Question:</strong> When will my divorce go to court?</td>
<td><strong>Question:</strong> Can you tell me when Judge Doe will be on vacation so I don’t have to appear in front of him again?</td>
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<tr>
<td><strong>Response:</strong> This time frame may depend on the type of service in the case. Hearings are only needed on contested cases and it will depend upon the status of the pleadings as to when it is set. There are general instructions and appropriate forms for uncontested divorce on the court’s website, or you may wish to obtain legal help if your case is going to go to trial.</td>
<td><strong>Response:</strong> I can’t give you personal information about the judge.</td>
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# Explaining Legal Terms vs. Providing Legal Interpretations

Explain legal terms so that people will have access to the court and understand the court system. While it is appropriate to explain legal terms, it is not appropriate to provide legal interpretations.

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<th>CAN PROVIDE Legal Definition</th>
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<tr>
<td><strong>Question:</strong> What does “certificate of service” mean?</td>
<td><strong>Question:</strong> My neighbors leave their kids at home all day without supervision. Isn’t that child neglect?</td>
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<tr>
<td><strong>Response:</strong> The rules require parties to file proof with the court that they complied with the requirement to serve other parties. This is called “certificate of service.” The rules require parties to give copies of any document filed with the court to all other parties in the case. The methods for service available to Texas litigants are outlined in the court rules and state statutes, in particular you may wish to look at Rule 21a of the Texas Rules of Civil Procedure. The rules are available on the court’s website.</td>
<td><strong>Response:</strong> I am not an attorney or a judge and cannot make that legal determination. I can, however, refer you to Child Protective Services who may be able to help you. If you are concerned that the children are in any kind of danger, contact law enforcement.</td>
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The Texas Statutes and a Self Help section are available on Texas Courts Online at [http://www.courts.state.tx.us/links.asp](http://www.courts.state.tx.us/links.asp).
Providing Forms and Approved Instructions vs. Filling Out Forms

Another important way to facilitate access to the court is by providing forms and assistance where resources allow. It is important to know what forms and written instructions are available from the court and other agencies.

Often court users will not know what forms to request in order to bring their matters before the court. When this happens, clerks and court personnel should direct them to available resources for forms such as the court’s website, law libraries, and legal clinics.

Answer procedural questions about how to complete court papers and forms. For example, tell a court user whether a form needs to be notarized or what factual information the form is asking for, but do not say what words to put on the forms. If someone asks what to say in a form, tell the person to use his or her own words. Due to time and resource constraints, suggest that people fill out as much of their form as possible before asking for assistance.

The Americans with Disabilities Act (ADA) requires reasonable accommodation to people with disabilities, which may include helping them fill out forms. Some legal clinics and legal service agencies will help people with disabilities fill out forms.

When helping someone fill out forms, write down exactly what the person dictates, word for word. Do not correct the person’s grammar, and do not paraphrase or edit what the person says. This can be considered giving legal advice, and threatens the court’s impartiality. Once the form is filled out, read it back to the party to confirm that what is written is correct. Write or stamp “dictated by court user, written verbatim by court staff,” and your name or initials in the margin, and why the assistance was necessary.

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**Question:**
I need to file for divorce and I have no idea where to begin. Is there some place I can go to find out how to get started?

**Response:**
Sure. The Texas Law Help website has forms and instructions for uncontested divorces. Go to [www.TexasLawHelp.org](http://www.TexasLawHelp.org) to find a full list of free forms. The court charges a fee to file your papers. This fee varies from county to county and may depend on whether children are involved.

**Question:**
The self-help divorce petition says I should list as my separate property any gifts I received while we were married. My parents gave us money to make our house payments for several months. Should I list that money as my separate property?

**Response:**
I cannot help you decide what information to enter. If you have questions about what information is appropriate to enter on the forms, you can ask an attorney or visit a legal clinic. Information about legal clinics is available on the court’s website.
Public Case Information vs. Confidential Case Information

Some documents or entire cases are confidential and the information cannot be disclosed. Ask a supervisor what records or cases are public and what are not.

Do not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record or the judge directs disclosure of the matter.

Do not speculate on the possible outcome of a matter submitted to a judge or a jury until the outcome is part of the public record. This also applies in cases when a matter has not yet been submitted to the court.

Generally, court case records are open to the public, and some records are made public by law. For example, search warrants and the affidavits that support them are public. Also, records in paternity suits are available for public inspection.

Some court case records may be sealed by the judge in civil cases under Rule 76a of the Texas Rules of Civil Procedure. The access to other kinds of court case records, such as records in mental health proceedings and juvenile case records, is limited by law. There are several other kinds of court case records that may be protected law. Be sure to check with your supervisor if there is a question about what records are public and what are not.

If court case records are confidential or protected by law, do not read them unless necessary to do your job. These records may contain highly personal information about parties, and it is inappropriate to read them unless required for your work.

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<tr>
<td>Public Case Information</td>
<td>Confidential Case Information</td>
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**Question:**
My mother died four months ago, and I lost my paperwork regarding her probate case. Can you give me the case number, and can I get copies of the pertinent documents?

**Response:**
Yes, I need to know her name. I’ll check our records and give you the case number. Then, you can visit our courthouse and view the file.

**Question:**
I think there is a mental health case for my uncle in your court. His name is John Smith. Can you tell me anything about his case?

**Response:**
Mental health cases are private and therefore I cannot provide you with any information. This type of information can only be disclosed by court order.

Tip: The Office of Court Administration publishes manuals for district clerks and county clerks. These manuals address requests for court case records and are available at [www.courts.state.tx.us/pubs/pubs-home.asp](http://www.courts.state.tx.us/pubs/pubs-home.asp).
**Options vs. Opinions**

Provide information on the various procedural options that are available and what the differences are between the options. It is important to explain options because the person is often not aware of those options. People have better access to the courts when options are explained.

It is also important to advise people of all appropriate options. Providing only some of the options may indirectly influence a decision by limiting the person’s choices.

Do not give an opinion about what specific remedies to seek or which option the person should use or otherwise advise someone on whether to bring the problem before the court. Remain neutral and do not take a position that will encourage or discourage a particular course of action.

<table>
<thead>
<tr>
<th>CAN PROVIDE Options</th>
<th>CANNOT PROVIDE Opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Question:</strong></td>
<td><strong>Question:</strong></td>
</tr>
<tr>
<td>What can I do if I cannot afford to pay the filing fee?</td>
<td>My ex-husband hasn’t paid the debts that he agreed to pay in our divorce settlement. Now he’s filed for bankruptcy. The creditors are coming after me. This is ruining my credit. I don’t live in Texas anymore. What can I do? He had an agreement and he’s not following it. Can I be made responsible for this debt?</td>
</tr>
<tr>
<td><strong>Response:</strong></td>
<td><strong>Response:</strong></td>
</tr>
<tr>
<td>You can request an affidavit of inability to pay costs form. This form allows you to open your case without paying the fee. The forms are available on the court’s website and on Texas Law Help’s website.</td>
<td>I can’t advise you what you can do because I cannot give you legal advice. The bankruptcy filing further complicates this matter. You may want to consult an attorney. You can contact a local lawyer referral service to find out if there are any free legal advice clinics that you could attend to get further information, or see Texas Law Help’s Find Legal Assistance web page.</td>
</tr>
</tbody>
</table>
Citing Statutes, Court Rules and Ordinances

vs.

Researching Statutes, Court Rules and Ordinances

It is appropriate to share known statutory and court rule citations, especially as they apply to procedures. However, it is not appropriate to conduct legal research. There are two factors that help distinguish between the two:

- If the information is something clerks and court personnel should know as a part of their job, then it is not considered legal research, even if it has to be looked up in the statutes, rules of civil procedure or local court rules.

- If the information is readily available and does not have to be compiled, then it is unlikely to be considered legal research. If the information has to be compiled, then it probably is legal research.

<table>
<thead>
<tr>
<th>CAN PROVIDE</th>
<th>CANNOT PROVIDE</th>
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</thead>
<tbody>
<tr>
<td>Cites of Statutes, Court Rules and Ordinances</td>
<td>Research of Statutes, Court Rules and Ordinances</td>
</tr>
</tbody>
</table>

**Question:**
Can I get a copy of a document from a case? Is it a public record?

**Response:**
Court records and documents are public record unless they have been sealed under Rule 76a of the Texas Rules of Civil Procedure, or they are confidential under some other law. The law requires that we charge a copying fee. If the document needs to be certified, there is an additional fee and per page copy fee.

**Question:**
What laws govern tort claims?

**Response:**
I cannot perform legal research for you, but you can do that research yourself or contact an attorney to assist you. The statutes and rules are available online and at the law library. Contact the State Law Library for help getting started in your research.
General Referrals
vs.
Subjective or Biased Referrals

Because the court, clerks, and court personnel must remain impartial in all matters, do not make referrals to a specific lawyer, law firm, or paralegal service. Instead, refer people to the court’s website, local lawyer referral service, the State Bar, or the yellow pages of the telephone book.

It is also helpful to keep lists of contact information for local government agencies and departments where people are frequently referred. Sometimes it is appropriate to make a call to the referred agency or department (if time permits) to make sure it can accommodate the person before sending them there.

<table>
<thead>
<tr>
<th>CAN PROVIDE General Referral</th>
<th>CANNOT PROVIDE Subjective or Biased Referral</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Question:</strong> I need a process server. Where do I find one?</td>
<td><strong>Question:</strong> Can you recommend a good process server?</td>
</tr>
<tr>
<td><strong>Response:</strong> We do not have lists of process servers at the court. Pleadings may be served by a sheriff, a constable or you can also check in the phone book or on the internet for certified private process servers.</td>
<td><strong>Response:</strong> I’m sorry, but the court must remain impartial. I cannot recommend a specific process server. I suggest that you check the phone book or the internet for a certified private process server.</td>
</tr>
</tbody>
</table>

Tip: Develop and have available a list of general resources and referrals. Good general referrals include the yellow pages and the Internet. A list of certified private process servers is available on Texas Courts Online at [www.courts.state.tx.us/psrb/pdf/Statewide_Authorized_Servers.htm](http://www.courts.state.tx.us/psrb/pdf/Statewide_Authorized_Servers.htm).
Permissible vs. Impermissible Forms of Ex Parte Communication

Do not transmit information to a judge unless that information has been provided to the other parties in the case. To uphold this principle, follow these guidelines:

- Do not communicate to the judge case information acquired through personal knowledge, read in the newspaper, or heard on the radio or from someone else.
- Do not transmit verbal information to a judge on behalf of a party or attorney concerning a case unless it involves scheduling or other administrative matters.
- Screen the judge’s calls. Do not transfer phone calls to a judge from parties or attorneys without learning what the caller wants to talk to the judge about and whether it is associated with a case before the judge, and then ask the judge if he/she wants to take the call.
- Communications about scheduling or other administrative matters are permitted because they do not deal with the litigation’s substance or merits, and no party gains an advantage as a result of the ex parte contact.

<table>
<thead>
<tr>
<th>CAN PROVIDE</th>
<th>CANNOT PROVIDE</th>
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<tbody>
<tr>
<td>Permissible Forms of Ex Parte Communication</td>
<td>Impermissible Forms of Ex Parte Communication</td>
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</table>

**Question:** Has the judge ruled on the motion to dismiss yet?

**Response:** No, the judge has not ruled on the motion yet. It is still under advisement.

**Question:** I am a prosecutor in the DWI case today. Please tell the judge that I don’t think we’re going to have the trial today because the defendant has already admitted he was drunk.

**Response:** I cannot tell the judge information about potential evidence in the case because it would be an impermissible ex parte communication. I can relay to the judge that the prosecutor states the trial will not go forward, or I can ask the judge if he would be willing to speak to you.
This is a list of some things clerks and court personnel can and cannot do.

<table>
<thead>
<tr>
<th>Can</th>
<th>Cannot</th>
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<tbody>
<tr>
<td>We can</td>
<td>explain and answer questions about how the court works.</td>
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<tr>
<td></td>
<td>provide the number of the local lawyer referral service, legal</td>
</tr>
<tr>
<td></td>
<td>services program, Texas State Bar lawyer referral service, and</td>
</tr>
<tr>
<td></td>
<td>other services where legal information is available.</td>
</tr>
<tr>
<td></td>
<td>give general information about court rules, procedures and practices.</td>
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<tr>
<td></td>
<td>provide court schedules and information on how to get a case</td>
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<tr>
<td></td>
<td>scheduled.</td>
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<td>give you information from your case file.</td>
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<td></td>
<td>give you samples of court forms that are available.</td>
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<td></td>
<td>usually answer questions about court deadlines.</td>
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Resources and Referral Information

Texas Law Help

www.texaslawhelp.org

The Texas Law Help website is a resource for people who do not have an attorney. Topics offered on the website include:

- Civil Rights
- Consumer Cases
- Wills and Estates
- Family Law
- Forms & Instructions
- Juvenile Cases

- Landlord-Tenant
- Mediation
- Domestic Violence
- Seniors
- Spanish Resources
- Veteran Issues

Alternative Dispute Resolution

www.texasadr.org/links.html

Going to court – litigation – may not always be the best way to resolve a problem. Alternative dispute resolution (ADR) is one way to work out an agreement. Mediation and arbitration, for example, both involve neutral, third parties who may facilitate a resolution. ADR can be used for many types of cases, including co-parenting, divorce, probate, contract disputes, other civil cases and appeals.

Legal Assistance Organizations and Other Non-Profit Organizations

www.texaslawhelp.org

www.lsc.gov

Contact information for Texas agencies and organizations such as Legal Aid of NorthWest Texas, Texas RioGrande Legal Aid, Lone Star Legal Aid, Advocacy, Inc., Texas Legal Services Center’s Legal Hotline for Texans, and the Texas Advocacy Project’s Family Law Hotline and Family Violence Hotline, and immigration law resources. On the Texas Law Help website, select the Find Legal Assistance tab. This tab also contains information about other organizations that assist with various legal problems, including consumer protection, landlord-tenant, OSHA complaints, complaints about nursing homes, and assistance with utility companies. On the Legal Services Corporation website, select Texas on the map of the United States. Most legal aid programs have income guidelines that determine the people or families they can serve. Persons must apply for assistance. Because of resource limitations, not everyone who qualifies will receive assistance.

Finding an Attorney

The State Bar of Texas Lawyer Referral Information Service is a free service provided by the Texas State Bar to help people find an attorney. Access the State Bar of Texas Lawyer Referral Information Service on the Texas Bar website: go to www.texasbar.com and select Need a Lawyer? Get a referral on the right side of the page. Most lawyer referral programs refer
people to attorneys who charge a nominal fee for the initial consultation; further fees will be negotiated by the attorney and client if they agree to continue.

Other resources include the yellow pages or friends who may have recommendations. Do not provide lawyer referrals. Another resource is www.martindale.com, an online version of the print lawyer directory Martindale-Hubbell. This site can be searched by location and subject specialty, and provides information about a lawyer’s education and experience, as well as the ratings other lawyers give them.

**Limited Legal Help**

Many people cannot afford to hire an attorney. Limited legal help, also known as “limited scope legal representation,” is an alternative way to get legal help. Under this kind of arrangement, an attorney and client agree that the attorney will provide specific services for a predetermined fee. For example, the attorney and client could agree that the attorney do one or more (but not all) of the following:

- will only advise the client about the strength of the case;
- help draft a document;
- review a document the client has drafted;
- coach the client for a negotiation;
- help with the discovery process;
- coach the client for a hearing;
- appear in court on behalf of the client for one hearing only; or
- any combination of these kinds of services.

Hiring an attorney to handle part of a case can be an affordable alternative to hiring one to take care of the entire case (also called “full representation”), and may be preferable to representing yourself in court—a process that takes time and patience and can be confusing. People who act as their own attorney are expected to know and follow the same rules that attorneys follow.

Not all cases are suited for limited legal help. Attorneys who are interested in providing limited scope representation may be found using the resources described above in the Finding an Attorney section. Feel free to ask attorneys if they are willing to provide limited scope representation.

**State Bar of Texas**

[www.texasbar.com](http://www.texasbar.com)

The State Bar of Texas Client-Attorney Assistance Program helps resolve problems between clients and attorneys. Also, a person with a complaint against an attorney may file a formal complaint (“grievance”) against the attorney with the State Bar. On the State Bar’s website, select Client Assistance & Grievance for more information. The State Bar’s Texas Lawyers Care department publishes a referral directory of legal services and other resources for low-income Texans, [www.texasbar.com/content/navigationMenu/Pro_Bono/2010ReferralDirectory.pdf](http://www.texasbar.com/content/navigationMenu/Pro_Bono/2010ReferralDirectory.pdf).
Texas Law Libraries
Law libraries have print and online resources including statutes, regulations, court rules, and court decisions, as well as legal encyclopedias, form books, and books about specific areas of law. Most law books are written for legal professionals, but some books are written for non-lawyers. Law library staff can't give legal advice, but they can show people how to use their resources.

Texas State Law Library
www.sll.state.tx.us
205 West 14th Street
Austin, Texas 78701-1614
(512) 463-1722

Texas Statutes and Legislative Process
www.statutes.legis.state.tx.us (Statutes)
www.capitol.state.tx.us (Texas Legislature)
The first website contains state statutes. The second website contains information about bills in the Texas Legislature and the legislative process.

Texas Court System
www.courts.state.tx.us
The Texas Courts Online website contains information about the Texas court system.

Texas Forms
Legal form books provide sample language that can be used to prepare documents to file with the court. Some forms are fill-in-the-blank, while others only provide language that must be tailored to the situation. Forms are not available for every situation.

- Some courts have forms available online or in the clerk’s office or county law library. Check on your court’s or county’s website.

- Some court forms are available at www.texaslawhelp.org/TX/index.cfm (click on a list of forms and topics.)

- Texas continuing legal education materials often include forms. Search the catalogs of university law libraries for the relevant topic, such as contracts, and include “Texas” in the search.
ANSWERS TO QUESTIONS

INTRODUCTION
Q. 1. The term “canon” refers to a standard of ethical conduct for members of the judiciary.
Q. 2. The Code of Judicial Conduct states basic standards to assist judges and clerks in establishing and maintaining high standards of judicial and personal conduct.

PART 1
Q. 3. Ethics is the discipline dealing with what is good and bad and with moral duty and obligation. It is a set of moral principles or values.
Q. 4. Integrity is strict personal honesty and independence. It is adherence to one’s moral values or putting into practice one’s values and beliefs.

PART 2
Q. 5. The objectives of the Commission are:
(1) to preserve the integrity of all judges in the State;
(2) to ensure public confidence in the judiciary; and
(3) to encourage judges to maintain high standards of both professional and personal conduct.
Q. 6. To achieve these goals, the Commission not only issues sanctions and secures the removal of judges from office who violate legal or ethical standards, but also offers assistance to judges who have an underlying personal impairment that is connected to the misconduct. In addition, the Commission participates as faculty members in continuing education programs at all levels of the judiciary.
Q. 7. The State Commission on Judicial Conduct was created by an amendment to the Texas Constitution in 1965. Article V, Section 1-a of the Texas Constitution and Chapter 33 of the Texas Government Code are the sources of authority under which the Commission operates.
Q. 8. False (the complaint must be written).
Q. 10. False.
Q. 11. False.
Q. 12. True.
Q. 15. True.
Q. 16. Rank the following actions in order of severity. (1=the most.)
1. Removal or Censure.
4. Private Admonition.
2. Public Reprimand.
PART 4

Q. 17. Our legal system is based upon the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us.

Q. 18. It is required by the Code of Judicial Conduct. Canon 3C(2) of the Code says that judges should require staff, court officials, and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge.

Q. 19. The judge may be held responsible.

Q. 20. True.


Q. 22. True.

Q. 23. False.


Q. 25. False.

Q. 26. Indicate whether the following behaviors are proper or improper for a clerk. (P=Proper; I=Improper)

I - Telling the judge about the belligerent attitude of a defendant scheduled for a bench trial.

I - Recommending a specific driving safety school to a defendant.

I - Using court stationary to offer a product or service for purchase to earn extra money.

I - Looking up your girlfriend’s traffic record.

I - Drinking beer while working overtime at the office.

I - Asking an officer to not file a traffic ticket against a friend.

I - Closing the court or decreasing fines to put pressure on the city council to increase salary and benefits for court personnel.

Q. 27. True.


Q. 29. True.

Q. 30. True.

Q. 31. True.

Q. 32. True.

Q. 33. False.

Q. 34. False.

Q. 35. Indicate proper or improper conduct for the clerk. (P=Proper; I=Improper)

P - Informing defendants how to properly conduct themselves in court.

I - Shouting at a belligerent defendant.

I - Telling sexual or racial jokes to jurors while they are waiting to be called into the courtroom.

I - Not explaining all the court options to members of a certain ethnic group.

I - Responding to a news reporter who asks you to review an article for legal accuracy. It contains information about a Class C misdemeanor assault that
appeared in your court and is part of a larger civil suit for sexual harassment.

P - Developing a records management program to help the court manage the progress of the cases through the court.

I - Sending the required monthly reports to the State late because the city manager wants the warrants updated so the city can attempt to collect that revenue.

P - Working with the judge to oversee the administration of the court.

P - Providing information requested under Rule 12.

Q. 36. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)

P - Writing with the judge a weekly column about legal matters and court activity for the local newspaper.

P - Teaching classes for the Texas Municipal Courts Education Center.

P - Speaking to high school students in a government class on “Your Rights in Traffic Court.”

I - Selling tickets for your daughter’s booster club to a group taking a driving safety course.

I - Traveling free to Las Vegas on a law firm’s private plane. The law firm frequently handles traffic tickets in your court.

P - Accepting gifts from a friend or a relative on special occasions when the friend or relative is not before the court.

P - Accepting free legal publications from the Texas Municipal Courts Education Center.

I - Accepting an invitation to a Christmas party that is being conducted by a company that has a pending case in your court.

I - Using court stationary to write a letter to a company which has failed to provide you with promised service.

I - Having your title as court clerk listed by your name on a letter being sent by a local charity organization that is soliciting toys for disadvantaged children.

Q. 37. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)

I - Making public statements in the local restaurant about persons running for city council.

P - Commenting privately to your spouse as to who would be the best candidate for mayor.

I - Wearing political T-shirts and buttons for local political races while at work.

I - Talking to defendants about who will be the best candidate for mayor.

Q. 38. True.

Q. 39. True (the municipal court does not have jurisdiction of this case so the judge may talk with the defendant to explain that he or she has no authority over this case and it must be filed in another court).

Q. 40. False.

Q. 41. False.

Q. 42. False.

Q. 43. True (but it could be improper conduct).

Q. 44. False.
Q. 45. True.
Q. 46. True.
Q. 47. True.

PART 5
Q. 48. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
I - Reporting only moving traffic convictions to the Department of Public Safety.
P - Refusing to gossip with a friend about your neighbor’s son who has a minor in possession of alcohol charge pending in your court.
I - Telling a defendant if he or she wants a jury trial, the defendant will have to appeal the case.
I - A defendant who doesn’t want to contest his case but wants to talk to the judge about the amount of the fine is belligerent to the clerk, because the judge is not available. The clerk sets the defendant for a hearing at a later date and then tells the judge to set a higher fine.
I - Telling a defendant who calls on the telephone that the judge always gives extensions of time to pay. “All the defendant has to do is ask.”
I - Stamping the judge’s signature in the docket because the judge only comes in once a month and does not have time to sign the docket.
I - Asking the judge to grant a driving safety course (DSC) under the discretionary provisions of the DSC statute to a friend who is not eligible under the mandatory provisions.
I - Seeing prisoners on the weekend to tell them what they are charged with and set their fines because the judge is on vacation.
I - As a clerk for a court with a part-time judge, granting deferred disposition to defendants who ask for it. When the judge comes in a couple of weeks later, the judge signs her name to all the clerk’s paperwork for these defendants.
P - Establishing and maintaining a records management program to ensure the proper processing of cases.
P - Telling a friend that the judge is sensitive to defendants who have children who are not good drivers because his son has a “heavy foot,” and is likely to grant her daughter the right to take a driving safety course under the discretionary provisions.
P - When turning over a deposit to the accounting department, asking the accounting department to count the money and sign for the deposit.
P - Receiving fine money through the mail and then presenting the case to the judge to accept and sign a judgment.
P - Issuing subpoenas when requested by the State or defense.
I - Asking a peace officer to sign a complaint without administering an oath to him or her.
P - Maintaining competence in court procedures by attending regular educational programs for professional development.
P - Working with the police department to establish a security plan for the court.
PART 6
Q. 49. False.
Q. 50. True.
Q. 51. False (helping a defendant complete a form is giving legal advice).
Q. 52. False.
Q. 53. The clerk may explain the court procedures and processes and give the defendant a pamphlet that explains these processes and the defendant’s obligations and rights. Do not advise the defendant on how to handle his or her case.

PART 7
Q. 54. True.
Q. 55. True.
Q. 56. True.
Q. 57. True.
Q. 58. False.
Q. 59. False.
Q. 60. True.
Q. 61. False.
Q. 62. True.
Q. 63. False.
Q. 64. True.
Q. 65. True.
Q. 66. True.
Q. 67. True.
Q. 68. True.
Q. 69. True.
Q. 70. False.
Q. 71. True.
Q. 72. True.
Q. 73. False.
Q. 74. True.
Q. 75. False.
Q. 76. True.
Q. 77. False.
Q. 78. False.
Q. 79. False.
Q. 80. True.
Q. 81. True.
Q. 82. True.
Q. 83. The judge’s father, mother, and children.
Q. 84. The judge’s father, mother, children, brothers, sisters, grandparents, and grandchildren.
Q. 85. The judge’s father, mother, children, brothers, sisters, grandparents, grandchildren, great-grandparents, great-grandchildren, uncles, aunts, nephews, and nieces.
Q. 86. Answers will vary from clerk to clerk.
Q. 87. Affinity (by marriage).
Q. 88. Affinity.
Q. 89. Neither by consanguinity nor by affinity.
Q. 90. The judge’s relatives within the first degree by marriage are his or her spouse, his or her spouse’s parents, his or her spouse’s children, his parent’s spouse, or his children’s spouses. Those within the second degree include those above plus his spouse’s brothers, sisters, grandparents, and grandchildren, and his brothers, sisters, grandparent’s or grandchildren’s spouses. Those within the third degree include all those above plus his spouse’s great-grandparents, great-grandchildren, uncles, aunts, nieces, and nephews, as well as any spouses of his great-grandparents, great-grandchildren, uncles, aunts, nieces, and nephews.
Q. 91. Answers will vary from clerk to clerk.
Q. 92. False.
Q. 93. True.
Q. 94. False.
Q. 95. False.
Q. 96. True.
Q. 97. 30 days.
Q. 98. No.
Q. 100. True.
Q. 101. He or she may be fined $100 to $1000 and be removed from office.

PART 8

Q. 102. A personality clash is not an ethical problem, but when the clerk told her supervisor that the other person did not know how to do her job just because of their personal differences, it became an ethical problem. The ethical problem is the clerk’s lie about the other employee. If the two employees could not work out their differences, they should have asked a supervisor to mediate and both demonstrated an effort to not let their differences affect their work.
Q. 103. This is not an ethical problem. The city secretary’s problem is a lack of training and education. This problem can be remedied by the city secretary reading materials from the Texas Municipal Courts Education Center.
Q. 104. The clerk may discuss with the judge administrative matters concerning the scheduling of the cases for trial or such matters as motions for continuances. The clerk may not discuss the merits of any of the cases, any information blurted out by defendants, or any conversations he or she had with any of the witnesses (usually peace officers).

Q. 105. This is not only an ethical violation, but it is also a crime. It is tampering with a governmental record. You should report it to your supervisor, judge, and chief of police immediately.

Q. 106. Canon 3D requires judges to take appropriate action upon receiving information clearly establishing that another judge has committed a violation of the Code of Judicial Conduct. If the violation raises a substantial question as to the other judge’s fitness for office, the judge shall inform the State Commission on Judicial Conduct or take other appropriate action. Depending on the circumstances, the appropriate action may be reporting the judge to the city council or the Commission. If in doubt, you should call the Commission to discuss the issue.
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INTRODUCTION

In municipal court, a case is usually initiated by a peace officer filing with the court a sworn charging instrument, the “complaint,” or a written notice to appear, commonly called a “citation” or “ticket.” Citizens may also file charges by complaint, but they are generally investigated first by a city department (such as the police department or code enforcement officers) and then reviewed by the prosecutor prior to the filing of the formal criminal charge.

The terms citation and complaint both have multiple definitions under Texas law, but for purposes most municipal court processes, both terms refer to the notice of criminal charges filed against a person.

After a charge is filed, the clerk enters the case on a docket and assigns a docket number that is noted on all papers associated with the case. The clerk prepares a jacket or file for the case and files the case in the active files. Because the clerk is responsible for maintaining court records, the clerk is considered the custodian of court records. This duty includes keeping records updated, properly maintained, and archived.

This chapter discusses complaints, dockets, uncontested cases where the defendant enters a plea of guilty or no contest, and procedures for handling a defendant who fails to appear. A brief overview is also included of warrants, bail, and bond forfeitures. A more thorough discussion on bond forfeitures is included in the Level II Study Guide.

PART 1

CHARGING INSTRUMENTS

A. Purpose

1. Notifies Defendant of Charge

One of the fundamental rights afforded defendants, even defendants accused of fine-only misdemeanors, is notice of specific charges filed against them. Art. 1.05, C.C.P. A charging instrument must notify a person of the offense alleged so that he or she may prepare a defense. Vallejo v. State, 408 S.W.2d 113 (Tex. Crim. App. 1966). Defendants are entitled to notice not later than the day before the date of any proceeding in the case. Defendants may, however, waive their right to notice. Art. 45.018, C.C.P.

2. Initiates Proceedings

The filing of the complaint or citation initiates proceedings in the court. Ex parte Greenwood, 307 S.W.2d 586 (Tex. Crim. App. 1957). When the court accepts a complaint or citation, the case is considered to be filed. As a general rule, a charging instrument must be filed with the municipal court to vest jurisdiction in the court. Until jurisdiction is vested in the court, the court has no authority to do anything with the case.

B. Types

In municipal court, defendants can be charged by a written notice to appear issued by a peace officer—the citation—or by a sworn complaint. A city code enforcement officer, animal control
officer, or citizen usually initiates charges in the court by filing a sworn complaint, as only peace
officers have the authority to issue a citation under Texas law. A defendant is entitled to know
the charges against him or her as alleged in the formal charging instrument; however, the
defendant may also waive that notice and enter a plea on a citation alone.

1. Citation

A written notice to appear issued by a peace officer is commonly called a “citation” or “ticket”
and is filed with the court to initiate proceedings. Section 543.003 of the Transportation Code
authorizes peace officers to issue written notices to appear in lieu of making a full custodial
arrest for Rules of the Road offenses (i.e., those offenses found in Subtitle C, Title 7 of the
Transportation Code). Article 14.06(b) of the Code of Criminal Procedure provides authority for
a peace officer to issue a citation for all Class C or fine-only misdemeanors, except for public
intoxication.

2. Complaint

The complaint is a sworn allegation charging an accused with the commission of a Class C or
fine-only misdemeanor offense in municipal or justice court. Art. 45.018, C.C.P. The complaint
must allege 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. Art. 45.019(a)(4), C.C.P. All elements necessary to constitute an offense must be

Any time a person is arrested in lieu of a citation being issued, the charges filed must be initiated
by sworn complaint. In other words, the issuance of a citation serves as a substitution for the
formal arrest in most situations. Because peace officers may not issue a citation for public
intoxication, a sworn complaint must be filed to initiate proceedings for that offense. Public
intoxication is an exception because one of the elements of that offense is that the person is
intoxicated to the degree that the person may endanger himself, herself, or another. Obviously, it
is not in the interest of the public or the individual to simply issue a citation requiring the
promise to appear when that person, at the time of the detention is intoxicated and a danger to
himself, herself, or another. Conversely, there are two instances in the Transportation Code
where a law enforcement officer is required to issue a citation rather than take the person into
custody; those offenses are speeding and open container. Sec. 543.004, T.C.

a. When a Citation Serves as the Complaint

A citation issued for a fine-only misdemeanor offense may substitute for the sworn complaint to
which defendants can plead not guilty, guilty, or nolo contendere. Art. 27.14(d), C.C.P.
However, a legible duplicate copy must have been given to the defendant. Attorney General

b. When a Defendant Pleads Not Guilty

If a defendant pleads not guilty, the court must file a complaint that complies with the
requirements of Chapter 45 of the Code of Criminal Procedure. Art. 27.14(d), C.C.P. 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, the agreement
must be in writing, signed by both the prosecutor and the defendant, and filed with the court. Without such an agreement, a sworn complaint must be filed in the case. Art. 27.14(d), C.C.P.

c. When a Defendant Fails to Appear

When a defendant fails to appear, a complaint must be filed that conforms to the requirements of Chapter 45 of the Code of Criminal Procedure. Art. 27.14(d), C.C.P. In both the case of the defendant pleading not guilty and the defendant failing to appear, the complaint that is filed replaces the citation as the charging instrument.

C. Requirements

The requirements for a citation are discussed in the Traffic Law chapter of this Study Guide. The requirements for a complaint are found in Article 45.019 of the Code of Criminal Procedure. The complaint may be filed within two years of the date of the offense and not afterward. Art. 12.02(b), C.C.P. This is called the “statute of limitations.” The day upon which the offense is committed and the day upon which the charges are brought are not considered. Art. 12.04, C.C.P.

1. Written

The complaint must be written. Art. 45.019(a)(1), C.C.P. Although the prosecutor is responsible for composing the wording on a complaint, the preparation of the complaint is a ministerial task that commonly falls on the court clerk, especially in this era of electronic ticket writers and court software that automatically generates complaints based on the citations entered.

a. Wording

The complaint shall begin: “In the name and by the authority of the State of Texas” and shall conclude: “Against the peace and dignity of the State.” If the offense is a city ordinance violation, it may also conclude: “Contrary to the said ordinance.” Art. 45.019(a)(7), C.C.P. Article 45.019 also requires that the complaint include:

- the name of the accused, if known, and if unknown, a reasonably definite description (note that a defendant’s name cannot be changed on the complaint even with his or her consent; if the name is spelled wrong and the State wants to change it, a new complaint must be sworn to. Franklyn v. State, 762 S.W.2d 228 (Tex. App.-El Paso 1988));
- that the accused has committed an offense against the laws of this State;
- that the offense was committed in the territorial limits of the city in which the complaint is made;
- the date of the offense as definitely as the affiant is able to provide (remembering that the date of the offense must be before the filing of the complaint and within the statute of limitations. Green v. State, 799 S.W.2d 756 (Tex. Crim. App. 1990)); and
- that the affiant has good reason to believe and does believe the accused has committed an offense.
Frequently, defendants are charged with committing more than one offense on a traffic citation. When a clerk receives a citation with multiple offenses listed on it, each offense is a separate charge and should be alleged on separate complaints. Each complaint will contain the name of the defendant, the date of the offense, and one of the offenses cited.

b. Location of Offense

The particular location within the court’s jurisdiction where a violation was committed need not be alleged if the violation is one that could occur at any place within that jurisdiction. Bedwell v. State, 155 S.W.2d 930 (Tex. Crim. App. 1941). For example, the offense of assault by threat does not require that a specific location be alleged, as long as the complaint alleges that the offense occurred within the territorial limits of the city. Although preparing the language of the complaint is a responsibility often delegated to court clerks, remember that the every element in the complaint must be proven by the prosecutor if the case goes to trial; therefore, be sure to consult with your city attorney or prosecutor as questions arise.

c. Culpable Mental States

Generally, a person commits an offense only if he or she voluntarily engages in criminal 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 intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires. The required culpable mental state must be alleged in the complaint. Sec. 6.02(a), P.C.

If the 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 the definition of an offense does not prescribe a culpable mental state, but one is required, Section 6.02(c) of the Penal Code says the required culpable mental state must be intentionally, knowingly, or recklessly. For an offense that is a violation of a city ordinance punishable by a fine exceeding $500, a culpable mental state is required to be pled in the complaint regardless of whether one is prescribed in the offense. Sec. 6.02(f), P.C.

Offenses that do not require a culpable mental state to be pled are called “strict liability offenses.” Many of these strict liability offenses are traffic offenses and can be found in the Transportation Code. Zulauf v. State, 591 S.W.2d 869 (Tex. Crim. App. 1979).

Section 6.02(d) of the Penal Code provides that culpable mental states are classified according to relative degrees, from highest to lowest, and are defined as follows:

- **Intentionally** - A person acts intentionally, or with intent, with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.
- **Knowingly** - A person acts knowingly, or with knowledge, with respect to the nature of the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, when the person is aware that the conduct is reasonably certain to cause the result.
- **Recklessly** - A person acts recklessly, or is reckless, with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist
or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

- **Criminal Negligence** - A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding the conduct or the result of the conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

If you prepare complaints, check with your city attorney or prosecutor to determine what culpable mental state, if any, is needed.

2. **Signed**


3. **Sworn to**

A complaint must be sworn, i.e., must be made under oath. Art. 45.019, C.C.P. The person swearing to the complaint must have good reason to believe and in fact believe that the defendant committed the act alleged in the complaint. The person swearing to the complaint is declaring the truth of the information contained in the complaint.

   a. **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)?”

   b. **Affiant**

The person swearing to the complaint is the affiant. 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. 1967). 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, and can be a court clerk or deputy court clerk.
The following is a list of procedures on how to administer an oath to an affiant:

- affiant reviews complaint;
- affiant and person administering oath both raise their right hand;
- oath is administered;
- affiant signs complaint; and
- person administering oath signs jurat.

c. Jurat

The certificate of the person before whom the complaint is 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.

If a complaint does not contain a 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 also renders a complaint defective. *Shackelford v. State*, 516 S.W.2d 180 (Tex. Crim. App. 1974).

Article 45.019(e) of the Code of Criminal Procedure lists the persons who have authority to administer the oath to someone swearing to a municipal court complaint and includes the municipal judge, court clerk, deputy court clerk, city secretary, city attorney, or deputy city attorney. Section 602.002 of the Government Code also provides authority for a clerk to administer any oath.

4. Seal

Municipal court complaints are required to have a court seal. Article 45.012(g) of the Code of Criminal Procedure 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 of the Government Code, 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.

The court seal may be created by electronic means, including optical imaging, optical disk, or other electronic reproduction technique that does not permit changes, additions, or deletions to an original document created by the same type of system. Art. 45.012(g), C.C.P.

D. Objections by Defendant

A defendant waives and forfeits the right to object to a defect, error, irregularity in form, or substance of the complaint if the defendant does not object before the commencement of the trial
on the merits. A court may require that objections be made at an earlier time such as at a pre-trial hearing. Art. 45.019(g), C.C.P.

E. Errors in the Complaint

Remember that complaints, like citations, cannot be amended. If there is an error on a citation, the way to cure that error is to file a new sworn complaint. If there is an error on a complaint, the way to cure that error is to dismiss the defective complaint and refile a corrected complaint, so long as it is still within the statute of limitations.

Q. 1. A citizen comes to court to complain about a neighbor’s dog running at large, but does not want to sign a written complaint. No complaint is filed. May the municipal court hear this case? Why or why not? ____________________________________________

Q. 2. If a citation has been filed to initiate the proceedings in court, when does a sworn complaint have to be filed? ____________________________

Q. 3. Since the preparation of the complaint is a ministerial duty, who usually prepares the complaint? ____________________________

Q. 4. Why does the complaint have to allege the date of the offense? ____________________________

Q. 5. Who may administer the oath to an affiant swearing to a complaint in municipal court? ____________________________

Q. 6. Define the word “jurat.” ____________________________

Q. 7. What words are required to be on the seal of a municipal court of record? ____________________________

Q. 8. May a court seal be created electronically? ____________________________

Q. 9. What is the purpose of the court seal? ____________________________

Q. 10. List the culpable mental states from the highest to the lowest. ____________________________

Q. 11. If a statute does not state that a culpable mental state is required, which culpable mental state should be alleged in the complaint? ____________________________

Q. 12. Which city ordinances must allege a culpable mental state even though the offense may not prescribe one? ____________________________

Q. 13. When the sworn complaint is filed, is this a new case or the same case that was initiated by the citation? ____________________________

Q. 14. When may the trial be on the citation instead of the sworn complaint? ____________________________
Q. 15. If a citation is filed with the court and the defendant fails to appear, what must be filed? ____

True or False
Q. 16. If a municipal court does not have a complaint or citation filed, the court may not accept a plea of guilty from the defendant. ____
Q. 17. A complaint is a charging instrument filed in municipal court. ____
Q. 18. Municipal court defendants do not have a right to notice of the crime with which they are being charged. ____
Q. 19. Defendants are entitled to notice—a copy of the complaint—at least five days prior to trial. ____
Q. 20. Citizens have the right to file a complaint with the court. ____
Q. 21. When an officer loses a ticket and finds it three months later and then files it with the court, the court has jurisdiction to try the case. ____
Q. 22. If a person is arrested, the officer can file a citation with the court. ____
Q. 23. The offense of public intoxication may not be filed in municipal court by citation, but must be initiated by a sworn complaint. ____
Q. 24. A complaint gives notice to a defendant of the offense with which he or she is charged so that the defendant can prepare a defense. ____
Q. 25. A defendant may object to an error in a complaint at any time, even during the trial. ____
Q. 26. A complaint must begin with the following words: “In the name and by the authority of the State of Texas.” ____
Q. 27. A city ordinance complaint for the offense of a dog running at large may also conclude with the words “Contrary to the said ordinance.” ____
Q. 28. A complaint does not have to state that the offense was committed in the city in which it occurred. ____
Q. 29. The specific location where an offense occurs must always be stated in the complaint. ____
Q. 30. If a defendant’s name is misspelled on a sworn complaint, the court clerk may correct it and the prosecution may proceed on the complaint. ____
Q. 31. Penal Code offenses do not require a culpable mental state. ____
Q. 32. Many Transportation Code offenses do not require a culpable mental state. ____
Q. 33. A person who recklessly damages someone else’s property even though they might not have intended to do it may be charged with a crime. ____
Q. 34. Criminal negligence is the highest degree of a culpable mental state. ____
Q. 35. If someone swears to a complaint, he or she is declaring by oath the truth of the information contained in the complaint. ____
Q. 36. Only the officer who personally observed an offense may be an affiant on a complaint. ____
Q. 37. A court clerk may not be an affiant on a complaint. ____
Q. 38. A hearsay affiant is one who is acquainted with the facts of the case, but did not personally observe the offense. ____

Q. 39. A complaint that is not signed by the affiant is still a valid complaint. ____

Q. 40. A complaint is defective if either the affiant or the jurat stamps their signature instead of actually writing it. ____

Q. 41. A signature of the affiant or jurat can be electronically captured. _____

Q. 42. A person swearing to a complaint must sign his or her name in front of the person administering the oath. ____

Q. 43. The date the complaint is sworn does not have to be noted in the jurat. _____

Q. 44. A complaint is valid as long as it has been sworn to even if the person administering the oath does not sign the jurat. _____

Q. 45. If the prosecutor decides to file the offense of failure to appear on old cases that have already gone to warrant, the failure to appear must have occurred less than two years previously. _____

Q. 46. If a defendant is being charged with more than one offense, the court may put all the offenses on one complaint. ____

Q. 47. A defendant may plead guilty, not guilty, or nolo contendere when a citation has been filed with the court. ____

PART 2
DOCKETS

A. Maintenance

A docket is a formal record of court proceedings. The judge must keep a docket and enter proceedings in each trial. Art. 45.017, C.C.P. Because keeping a docket is not discretionary, the judge usually delegates the maintenance of the docket to the clerk.

B. Format and Information

There is no requirement that the docket be kept in a well-bound book. Attorney General Opinion DM-139. Information in a docket may be processed and stored by use of electronic data processing equipment at the discretion of the judge. Arts. 45.012(b)(3) and 45.017(b), C.C.P. If a court stores and maintains the docket electronically, the court is not required to simultaneously maintain a paper copy of the docket. In fact, courts that keep the great bound docket book now are the rare exceptions.

Article 45.017 of the Code of Criminal Procedure requires 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 thereon;
• the time when the examination or trial was held and if a trial was held, whether it was by jury or by the judge;
• the verdict of the jury, if any, and the date of the verdict;
• the judgment and sentence 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.

As a case proceeds through the judicial system, the clerk enters the required information on the docket. Remember that only brief entries of the information are required.

Q. 48. When a judge or clerk enters proceedings on a docket, what is he or she doing? __________

________________________________________________________________________

Q. 49. Why does the court keep a docket? ________________________________

Q. 50. Why may a clerk enter proceedings on a docket? ________________________________

________________________________________________________________________

True or False
Q. 51. The style and file number of each case must be entered on the docket. _____
Q. 52. A docket does not have to include the type of offense with which the person is charged. _____
Q. 53. When a judge issues a warrant, only the date that it is issued must be noted on the docket. _____
Q. 54. The docket must show whether the trial was conducted by the judge or by the jury. _____
Q. 55. Who has the authority to decide whether to process and store the information on the docket electronically? ________________________________
Q. 56. If information is stored electronically, does the court still have to maintain a simultaneous record in a docket book that is a bound book? ________________________________

PART 3
UNCONTESTED PROCEEDINGS

Defendants who do not wish to contest the charges against them may 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 by delivering or mailing to the court a plea and waiver of jury trial or payment of the fine and costs. Defendants who do not want to contest charges against them may still present evidence to mitigate the fine to be used during the court’s determination of punishment at the court’s discretion. Arts. 27.14(a) and 45.022, C.C.P.
A. Pleas of Guilty or Nolo Contendere

A plea of guilty is a formal admission of guilt wherein the defendant confesses to committing the charged crime. A plea of nolo contendere means the defendant is not contesting the charges filed against them. Literally, nolo contendere is a Latin phrase meaning, “I will not contest.” Although this plea has a similar legal effect as pleading guilty (i.e., the defendant is found guilty and is assessed a fine and costs), the defendant does not admit or deny the charges. The principal difference between a plea of guilty and a plea of nolo contendere is that the nolo plea may not be used against the defendant in a civil action based upon the same acts.

Pleas of guilty and nolo contendere must be made intelligently and voluntarily. Defendants who plead guilty or nolo contendere must also waive the right to a jury trial in writing. Art. 45.025, C.C.P. When a defendant waives a trial by jury, the judge determines the punishment.

B. Payment of Fine – Plea of Nolo Contendere

Defendants may pay a fine by mail or by delivering the payment to the court in person or through the defendant’s counsel. The amount accepted by the court 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 formally accept the payment. After the judge enters a judgment, the clerk notes the judgment on the docket. Art. 27.14(c), C.C.P.

C. Appearances

Defendants who do not wish to contest their cases must still make some type of appearance to dispose of their case. Adult defendants may appear in person or by counsel in open court, by mail, by delivering a plea and waiver of jury trial to the court, or by payment of the fine and costs. Art. 27.14, C.C.P.

1. Open Court

Adult defendants may appear in person or by counsel in open court to enter a plea. Art. 27.14(a), C.C.P. This procedure is sometimes referred to as the arraignment, although there is no true arraignment in municipal courts. Art. 26.02, C.C.P. At the “arraignment,” a judge identifies the defendant, explains the charge, and requests a plea. If the defendant pleads guilty or nolo contendere, the judge can listen to mitigating circumstances before setting the fine.

2. Delivery of Plea in Person

Adult defendants can 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 shall dispose of the case without requiring a court appearance by the defendant. If the court receives the plea and waiver after the time the defendant is scheduled to appear in court but at least five business days before a scheduled trial date, the court shall also dispose of the case without requiring a court appearance by the defendant. The clerk usually receives these types of pleas and transmits them with the waiver of jury trial to the judge to accept and enter a judgment. Only the judge has the authority to request and accept a plea, and this duty may not be delegated to other court personnel. Attorney General Opinion H-386 (1974).
The court must give notice to the defendant either in person, by hand delivery, or by certified mail with return receipt requested of the amount of any fine assessed in the case and, if requested by the defendant, the amount of an appeal bond. Typically, the clerk provides a hand-delivered notice when the defendant delivers the plea and waiver to the court. After the defendant receives the notice, he or she must pay the fine and costs assessed or post an appeal bond before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

3. Mailed Plea

Adult defendants may also make an appearance by mailing a plea of guilty or nolo contendere and a waiver of jury trial to the court. If the court receives the plea and waiver before the defendant is scheduled to appear or after the defendant is scheduled to appear but at least five business days before a scheduled trial date, the court simply disposes of the case without requiring a court appearance. Art. 27.14(b), C.C.P. If a defendant makes his or her appearance by mail, 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 post an appeal bond before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

A document is considered timely filed with the clerk of a court if it 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 and is received not later than the 10th day after it is required to be filed. Do not count Saturdays, Sundays, or legal holidays when calculating this time period. This is called the “Mailbox Rule.” Art. 45.013, C.C.P. Consequently, courts should consider waiting an additional 10 days after a person is scheduled to appear before preparing warrants or filing failure to appear or violation of promise to appear charges.

4. Jailhouse Plea

Judges may permit a defendant who is detained in jail to enter a plea of guilty, nolo contendere, or not guilty. If the defendant enters a plea of guilty or nolo contendere, the judge may, after giving the magistrate warnings required under Article 15.17 of the Code of Criminal Procedure and advising the defendant of the defendant’s right to a trial by jury, accept the defendant’s plea and:

- assess a fine, determine costs, and accept payment of the fine and costs;
- give the defendant credit for time served;
- determine whether the defendant is indigent; or
- discharge the defendant.

Although many judges were already in the practice of taking these “jailhouse pleas,” the practice was not codified until 2013 when the Legislature amended Article 45.023 of the Code of Criminal Procedure. The statute also provides that a defendant who enters a plea in jail may make a motion for new trial not later than 10 days after the rendition of judgment and sentence. If such a motion is made, the judge shall grant the motion for new trial. Consequently, courts should be mindful when processing payment of fines and costs made following a jailhouse plea.
that if the defendant makes a timely motion for new trial within the 10 days, the judge must grant that motion.

D. Alternative Sentencing

If a defendant does not want to contest a charge, he or she may request a driving safety course, teen court, or deferred disposition in lieu of having a judgment of conviction entered against him or her. Each of these alternatives requires the defendant to first plead guilty or nolo contendere. Unless the defendant is eligible for a driving safety course by statute, the decision to allow a defendant a form of alternative sentencing is completely in the judge’s discretion.

These forms of alternative sentencing are also available after a finding of guilty at trial; therefore, alternative sentencing methods, including deferred disposition and driving safety courses, are discussed at length in the Post-Trial Procedures chapter of this Study Guide.

True or False
Q. 57. A defendant who pleads nolo contendere will be found guilty by the court. _____
Q. 58. A defendant involved in a collision who pleads nolo contendere to the traffic charge may have the plea held against him in a civil suit. _____
Q. 59. Pleading guilty means that a defendant admits to having committed the crime. _____
Q. 60. What is the arraignment? ____________________________________________
Q. 61. When a defendant delivers a plea of guilty or nolo contendere to the court, what additional information must be included with the plea? ________________________________
Q. 62. May the court require an adult defendant’s personal appearance if the defendant delivers the plea of guilty or nolo contendere and a waiver on or before his or her appearance date? ____________________________________________
Q. 63. When a defendant delivers the plea and waiver to the court and requests the amount of fine and appeal bond, what is the court required to do? ________________________________

True or False
Q. 64. When a defendant pays a fine and court costs without sending in a plea, the payment constitutes a plea of nolo contendere and a written waiver of jury trial. _____
Q. 65. If a defendant’s charge is the result of having caused a traffic collision, the judge has the authority to require that person to make an appearance in open court. _____
Q. 66. A defendant has 31 days to either pay a fine or present the court with an appeal bond from the time that he or she receives notice of the amount owed following a plea by mail. _____
Q. 67. When a defendant mails a plea of guilty or nolo contendere and waiver of jury trial to the court, the court considers that the defendant has made an appearance. _____
Q. 68. If a defendant mails the plea and waiver to the court after his or her appearance date but at
least five business days before a scheduled trial date, the court may make the defendant make a personal appearance. _____

Q. 69. A defendant who makes an appearance by mail has the right to appeal his case. _____

Q. 70. When the defendant mails the money to the court, he or she is pleading guilty. _____

Q. 71. If the defendant sends in the wrong amount, the clerk must, before he or she gives the case to the judge, contact the defendant and try to get the rest of the money. _____

Q. 72. If an adult defendant’s attorney appears in open court, the defendant must also appear in open court. _____

Q. 73. If a judge takes a plea from a person detained in jail on a Class C misdemeanor, the judge must grant any motion for new trial if made within 5 days of the judgment. _____

Q. 74. Mailed pleas are considered timely made if deposited in the U.S. Postal Service properly addressed and stamped on or before the appearance date. _____

PART 4
FAILURE TO APPEAR

A. Failure to Appear (FTA)

When a defendant is released from custody and intentionally and knowingly fails to appear in accordance with the terms of release, he or she can be charged with the separate offense of Bail Jumping and Failure to Appear. The 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. A defendant that has not been in custody, and consequently, has never promised to appear, cannot be charged with the offense of failure to appear. In this instance, the court would issue a warrant of arrest or capias. Remember, a person that has been detained by a peace officer and then released upon the issuance of a citation, has been released from custody on the condition they subsequently appear in court. Likewise, a person who has been arrested and released by a magistrate either on bail or under a subsequent order to appear has been released from custody on the condition they subsequently appear in court.

B. Violate Promise to Appear (VPTA)

A person who wilfully 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 Violate Promise to Appear may be charged only when the underlying offense is an offense in Subtitle C of Title 7 of the Transportation Code, i.e., a Rules of the Road offense (found in Chapters 541-600). Since no specific penalty is provided for the offense, the court must look to the general penalty found in Section 542.401 of the Transportation Code of a fine of not less than $1 or more than $200.

C. Filing FTA or VPTA

A defendant that does not appear in court as scheduled is not automatically going to be charged with a nonappearance crime. Only the prosecutor may decide whether to file the charge of failure to appear or violation of promise to appear. Clerks do not make this decision.
Both of these charges are initiated by a sworn complaint and filed on a new docket with a new cause number. Usually the bailiff, warrant officer, marshal, or clerk is the affiant. This is a new crime of which the defendant is accused. It exists independently of the underlying charge for which the defendant failed to appear.

D. Charts
The following chart illustrates instances when it is possible to file failure to appear or violate promise to appear charges.

<table>
<thead>
<tr>
<th>Offense</th>
<th>Failure to Appear (Sec. 38.10, Penal Code)</th>
<th>Violate Promise to Appear (Sec. 543.009, Transportation Code)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vehicle Registration Laws Chapter 502, T.C.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Driver’s License Laws Chapter 521, T.C.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Commercial Driver’s License Laws Chapter 522, T.C.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Subtitle C, Rules of the Road offenses Chapters 541-600, T.C.</td>
<td>No</td>
<td>Yes (if signed the citation)</td>
</tr>
<tr>
<td>Financial Responsibility Law Chapter 601, T.C.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Other Transportation Code offenses outside Subtitle C, Rules of the Road</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Alcoholic Beverage Code offenses</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Education Code offenses</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Health and Safety Code offenses</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Penal Code offenses</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>City Ordinance offenses</td>
<td>Yes&lt;sup&gt;1&lt;/sup&gt;</td>
<td>No</td>
</tr>
</tbody>
</table>

<sup>1</sup> If a non-peace officer, such as a code enforcement officer, issues a citation, failure to appear may not be filed as the defendant would never have been released from custody.

Of course, all of the elements of an FTA or VPTA must be present in order to file the additional nonappearance charge. FTA requires the defendant to have been in custody, released from custody on the condition the defendant subsequently appear in court, and the defendant intentionally or knowingly fails to appear. VPTA requires the defendant to have been cited for a Rules of the Road offense, signed the citation promising to appear, and willfully violated that promise to appear by not appearing.

The following chart indicates some similarities and differences between the two charges:

<table>
<thead>
<tr>
<th>Decision to file charge</th>
<th>Failure to Appear (Sec. 38.10, Penal Code)</th>
<th>Violate Promise to Appear (Sec. 543.009, Transportation Code)</th>
</tr>
</thead>
<tbody>
<tr>
<td>City prosecutor</td>
<td>City prosecutor</td>
<td>City prosecutor</td>
</tr>
<tr>
<td>Charge initiated by sworn complaint</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>-----</td>
<td>-----</td>
</tr>
<tr>
<td>Culpable mental state</td>
<td>Intentionally or Knowingly</td>
<td>Willfully</td>
</tr>
<tr>
<td>Custody of defendant required</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Defendant released on bail required</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Signature on citation, if any, required</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum possible fine if convicted</td>
<td>$500.00</td>
<td>$200.00</td>
</tr>
</tbody>
</table>

If the situation does not meet the elements (e.g., the citation was not issued by a peace officer), the court can still issue an arrest warrant for the underlying charge for which the defendant failed to appear (e.g., for the code violation). See the next section for more on warrants.

### True or False

Q. 75. A defendant who has been served with a summons and then fails to appear may be charged with the offense of failure to appear. ____

Q. 76. A defendant who is released without bail and then fails to appear may not be charged with the offense of failure to appear. ____

Q. 77. The culpable mental state of the offense of failure to appear is intentionally or knowingly. ____

Q. 78. The offense of failure to appear is a Class C misdemeanor if the offense for which the person was required to appear is also a Class C misdemeanor. ____

Q. 79. The maximum amount of fine that may be assessed for the offense of failure to appear is $200. ____

Q. 80. A municipal court clerk may sign as affiant on a complaint for failure to appear. ____

Q. 81. The culpable mental state for the offense of violation of promise to appear is willful conduct. ____

Q. 82. If the charge for which the defendant’s appearance was required is dismissed, the offense of violation of promise to appear must also be dismissed. ____

Q. 83. When a defendant charged with the offense of failure to maintain financial responsibility fails to appear, he or she may be charged with violation of promise to appear. ____

Q. 84. The maximum fine that a court may assess for the offense of violation of promise to appear is $200. ____

### PART 5

**WARRANTS, CAPIASES, AND SUMMONSES**

This section provides an overview of probable cause and the types of writs issued by municipal courts. First, what is a “writ?” Originally, a writ was a letter or command from the King, usually written in Latin, and sealed with the Great Seal. Now, a “writ” is referred to as a written order of the court ordering a person to perform or refrain from some specified act. Municipal courts deal
with several types of writs: an arrest warrant is a writ, as is a capias. In order for a judge to issue a warrant or capias, the judge must have probable cause to issue such an order.

Although municipal court clerks have no authority to determine probable cause, typically, they prepare affidavits of probable cause for peace officers and others. After an affidavit is sworn, it is presented to a judge or a magistrate who determines if the probable cause in the affidavit is sufficient 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; some give them the original. Some courts are connected electronically with the police department; some courts provide the police department with a list of defendants to whom warrants have been issued.

Article 15.26 of the Code of Criminal Procedure makes it the official duty of the magistrate’s clerk to be the custodian of arrest warrants or affidavits made in support of the warrant. Warrants and affidavits are public information after the warrants are executed. The clerk has an affirmative duty to make a copy of the warrants and supporting affidavits available for public inspection after the warrants are served.

A. **Probable Cause**

No warrant shall issue, but upon probable cause. Amend. IV, U.S. Const.; Art. I, Sec. 9, Tex. Const.; and Art. 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 summons, and a capias 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 by additional wording contained in a complaint. 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**

1. **Process Defined**

Processes are written orders issued by a judge or a magistrate and include a warrant of arrest, capias, capias pro fine, and summons.

2. **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. Art. 45.202, C.C.P. A city police officer or marshal may serve all process issuing out of a municipal court anywhere in the county in which the municipality is situated. If the municipality is in more than one county, they may serve process throughout those counties.
C.  **Warrant of Arrest**

1.  **Defined**

A warrant of arrest is a written order from a magistrate directed to a peace officer or some other person specially named to take a person into custody to be dealt with according to law. Art. 15.01, C.C.P.

2.  **Authority to Issue**

A magistrate may issue a warrant of arrest for all classifications of offenses, misdemeanors to felonies. Municipal judges and city mayors are magistrates and have that additional authority to issue arrest warrants for higher crimes. Art. 2.09, C.C.P. A municipal judge may also issue arrest warrants as a judge for fine-only misdemeanors filed in municipal court. Art. 45.014, C.C.P.

a.  **Issued by Judge**

When a sworn complaint or affidavit based on probable cause is filed, the judge may issue a warrant of arrest for charges over which the judge has jurisdiction. Art. 45.014, C.C.P.

A warrant issued pursuant to Article 45.014 of the Code of Criminal Procedure must:

- 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 therein named;
- state the name of the person whose arrest is ordered, if known, and if not known, describes the person as in the complaint;
- state that the person is accused of some offense against the laws of the State naming the offense; and
- be signed by the judge and name his or her office in the body of the warrant or in connection with his or her signature.

Note that an arrest warrant issued by a municipal judge under Chapter 45 of the Code of Criminal Procedure orders the officer to bring the arrested person before the court.

b.  **Issued by Magistrate**

A magistrate may issue a warrant of arrest in any case in which the magistrate is authorized by law to verbally order the arrest of an offender; when a person makes an oath before the magistrate that a person has committed an offense against the laws of the State; and in any case named in the Code of Criminal Procedure where the magistrate is specially authorized to issue a warrant. Art. 15.03, C.C.P.

Article 15.02 of the Code of Criminal Procedure provides that a warrant issued by a magistrate must:

- issue in the name of “The State of Texas;”
- specify the name of the person whose arrest is ordered, if known; if unknown, then some reasonably definite description of him or her;
• state that the person is accused of some offense against the laws of the State naming the offense; and
• be signed by the magistrate and name his or her office in the body of the warrant or in connection with his or her signature.

A warrant issued by a magistrate, except a mayor, extends to every part of the State, and any peace officer to whom the warrant is directed is authorized to execute it in any county in the State. Art. 15.06, C.C.P. The peace officer receiving the warrant must execute it without delay.

The officer or person executing a warrant of arrest shall, without unnecessary delay but no later than 48 hours after the arrest, 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. Art. 15.16, C.C.P. If it is more expeditious to the person arrested, the officer may take the person before a magistrate in a county other than the county of arrest. Art. 15.16(b), C.C.P.

c. Issued by Mayor

A warrant issued by a mayor as a magistrate cannot be executed in another county other than the one in which it is issued. The exception to this is when it is endorsed by a judge of a court of record, in which case it may be executed anywhere in the State, or if it is endorsed by a magistrate in the county in which the accused is found, it may be executed in that county. If it is endorsed by a magistrate where the accused is found, the endorsement is as follows: “Let this warrant be executed in the County of __________.” If the warrant is endorsed by a judge of a court of record, the endorsement is “Let this warrant be executed in any county of the State of Texas.” Any other words of the same meaning will be sufficient. The endorsement shall be dated and signed officially by the magistrate making it. Art. 15.07, C.C.P.

D. Capias

1. Defined

A capias is a writ 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 “to 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 on a day or at a term stated in the writ. Art. 23.01, C.C.P.

2. Authority to Issue

In misdemeanor cases, the capias 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.

Municipal court clerks may prepare the capias, but the municipal judge must issue the capias. Although Article 23.01 provides that the capias may be issued by the clerk at the direction of the judge, this provision only applies to district clerks under certain conditions. The 80th Legislature
codified the *Sharp v. State* case that involved a City of Houston municipal court clerk who issued a capias writ for a defendant accused of violating the “helmet safety law.” The defendant was later arrested on that writ 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. 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. State*, 759 F.2d 412 (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 capiases.

3. **Requisites**

   Article 23.02 of the Code of Criminal Procedure 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 (note that a capias does not lose its force if not executed and returned at the time fixed in the writ; rather it may be executed at any time afterward and 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 to officially by the authority issuing the same.

4. **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 the defendant, 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. **Capias Pro Fine**

   A capias pro fine is an order of the court directing a peace officer to bring a defendant who fails to satisfy a judgment before the court immediately or to place the defendant in jail until the business day following the date of the defendant’s arrest if he or she cannot be brought before the court immediately. Art. 45.045, C.C.P. This writ is only issued post-judgment and is discussed in the *Post-Trial Procedures* chapter of this Study Guide.
F. **Summons**

1. **Defined**
   
   A summons gives notice to a person, association, or corporation that a charge has been filed against him or her in a court. It provides the address of the court and a date and time the defendant is required to appear.

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) of the Code of Criminal Procedure requires that a summons 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.”

      A summons issued by a magistrate for a defendant is in the same form as a warrant, except it summons a defendant to appear before a magistrate at a stated time and place. Art. 15.03(b), C.C.P.

   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 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.

3. **Authority to Issue**

   a. **Judicial Authority**
      
      In a misdemeanor case, the summons is issued by a court 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 requiring his or her appearance for jury service. A municipal court may also issue a summons for a corporation or association under Article 17A.03, C.C.P.
      
      The summons for a defendant may be issued *only* upon request of the attorney representing the State. Art. 23.04, C.C.P. There is no requirement in Chapter 17A that a prosecutor make a request for issuance of a summons to a corporation or association.
b. **Magistrate Authority**

A magistrate may issue a summons for Class A and B misdemeanors and felonies, and in any case where a warrant may be issued. Art. 15.03, C.C.P.

4. **Service**

a. **On the Defendant**

Articles 23.03(c) and 15.03(b) of the Code of Criminal Procedure provide for how a peace officer serves a summons. The methods of service 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**

Peace officers can serve a summons on a corporation the following ways:

- 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, by personally serving the president or a vice president of the corporation; or
- if the attempt to effect service is unsuccessful, by serving 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.

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. 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 the corporation or association, it is deemed to be present in person for all purposes and the court shall enter a plea of not guilty and the court may 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.

When a defendant fails to respond to a summons issued by a magistrate, the magistrate enforces the summons by issuing a warrant of arrest. Art. 15.03(b), C.C.P.
G. Fees Attached to Writs

1. Arrest Fee

Courts must collect a $5 fee upon conviction when a peace officer issues a written notice to appear (citation) in court for a violation of a traffic law, municipal ordinance, or penal law of this State or makes a warrantless arrest. Art. 102.011(a) C.C.P. The definition of conviction for the purpose of collecting the arrest fee is defined in Section 133.101 of the Local Government Code and provides that a person is considered to have been convicted in a case if:

- a judgment, a sentence, or both a judgment and a sentence are imposed on the person;
- the person receives community supervision, deferred adjudication, or deferred disposition; or
- the court defers final disposition of the case or imposition of the judgment and sentence.

Note that if a charge is initiated by the filing of a complaint, such as a citizen complaint or a code enforcement officer’s complaint, the arrest fee may not be collected. Why? There has been no arrest and release with the issuance of a citation in these instances. Likewise, if a peace officer files a charge by complaint and obtains a warrant of arrest, the court may not collect the arrest fee. The arrest fee is not to be collected for the offenses of failure to appear and violation of promise to appear since these charges are initiated by complaint and a warrant is issued.

When a city police officer issues a citation or makes a warrantless arrest, the city keeps the entire amount of the arrest fee. If a peace officer with statewide authority, such as a DPS officer, issues the citation, one dollar must be reported to the Comptroller. The statute does not require that the arrest fee be used for a specific purpose, and it may be deposited into the general revenue fund.

2. Warrant Fee

Warrant fees are costs collected as a result of services performed by a peace officer. Article 102.011(a)(2) of the Code of Criminal Procedure requires that a $50 warrant fee be collected upon conviction if a warrant, capias, or capias pro fine is processed or executed by a peace officer. The definition of conviction for the purpose of collecting the warrant fee is defined in Section 133.101 of the Local Government Code as discussed above.

A warrant, capias, or capias pro fine is executed if the officer serves the warrant by arresting the defendant. The statute does not define processing, so each clerk should ask the judge to determine what the judge considers as “processing.” Some processes that a judge might consider are making telephone calls to the defendant, writing courtesy letters, or entering the warrant into the local police department computer by the law enforcement agency. Regardless of what the judge accepts as processing, documentation of the processing must be provided to the judge before he or she may assess the fee. The fee is not to be assessed just for issuing an arrest warrant, capias, or capias pro fine.

If a peace officer employed by the city where the warrant, capias, or capias pro fine was issued executes or processes the warrant, the $50 fee would be collected and paid into the city treasury. If a peace officer with statewide authority executes or processes the warrant, $10 of the $50 fee must be remitted to the State the last day of the month following the quarter in which it was collected, on the quarterly report to the Comptroller. If a law enforcement agency other than the
one whose court issued the warrant, capias, or capias pro fine executes it, that agency may request the $50 fee. The request must be made within 15 days after the arrest. If that agency fails to request the fee, it is still required to be collected, but it is paid into the issuing city’s treasury.

If the warrant is executed or processed but there is no conviction, the $50 fee may not be assessed or collected. If the warrant is not processed or served by a peace officer, the court may not assess the fee. For instance, when the warrant is given to a warrant collection agency to process, the fee may not be collected because a warrant collection agency generally employs people who are not peace officers. However, if the court first gives the warrant to the local police department for some type of processing before sending the warrant to the warrant collection agency, the court could assess the fee.

The statute does not require that this fee be used for any specific purpose. It may be placed in the city’s general revenue fund used for any lawful purpose.

3. Special Expense Fee: Warrants

Article 45.203 of the Code of Criminal Procedure provides authority for a city to adopt an ordinance for the collection after due notice of a special expense fee not to exceed $25 for the issuance and service of a warrant of arrest for the offenses of failure to appear (Sec. 38.10, P.C.) and violation of promise to appear (Sec. 543.009. T.C.).

The statute requires the warrant of arrest to be executed; just processing it does not count. Because of this, the fee may not be collected if a defendant voluntarily surrenders himself or herself to the court or the defendant appears after a courtesy letter from the court or peace officer. The statute requires that the fee be deposited into the municipal treasury. Some cities pay the warrant fee to peace officers who serve the warrant outside their regular duty hours. Attorney General Opinion JM-462 (1986) addresses this issue and says, in part, that members of a regular police force may legally serve arrest warrants outside of their regular hours, but may not receive the warrant fee as compensation for such service. Cities must compensate officers as they otherwise would when they work overtime. Hence, cities should consult with their city attorney regarding the payment of peace officers.

H. Search Warrants

1. Defined

A search warrant is a written order issued by a magistrate and municipal judges are magistrates under Article 2.09 of the Code of Criminal Procedure. The search warrant directs a peace officer to search and seize property or things and bring the seized property before the magistrate. Art. 18.01, C.C.P. A search warrant must be supported by a sworn affidavit setting forth substantial facts establishing probable cause for its issuance. This affidavit is public information if executed, unless it has been ordered to be sealed, and the clerk must make a copy of the affidavit available for public inspection during normal business hours. Art. 18.01(b), C.C.P.

2. Authority to Issue

As a general rule, only municipal judges sitting in a court of record may issue evidentiary search warrants to order seizure of non-contraband items. The exception to this rule is if the county does not have a municipal court of record or a county judge that is an attorney. Art. 18.01(i),
C.C.P. Since 2009, Article 18.01 of the Code of Criminal Procedure authorizes any magistrate who is a licensed Texas attorney to issue a search warrant to collect a blood specimen from persons accused of certain intoxication or alcohol offenses who refuse to submit to a breath or blood alcohol test. Consequently, it appears that municipal courts with attorney judges now have authority to issue blood warrants.

3. **Nuisance Abatement**

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 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 removing debris from a property. Sec. 30.0005, G.C.

<table>
<thead>
<tr>
<th>True or False</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 85. Clerks are required to have copies of warrants and affidavits on file for public viewing after the warrants have been executed. _____</td>
</tr>
<tr>
<td>Q. 86. The amount of evidence necessary for a finding of probable cause is evidence that causes a judge to believe that someone has committed a crime. _____</td>
</tr>
<tr>
<td>Q. 87. A judge does not need probable cause to issue a capias. _____</td>
</tr>
<tr>
<td>Q. 88. Complaints alone are enough evidence to establish probable cause. _____</td>
</tr>
<tr>
<td>Q. 89. Probable cause must always be in a separate affidavit from a complaint. _____</td>
</tr>
<tr>
<td>Q. 90. Judges must always remain neutral when assessing probable cause. _____</td>
</tr>
</tbody>
</table>
Q. 91. Why can a municipal court clerk not issue a warrant or capias?

Q. 92. When a city is situated in only one county, where may city peace officers serve municipal court warrants, summons, and capiases?

Q. 93. When a city is situated in more than one county where may city peace officers serve warrants?

Q. 94. May a city peace officer serve a warrant of arrest in a neighboring city?

Q. 95. What kind of order is a warrant of arrest?

True or False
Q. 96. Mayors do not have the authority to issue warrants for felonies. _____
Q. 97. Municipal judges are magistrates. _____

Q. 98. In what name must a warrant be issued?

Q. 99. To whom is a warrant directed?

Q. 100. When a person is arrested, where is the officer supposed to take that person? ______________

Q. 101. If the court does not know the name of the person for whom the warrant is being issued, what description must be on the warrant?

Q. 102. Must the warrant state the offense for which the person is being charged?

Q. 103. Where must the judge’s office be named in the warrant? __________________________

True or False
Q. 104. A warrant issued by a magistrate must command that the person be brought before a magistrate. _____
Q. 105. The officer’s first responsibility when he or she arrests a person is to take the person before the magistrate named in the warrant within 10 hours of the arrest. _____
Q. 106. If a person is arrested in a county other than the one from which the warrant was issued, the peace officer must transport the person immediately to the magistrate who issued the warrant. _____

Q. 107. Who has the authority to serve a warrant issued by a magistrate?

Q. 108. Who has the authority to serve a warrant issued by a municipal judge?

True or False
Q. 109. A warrant issued by a municipal judge may only be served in the county in which the city is located. _____
Q. 110. A warrant issued by a judge must command that the person be brought before the court. 

Q. 111. A judge can issue a warrant of arrest for a defendant charged with a Class C or fine-only misdemeanor in the judge’s court upon the filing of a sworn complaint or probable cause affidavit. 

Q. 112. The judge does not need to determine probable cause before issuing the arrest warrant for a defendant who has failed to appear in the court. 

Q. 113. Who must endorse a warrant issued by a mayor so that it can be served in any county in the state? 

Q. 114. What is the required wording of the endorsement? 

True or False

Q. 115. All mayors have authority to issue a capias. 

Q. 116. A judge who has the authority to hear a case has the authority to issue a capias. 

Q. 117. A municipal court clerk has the authority to issue a capias. 

Q. 118. The court must know the name of the defendant before it can issue a capias. 

Q. 119. The capias does not have to state a time when it is to be returned to the court. 

Q. 120. When a defendant is arrested on a capias, the officer must bring the person before the court immediately or on a certain day stated in the capias. 

Q. 121. When must a court issue a capias? 

Q. 122. What happens if a peace officer does not serve a capias by the date fixed in the capias? 

Q. 123. If a capias is not served until after the date fixed in the capias, are the proceedings under the capias still valid? 

Q. 124. Where is a capias returned to? 

Q. 125. What information is required to be on the return when the peace officer was unable to serve the capias? 

True or False

Q. 126. A municipal court clerk has the authority to issue a summons. 

Q. 127. A municipal judge may issue a summons. 

Q. 128. Mayors have no authority to issue a summons. 

Q. 129. A municipal court summons must follow the same form and procedure of the summons issued by the district court. 

Q. 130. A summons issued by the municipal judge is supposed to be in the same form as a felony
warrant of arrest. _____

Q. 131. A summons for a corporation or association requires the court to wait 20 days after service on the corporation or association before requiring an appearance by counsel for the corporation or association. _____

Q. 132. The summons does not have to contain a notice in Spanish that it is an offense to intentionally influence, coerce, or harm a witness. _____

Q. 133. A summons tells the defendant to appear in court at a stated time and place. _____

Q. 134. The only time that a municipal judge may issue a summons is when the city prosecutor makes a request for its issuance. _____

Q. 135. A summons issued for a corporation or associate must be served in person. _____

Q. 136. A copy of the summons must be given to the defendant personally. _____

Q. 137. A summons may be served by mailing it. _____

Q. 138. Municipal court clerks have the authority to serve a summons. _____

Q. 139. What is the form of a summons issued by a magistrate?

Q. 140. What does a summons issued by a magistrate do?

Q. 141. When may a magistrate issue a summons?

Q. 142. When a defendant fails to respond to a summons issued by the court (judge), what type of order does the court issue?

Q. 143. When a defendant fails to respond to a summons issued by a magistrate, what type of order does the magistrate issue?

True or False

Q. 144. Courts only collect the arrest fee when a defendant is arrested and taken to jail. _____

Q. 145. The arrest fee is $5. _____

Q. 146. The city must remit $1 of the arrest fee to the State for every arrest that a city officer makes. _____

Q. 147. The warrant fee can be collected upon conviction of a defendant only when a peace officer executes the warrant. _____

Q. 148. If another law enforcement agency executes the warrant, the court is required to send the $50 warrant fee to the other law enforcement agency even if the defendant is found not guilty. _____

Q. 149. The warrant fee must be allocated to the police department budget. _____

Q. 150. The court may collect the $25 special expense fee on nonappearance crime warrants only after the city has adopted an ordinance requiring the fee to be collected. _____
Q. 151. A search warrant is a verbal order of a magistrate. ____
Q. 152. A search warrant may command a peace officer to search for and seize a person’s property. ____
Q. 153. A municipal judge who is not a licensed attorney may issue any type of search warrant. ____
Q. 154. After a search warrant is executed, the clerk must make a copy of the affidavit and have it available to the public. ____

PART 6
BAIL

A. Definition of Bail
Bail is the security given by the accused that he or she will appear and answer before the proper court the accusation brought against him or her. Bonds are a type of bail and include personal or surety bonds or a cash deposit. Arts. 17.01 and 17.02, C.C.P.

B. When Bail is Fixed
Defendants accused of fine-only offenses have a constitutional and statutory right to bail. Art. I, Sec. 11, Tex. Const.; Art. 1.07, C.C.P. Bail in a fine-only misdemeanor case may be set in two different instances. A person who is arrested must be taken before a magistrate for certain warnings under Article 15.17 of the Code of Criminal Procedure. The magistrate, after giving the required warnings, shall admit the person to bail if allowed by law; thus, the first instance would be bail set by the magistrate prior to formal charges being filed. The second instance would be bail set by the judge. A municipal judge may require a defendant to give bail to secure the defendant’s appearance in accordance with the Code of Criminal Procedure. Art. 45.016, C.C.P.

The rules regarding bail are applicable to all courts. They apply when a judge or magistrate sets and takes bail, when a peace officer takes bail, or when a witness is required to give bail. Art. 17.38, C.C.P.

C. Records of Bail
A magistrate or other officer who sets the amount of bail or who takes bail must record the following information in a well-bound book:
- the name of the person whose appearance the bail secures;
- the amount of bail;
- the date bail is set;
- the magistrate or officer who sets bail;
- the offense or other cause for which the appearance is secured;
- the magistrate or other officer who takes bail;
- the date the person is released; and
- the name of the bondsman, if any. Art. 17.39, C.C.P.
If a state law relating to the keeping of records by a local government officer or employee requires the records to be kept in a “book,” “record book,” or “well-bound book,” or contains any similar requirement that a record be maintained in bound paper form, the record may be maintained on microfilm or stored electronically in accordance with the requirements of the Chapters 204 and 205 of the Local Government Code and rules adopted under those chapters, unless the law specifically prohibits those methods. Sec. 201.004, L.G.C.

D. Surety Bond

A surety bond is a written undertaking entered into by a defendant and the defendant’s sureties guaranteeing the appearance of the defendant (the principal) before some court or magistrate to answer a criminal charge. Art. 17.02, C.C.P. If the defendant fails to appear, the surety or sureties are liable to the court for the bond amount.

E. Personal Bond

A magistrate or judge can also release a person on a personal bond, in lieu of having sureties. Art. 17.03, C.C.P. This means the defendant is giving their word that they will appear and if not, will become liable for the amount of the bond.

F. Cash in Lieu of Surety

A defendant in any criminal action may deposit with the custodian of funds of the court in which the prosecution is pending money in the amount of the bond in lieu of having sureties. Art. 17.02, C.C.P.

Cash funds deposited must be receipted by the officer receiving the money and deposited with the custodian of the funds of the court (usually, the city designates the court clerk as the custodian of the court funds). Prior to 2011, cash bonds were refunded to the defendant if and when the defendant complied with the conditions of their bonds, and upon order of the court. Effective September 1, 2011, Article 17.02 of the Code of Criminal Procedure was amended in an effort to insure that third parties who post cash bonds for a defendant get that money back, rather than having the refunded bond go to the defendant. Thus, if a bond is to be refunded, the bond shall be refunded to the person whose name is on the receipt issued when the bond was posted. If a receipt is not produced, then the bond can be refunded to the defendant. The law is silent, however, as to how long the court should wait for a receipt to be produced by a third party.

PART 7

BOND FORFEITURES

When a defendant posts bond, he or she agrees as a condition of being released, to appear in court. The failure to perform the condition on the bond causes the court to declare forfeiture of the bail. The term “forfeiture” simply means to become liable for the payment of a sum of money as a consequence of a certain act. In other words, a bond forfeiture is a lawsuit to recover the amount of a bond from a defendant or surety because of the violation of the conditions of the bond. Generally, Chapter 22 of the Code of Criminal Procedure governs bond forfeiture proceedings. The exception to using the procedures in Chapter 22 is found in Article 45.044 of
the Code of Criminal, which provides an alternative method of forfeiting a cash bond applicable to municipal and justice courts.

A. Procedures when Forfeited

When a defendant fails to appear in court, bail is required to be forfeited. Art. 22.01, C.C.P. Before bail is forfeited, the defendant’s name must be called distinctly at the courthouse door. Art. 22.02, C.C.P. If the defendant fails to appear or to answer, the clerk prepares a judgment nisi for the judge’s signature. A judgment nisi recites the amount of the forfeiture, who is liable for the judgment, and that the judgment will be made final unless good cause is shown as to why the defendant did not appear.

The clerk enters the judgment nisi on the scire facias docket, which is a civil docket especially for bail forfeitures. The clerk then prepares a “citation,” which is a civil notice of the forfeiture proceeding. For much more detailed information on bond forfeiture proceedings, see the chapter on Bond Forfeitures in the Level II Study Guide.

B. Alternative Procedures for Forfeiting a Cash Bond

Article 45.044 of the Code of Criminal Procedure permits a judge to forfeit a cash bond for fine and costs if the defendant:
- enters a written and signed plea of nolo contendere and a waiver of jury trial; and
- fails to appear according to the terms of the defendant’s release.

The judge must immediately notify the defendant of the conviction, forfeiture, and the right to apply for a new trial within 10 days from the judgment. If the defendant applies for a new trial, the court must permit the defendant to withdraw the previously entered plea of nolo contendere and waiver of jury trial.

If the defendant does not request a new trial within 10 days of the judgment, the judgment becomes final and the court reports the court costs to the State Comptroller and turns the fine portion of the bond over to the general revenue fund of the city. If the defendant has been in jail, the court must also give jail-time credit at $50 for a period of time specified in the judgment. Period of time is defined to mean not less than eight hours or more than 24 hours. This may result in the court refunding part or all of the bond.

True or False

Q. 155. When a defendant posts a bond with the court, he or she is promising to appear in court at a later date. _____
Q. 156. Only a magistrate may set a bond. _____
Q. 157. Defendants may not use cash as security on a bail bond. _____
Q. 158. When the court allows a personal bond, the security is the person’s word that he or she will appear in court. _____
Q. 159. A cash bond received by a peace officer must be deposited with the custodian of the funds of the court. _____
Q. 160.  Do defendants charged with Class C misdemeanors in municipal court have to follow the same bail rules as someone posting a bond for trial in district court? _________________

Q. 161.  When a defendant complies with the conditions of a bond by making all required appearances in court, may a court keep the bond to pay the fine if the defendant is convicted? ________________________________

Q. 162.  When is the court required to forfeit a defendant’s bail? ________________________________

Q. 163.  When a defendant fails to appear after having posted a bond, what must the court do? _________________

Q. 164.  What is a judgment nisi? ________________________________

Q. 165.  What is a scire facias docket? ________________________________

Q. 166.  Does the court clerk have the authority to serve a citation in a bond forfeiture case? ____

Q. 167.  When may the judge forfeit a cash bond without going through the bond forfeiture proceedings in Chapter 22? ________________________________

Q. 168.  If the defendant wants a new trial, what must the defendant do? ________________________________

Q. 169.  When the defendant requests a new trial, what must the court do? ________________________________

Q. 170.  When the defendant does not request a new trial, what does the court do with the bond money? ________________________________
ANSWERS TO QUESTIONS

PART 1

Q. 1. No, because no complaint has been filed, so the court has no jurisdiction over the case. The charging instrument must be filed with the court to vest jurisdiction of a case in the court.

Q. 2. A sworn complaint must be filed with the defendant fails to appear or when the defendant pleads not guilty unless the defendant and prosecutor agree in writing to proceed on the citation.

Q. 3. The clerk.

Q. 4. The defendant is entitled to notice of the charge he or she is accused of committing, and knowing the date helps the defendant prepare a defense. Also, the complaint must be filed within the statute of limitations.

Q. 5. A municipal judge, court clerk, deputy court clerk, city secretary, city attorney, or deputy city attorney.

Q. 6. The certificate of the person before whom the complaint is sworn. It is the clause written at the foot of a complaint stating when and before whom the complaint was sworn.

Q. 7. “Municipal Court of/in __________, Texas.”

Q. 8. Yes, under Article 45.012(g) of the Code of Criminal Procedure.

Q. 9. To authenticate the acts of the judge and clerk.

Q. 10. Intentionally, knowingly, recklessly, criminal negligence.

Q. 11. Intentionally, knowingly, or recklessly.

Q. 12. If the ordinance violation is punishable by a fine exceeding $500.

Q. 13. The same case. The sworn complaint replaces the citation.

Q. 14. When the defendant waives the filing of a sworn complaint, the prosecutor and defendant agree in writing, and the agreement is filed with the court.

Q. 15. A sworn complaint.

Q. 16. True.

Q. 17. True.

Q. 18. False (all defendants have a right to notice).

Q. 19. False (defendants are entitled to notice not later than the day before any proceeding).

Q. 20. True.


Q. 22. False (the citation is in lieu of the arrest, as a substitute for the custodial arrest).

Q. 23. True.

Q. 24. True.

Q. 25. False (the defendant waives and forfeits the right to object if he or she does not do so before the commencement of the trial on the merits).

Q. 27. True.
Q. 28. False (the complaint must state the offense occurred in the territorial limits of the city).
Q. 29. False.
Q. 30. False.
Q. 31. False.
Q. 32. True.
Q. 33. True.
Q. 34. False (intentionally is the highest, criminal negligence is the lowest).
Q. 35. True.
Q. 36. False.
Q. 37. False.
Q. 38. True.
Q. 40. False.
Q. 41. True.
Q. 42. True.
Q. 43. False.
Q. 44. False.
Q. 45. True.
Q. 46. False.
Q. 47. True.

PART 2
Q. 48. The judge or clerk is noting brief entries of the proceedings in a particular case.
Q. 49. The law requires that a judge keep a docket.
Q. 50. The maintenance of a docket is a ministerial duty. A clerk may enter proceedings on a docket because the judge is required to keep the docket, and the law specifically states the information that must be contained in it. The judge has no discretion in performing this duty.
Q. 51. True.
Q. 52. False.
Q. 53. False (the docket must also contain the return date).
Q. 54. True.
Q. 55. The judge.
Q. 56. No.

PART 3
Q. 57. True.
Q. 58. False.
Q. 59. True.
Q. 60. Arraignment is the procedure where the judge identifies the defendant, explains the charge, and requests a plea.
Q. 61. The waiver of jury trial.
Q. 62. No.
Q. 63. The court must give the defendant notice of the fine and the amount of the appeal bond. The notice may be in person or by certified mail with return receipt requested.
Q. 64. True.
Q. 65. False.
Q. 66. True.
Q. 67. True.
Q. 68. False.
Q. 69. True.
Q. 70. False (it is considered a no contest plea).
Q. 71. False.
Q. 72. False.
Q. 73. False (the judge must grant the motion if made within 10 days of the judgment).
Q. 74. True.

PART 4
Q. 75. False (the defendant has not been in or released from custody yet).
Q. 76. False (the defendant must just have been released from custody on the condition he or she subsequently appear; there is no requirement the defendant be released with bail).
Q. 77. True.
Q. 78. True.
Q. 79. False (the maximum fine is $500).
Q. 80. True.
Q. 81. True.
Q. 82. False (the two are separate charges).
Q. 83. False (FMFR is not a Rules of the Road offense; the correct charge would be FTA).
Q. 84. True.

PART 5
Q. 85. True.
Q. 86. True.
Q. 87. False.
Q. 88. False (a complaint may contain probable cause if additional information is added to the complaint to cause the judge to believe that this defendant has committed the crime alleged in the complaint).

Q. 89. False.

Q. 90. True.

Q. 91. A municipal court clerk may not issue a warrant or capias because he or she does not have the authority to determine probable cause. Only a judge or magistrate may determine probable cause.

Q. 92. The city police officer may serve process in the county in which the city is located.

Q. 93. The city police officer may serve warrants throughout each county in which the city is located.

Q. 94. It depends on whether or not the neighboring city is located in the same county in which the peace officer’s city is located.

Q. 95. A written order; a writ.

Q. 96. False (as a magistrate, a mayor does have the authority. See Art. 2.09, C.C.P.).

Q. 97. True.

Q. 98. In the State of Texas.

Q. 99. To the proper officer.

Q. 100. The officer is required to bring the accused before the court if the judge issued the warrant or a magistrate if the warrant was issued by a magistrate.

Q. 101. The description in the complaint if the warrant is issued by a judge, or a reasonably definite description if the warrant is issued by a magistrate.

Q. 102. Yes.

Q. 103. Either in the body of the warrant or in connection with the judge’s signature.

Q. 104. True.

Q. 105. False (the officer must take the person before a magistrate without unnecessary delay, but not later than 48 hours after the arrest.)

Q. 106. False.

Q. 107. Any peace officer or someone specially named in the warrant.

Q. 108. Any peace officer or someone specially named in the warrant.


Q. 110. True.

Q. 111. True.

Q. 112. False (the judge must always determine probable cause).

Q. 113. Either a judge of a court of record or a magistrate in the county in which the warrant is being executed must endorse a warrant issued by a mayor.

Q. 114. If a magistrate endorses the warrant, the wording is “Let this warrant be executed in the County of _____.” If a judge of a court of record endorses the warrant, the wording is “Let this warrant be executed in any county of the State of Texas.”
Q. 115. False (a mayor who is also the judge of the city may issue a capias; however, a capias may be issued only by a judge with authority to hear the case and not by a magistrate. In general-law cities that have not adopted an ordinance to create the position of municipal judge, the mayor is the judge.).

Q. 116. True.

Q. 117. False.

Q. 118. False.

Q. 119. False.

Q. 120. True.

Q. 121. A capias is required to be issued when a forfeiture of bail is declared.

Q. 122. The capias is still valid and may be executed at any time.

Q. 123. Yes.

Q. 124. The return is made to the court from which the capias was issued.

Q. 125. The officer must state the reason for failing to execute the warrant, and if the defendant cannot be located, what efforts have been made to find the defendant.

Q. 126. False.

Q. 127. True.

Q. 128. False (a mayor may issue a summons as a magistrate or if the mayor is also the municipal judge, the mayor may issue the summons as a judge).

Q. 129. True.

Q. 130. False (in the form of a felony capias).

Q. 131. True.

Q. 132. False.

Q. 133. True.

Q. 134. True.

Q. 135. True.

Q. 136. False (summons for an individual may be mailed to the defendant’s last known address).

Q. 137. True.

Q. 138. False.

Q. 139. A summons issued by a magistrate is in the same form as a warrant except that it shall summons the defendant to appear before a magistrate at a stated time and place.

Q. 140. It gives notice to a person that charges have been filed in court against him or her and gives the defendant a day and time to appear in court.

Q. 141. Anytime that he or she may issue a warrant of arrest.

Q. 142. A capias.

Q. 143. A warrant of arrest.

Q. 144. False (the arrest fee is also assessed when a defendant is issued a citation by a peace officer).
Q. 145. True.
Q. 146. False (the city need only remit to the State when the officer is employed by the State).
Q. 147. False (the warrant fee applies also if a peace officer processes the warrant).
Q. 148. False (the warrant fee only is assessed upon conviction).
Q. 149. False (the warrant fee goes into the city’s general revenue fund).
Q. 150. True.
Q. 151. False (it is a written order).
Q. 152. True.
Q. 153. False (municipal judges who are not attorneys may not be able to issue a blood search warrant).
Q. 154. True.

PART 7
Q. 155. True.
Q. 156. False (a judge can require a defendant to post a bond in municipal court under Article 45.016, C.C.P.).
Q. 158. True.
Q. 159. True.
Q. 160. Yes.
Q. 161. Technically, the bond is to be refunded and fines/costs assessed against the defendant. The defendant is entitled to jail credit, so the amount held in bond and the amount owed after judgment may not match up. Legally, the bond shall be refunded and the defendant shall pay new money to satisfy the judgment. In reality, courts convert the bond to make it easier on both the defendant and the court.
Q. 162. When the defendant fails to appear.
Q. 163. Article 22.02 of the Code of Criminal Procedure requires that the court order the defendant’s name called outside the courtroom. This is an element of the bond forfeiture lawsuit. This requirement makes sure that the defendant had notice that his or her case was being called before the court.
Q. 164. A judgment nisi recites the amount of the forfeiture, who is liable for the judgment, and that the judgment will be made final unless good cause is shown as to why the defendant did not appear.
Q. 165. It is a civil docket in which the court enters proceedings of a bond forfeiture.
Q. 166. Yes, if requested to do so by the prosecutor.
Q. 167. A judge may take a bond for the fine and costs when a defendant has entered a written and signed conditional plea of nolo contendere and a waiver of jury trial, and the defendant fails to appear according to the terms of the defendant’s release.
Q. 168. The defendant must make a request for a new trial within 10 days from the date the judgment was entered.
Q. 169. The court must allow the defendant to withdraw the plea of nolo contendere and enter a plea of not guilty and reinstate the defendant’s bond.

Q. 170. The court reports the court costs to the comptroller’s office and deposits the fine portion of the bond in the general revenue fund of the city. If the defendant has been in jail, the court is also required to give jail-time credit and may have to refund that credit to the defendant.
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INTRODUCTION

The trial system in the United States is adversarial, meaning it is a contest between opposing sides: the defense and the prosecution. The theory of this process is that the trier of fact (the judge or the jury) will be able to determine the truth when the opposing parties present their best arguments and show the weaknesses in each other’s case. However, the adversary process is sometimes criticized as focusing on victory for either side instead of emphasizing the facts of a specific case. Supporters of the system believe that approaching the same set of facts from totally different perspectives uncovers the most accurate truth. To this end, lawyers are bound by their professional ethics to present the facts truthfully.

When a criminal case goes to trial, the prosecution has the burden of proving the defendant’s guilt beyond a reasonable doubt. The standard of proof is higher in criminal prosecutions than in civil lawsuits where the plaintiff must prove his or her case by a preponderance of the evidence (greater weight of the evidence).

Judges preside over trials and protect the rights of those involved by ensuring that attorneys and self-represented (pro se) defendants follow the rules of evidence and trial procedure. In bench trials, judges listen to the evidence presented on a case and render judgment based upon that evidence. In jury trials, judges instruct the jury regarding the law involved in the case.

Clerks should be knowledgeable enough to provide proper assistance to attorneys and defendants without overstepping the bounds of their authority. This study guide explains defendants’ rights in the trial process and summarizes preparation procedures for pre-trials, jury trials, and bench trials. This guide also discusses court reporters and court interpreters as well as the different kinds of contempt sanctions for misconduct in the court.

Q. 1. Describe the adversary process of the U.S. trial system.

Q. 2. Who in the trial is the finder of fact?

Q. 3. Who has the burden of proof in a criminal case?

Q. 4. What is the standard of proof in a criminal case?

Q. 5. What is the judge’s role in a bench trial?

Q. 6. What is the judge’s role in a jury trial?

PART 1
DEFENDANT’S RIGHTS IN PROSECUTION

Defendants appearing in municipal courts generally have the same rights and guarantees afforded any person accused of a crime at any level of the judicial system. These rights are given by the U.S. Constitution, Texas Constitution, and state statutes, most notably the Code of Criminal Procedure. The procedures and practices in municipal courts may be slightly different from county and district courts because municipal courts have their own procedures in Chapter 45 of
the Code of Criminal Procedure. If Chapter 45 does not provide a rule of procedure, the judge shall apply other general provisions of the Code of Criminal Procedure. Art. 45.002, C.C.P.

In all criminal prosecutions, defendants have the right to:

- a speedy public trial by an impartial jury; however there is no specific requirement that a trial be conducted within a certain number of days;
- demand to know the nature and cause of the accusation;
- receive a copy of the charging instrument (complaint) (note that municipal court defendants have a right to notice of a complaint filed against them not later than the day before the date of any proceeding in the prosecution of the defendant, but the defendant may waive this notice. Art. 45.018, C.C.P.);
- represent themselves;
- be represented by an attorney;
- be confronted by witnesses against them (the defendant can also cross-examine any State witness);
- compel witnesses to come to court and testify on their behalf (by subpoena);
- testify in their own behalf and have their counsel heard; and
- not be compelled to testify against themselves (and the decision not to testify may not be considered in determining innocence or guilt).

A. Jury Trial

The 6th and 7th Amendments of the U.S. Constitution guarantee the right to trial by jury. The Texas Constitution, in Article I, Section 10, likewise states that in all criminal prosecutions in Texas the accused has a right to a jury trial. Article 1.12 of the Code of Criminal Procedure provides that the right to a jury trial shall remain inviolate. The term “inviolate” means to keep sacred or unbroken. Hence, 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. Since municipal courts were established by the Legislature to have criminal jurisdiction, defendants in these courts have a right to a jury trial. A defendant has to request a trial by judge (a bench trial) if he or she wants one by waiving his or her right to a jury trial.

B. Speedy Trial

The right to a speedy trial arises from the time the defendant is formally accused or arrested. The speedy trial guarantee, made by the 6th amendment of the U.S. Constitution, applies. The Texas Constitution in Article I, Section 10, guarantees that any accused shall have the right to a speedy trial. Article 1.05 of the Code of Criminal Procedure codifies this right. 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 was 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]ver crowded trial dockets alone cannot justify the diminution of the criminal defendant’s right to a speedy trial.”
Clerks should make certain that crowded trial dockets are not the cause of a case being dismissed for violation of the defendant’s right to a speedy trial. Clerks should work with judges and prosecutors to establish enough trial dates to keep cases from becoming backlogged on the trial docket.

C. Representation by an Attorney

Article 1.051(a) of the Code of Criminal Procedure guarantees that defendants in a criminal proceeding are entitled to be represented by counsel in an adversarial judicial proceeding. Both Article I, Section 10 of the Texas Constitution, and Article 1.05 of the Code of Criminal Procedure guarantee that defendants have a right to be heard and the right to have their counsel heard. An indigent defendant has the right to have an attorney appointed by the court in a proceeding that may result in punishment by confinement and in other criminal proceedings if the court concludes that the interests of justice require representation. Art. 1.051(c), C.C.P.

Generally, municipal courts have jurisdiction over criminal cases in which jail or prison time is not a possible punishment, except for cases of contempt. Art. 4.14, C.C.P. Therefore, except in contempt hearings, municipal judges do not often provide court-appointed attorneys for indigent defendants.

D. Subpoena

A subpoena is a writ issued to a person or persons summoning them to appear as witnesses. 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.

E. Public Trial

Defendants in municipal court have a right to a public trial. This right is guaranteed by the U.S. Constitution in the 6th Amendment; in the Texas Constitution in Article I, Section 10; and by Articles 1.05 and 1.24 of the Court of Criminal Procedure. Article 1.24 of the Code of Criminal Procedure further provides that the “proceedings” in all criminal courts are public.

F. Appeal

Defendants who are found guilty of any offense have the right to appeal their case. Art. 44.02, C.C.P. In municipal courts of non-record, the appeal is a trial de novo, meaning that the defendant gets a new trial as if the trial in municipal court never occurred. In municipal courts of record, the appeal is based on the transcript of the trial and the appellate court determines whether any error occurred during the trial. The municipal court case is appealed to the county court.

True or False
Q. 7. Defendants are entitled to a jury trial. _____
Q. 8. The charging instrument in municipal court is the complaint. _____
Q. 9. Municipal court defendants have a right to a copy of the complaint. _____
Q. 10. Defendants may represent themselves at trial. _____
Q. 11. Defendants must request a jury trial if they want one. _____
Q. 12. Defendants in municipal court have a constitutional right to a speedy trial. _____
Q. 13. A trial court’s delay in hearing a case because of a backlog of cases set for trial cannot be used to justify denying a defendant’s right to a speedy trial. _____

Q. 14. An indigent defendant in municipal court has the right to have a court appointed attorney. _____

Q. 15. An indigent defendant charged with contempt may be entitled to a court appointed attorney in municipal court. _____

Q. 16. Defendants may request that their trials be closed and not open to the public. _____

Q. 17. Defendants convicted of a city ordinance violation do not have the right to an appeal. _____

PART 2
CLERK’S ROLE IN TRIAL PROCESS

In general, the clerk’s role in the trial process includes providing information to defendants about court procedures, managing court participants on the day of trial, scheduling trials, issuing subpoenas, and summoning the jury. Since preparing for a trial includes many technical procedures, knowledge of the trial process will help clerks properly manage trials and provide better service to court participants.

A. Posting the Court Docket

The court must post, in a designated public place in the courthouse, notice of a criminal court docket setting. Article 17.085 of the Code of Criminal Procedure provides that the clerk shall post the docket “as soon as the court notifies the clerk of the setting.” This posting is not required when the court provides online internet access to the court’s criminal case records.

B. Information to Defendants

Because many defendants in municipal court represent themselves, it is important for clerks to understand trial processes and procedures so that they can properly explain them to all court participants. In doing so, however, clerks must be cautious not to give legal advice.

Clerks should work with their presiding judge to develop written information for defendants requesting trials. The following information should be considered for inclusion:

- Pleas
- Pre-Trial Procedures
- Rights
- Continuances
- Bench or Jury Trial
- Motions for New Trial
- Fines and Court Costs
- Driving Safety Courses
- Deferred Disposition
- Appeals
- Juveniles
TMCEC has sample pamphlets with basic procedural information available for courts to download and adapt at www.tmcec.com/Resources/Pamphlets.

C. Preparation

Clerks should establish procedures for preparing for trials. These may include:

- When a citation is filed, prepare a sworn complaint unless the defendant and prosecutor agree in writing to go to trial on the citation and file the agreement with the court. Art. 27.14(d), C.C.P. Although the prosecutor is responsible for the legal accuracy of the wording on complaints, generally, clerks prepare it.
- Review the complaint for clerical errors, and check to be sure that the complaint is properly sworn and the court seal affixed.
- Provide a copy of the complaint to the defendant if the defendant does not waive his or her right to notice.
- Give the case file to the prosecutor.
- Ideally, at least two weeks before the trial date, prepare a trial docket and post it in the clerk’s office and the police department; send a copy to the prosecutor and to each defendant and his or her lawyer.
- Issue subpoenas, if they have not already been issued.
- Summons jurors at least three to four weeks before a trial.
- If it is a jury trial, make certain that the court has enough jury handbooks for the jurors to read before the trial.
- If interpreters are needed, make sure that they will be available.
- Review trial forms and make sure they are proper and available to the judge.

D. Management

Whether the trials are bench or jury, the clerk is responsible for coordinating the movement of the 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 own way.
- Provide signs or pamphlets about the rules of the court that should include information about proper dress, tobacco or cell phone use, courtroom decorum, and the prohibition of carrying guns and other weapons into the court facility.
- If possible, have a clerk act as information officer to direct people.
- Wear nametags so that the court participants know who to ask for assistance.
- Make sure that the court has made all required reasonable accommodations for those with mobility, visual, hearing, or other impairments.
- If the court does not have a pay telephone, the court may want to make a telephone available for court participants to use.
- Since some court participants might need a letter to present to a work supervisor, have forms available for either the judge or clerk to sign.
E. Trial 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; attorneys’ information; and any other items that courts find helpful to manage trials.

To establish trial dates, courts might want to address the following criteria:

- volume of cases scheduled for trial;
- number of defendants who want to plead guilty or no contest, but are requesting to see the judge before the fine is set;
- type of trial (jury trial or bench trial) or hearing requested (such as an indigent hearing);
- age of defendant, whether adult or juvenile;
- type of case (e.g., city ordinance violation, penal offense, traffic violation);
- peace officers’ work schedules (as most complaining witnesses are city police officers, clerks should consider their work schedules in setting trial dates); and
- availability of judges and prosecutors.

1. Predetermined Scheduling

Predetermined scheduling provides a specific day and time for the defendant to appear. Courts using this method have docket call (calling the names of defendants scheduled for trial on that docket) at the beginning of the court session. Those pleading not guilty are rescheduled for a trial at a later date. Those pleading guilty or no contest might pay a fine, request to take a driving safety course, request that the judge grant deferred disposition, or appeal the conviction.

A problem with this type of scheduling is that the court never knows how many defendants will actually appear on their assigned date. Also, if all the defendants scheduled to appear actually show up, defendants may have to wait a long time for their case to be called. The advantage of this system is that a judge is available to see the defendants when they appear.

a. Peace Officer Citation

Most cases in municipal court are initiated by a peace officer filing a citation with the court. The defendant must have a duplicate copy of the citation. The citation provides an appearance date for the defendant to appear before the court. If a court uses predetermined scheduling, the citation provides a specific date and time for the defendant to appear. At this first appearance, sometimes referred to as the arraignment, the court explains the charge filed against the defendant and takes a plea. If the plea is not guilty, the court schedules a trial.

b. Citizen Complaint

Generally, complaints initiated by a citizen must be investigated by the police department or by a code enforcement officer to determine if an offense has occurred. Once the investigation determines that an offense has occurred, the citizen can come to the court to swear to a complaint. The prosecutor then determines whether to prosecute the case.
The case is scheduled for an arraignment on a specific date and time. The judge issues a summons or a warrant to notify the defendant of the charges. Sometimes, clerks send a courtesy notice to the defendant telling the person that charges have been filed and that a preliminary hearing is scheduled. When the defendant appears, he or she may plead guilty, nolo contendere, or not guilty. If the plea is not guilty, the court schedules a trial.

Clerks should work with the prosecutor, police department, and code enforcement to establish procedures for processing citizen complaints.

2. **Assignment by Court Clerk**

The assignment by court clerk method of scheduling cases places the responsibility on the defendant for obtaining a court date. The written notice to appear (citation) just notifies the defendant to appear within a certain number of days or by a specific date without providing a specific time to appear. The defendant, then, is responsible for contacting the court to set up a specific appearance date or trial date. Courts usually have established schedules for pre-trials, bench trials, and jury trials. When the defendant contacts the court, whether by mail or personal appearance, the clerk should provide a procedures pamphlet to the defendant, and if the defendant appears in person, explain court procedures.

When the court places the responsibility on the defendant to establish a court date, the volume of persons appearing at the court and the number of telephone calls are greater. However, the court maintains better control over the trial dockets because the court talks with the defendants before scheduling a hearing or trial. Only those defendants who specifically request a trial are set on the trial docket. The number of defendants set on each docket is controlled by the court clerk.

F. **Subpoenas**

A subpoena is a writ 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 subpoenas, and defendants are entitled to request their issuance to compel the attendance of witnesses in court. 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, the Code of Criminal Procedure is silent on whether the application for subpoenas issued out of municipal court 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 is necessary before a subpoena can 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 application for subpoenas for out-of-county witnesses in felonies and misdemeanor cases that include confinement as part of
the punishment. The code is silent, however, 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. Nevertheless, municipal court defendants 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.

b. For Child Witnesses

When a witness is younger than 18 years of age, 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 in municipal court of an item requested by the defendant is the radar unit, repair logs of the radar unit, or any video recording of the stop or arrest.

2. Service of the Subpoena

A subpoena can be served by reading it to the witness, delivering a copy to the witness, electronically transmitting a copy of the subpoena with acknowledgment of receipt requested to the last known electronic address of 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 of age or a peace officer and may not be involved in the proceedings for which the appearance is sought. Art. 24.01(b), C.C.P.

A court can compel a peace officer to serve a subpoena. A court may not compel a person who is at least 18 and who is not a peace officer to serve the subpoena unless the person agrees in writing to accept that duty. If the person then neglects or refuses to serve or return the subpoena, the court may fine him or her not less than $10 or more than $200 for contempt at the court’s discretion. Arts. 2.16 and 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 person’s return must state the reason for not serving it, the diligence used to find the witness, and any 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 up to $100. Art. 24.05, C.C.P.
The defendant or State may request a writ of attachment, issued by a clerk of a court under seal, commanding a peace officer to bring the witness before the court immediately or on a day named in the order. The court can postpone a case in order for the writ to be served. Art. 24.11, C.C.P.

The procedures for assessing a fine include the following:

- After a fine is entered against a witness for failure to appear, the judgment is conditional. Art. 24.07, C.C.P.
- The witness is given an opportunity at a hearing to present a reason for disobeying the subpoena. The court may collect the fine this time if the judge is not satisfied with the excuse given by the witness. Arts. 24.08 and 24.09, C.C.P.
- When a fine is entered against a witness and the witness appears and testifies, the judge has the discretion to reduce the fine or remit it altogether. The witness, however, is still required to pay all the costs accrued because of his or her failure to appear. Art. 24.10, C.C.P.

4. **Bail for the Witness**

The court may require a witness to post bail in an amount set by the judge. If the witness is unable to post bail, the court must release the witness without security. Art. 24.24, C.C.P. A reference to the “court” means the judge.

Q. 18. What is the role of the clerk in the trial process? ____________________________________________

Q. 19. A clerk may give legal advice to defendants who represent themselves. _____

Q. 20. List procedures that a clerk might want to consider when preparing for trials. __________

Q. 21. When may the court proceed to trial using the citation as the charging instrument? ______

Q. 22. List criteria that you use to establish trial dates. ________________________________

Q. 23. List disadvantages of using a predetermined scheduling system. ________________________

Q. 24. List advantages of using a predetermined scheduling system. ________________________
Q. 25. Why should the police department or the code enforcement officer investigate a citizen’s complaint? ________________

Q. 26. What is the clerk’s role in handling citizen complaints? ________________

Q. 27. When a court uses the assignment by court clerk method of scheduling cases, who is responsible for obtaining a trial date? ________________

Q. 28. List the main disadvantage of using the assignment by court clerk method for controlling the docket. ________________

Q. 29. List the main advantage of using the assignment by court clerk method for controlling the trial docket. ________________

Q. 30. What is a subpoena? ________________

Q. 31. Who is entitled to a subpoena? ________________

Q. 32. Who has authority to issue a subpoena? ________________

True or False
Q. 33. Courts are required to issue subpoenas when requested by either the State or the defense. _____

Q. 34. The request for a municipal court subpoena must be in writing. _____

Q. 35. A person requesting a subpoena may request in writing that the subpoena not be mailed. _____

Q. 36. A subpoena is not valid unless the municipal court seal is impressed on it. _____

Q. 37. To bring in a child witness, who would the court subpoena? ________________

Q. 38. If a person is younger than 18 years of age, is the court required to subpoena the parent to bring him or her to court to testify? ________________

Q. 39. What is a subpoena duces tecum? ________________

Q. 40. What type of description must the subpoena give of an item requested to be brought to trial? ________________

True or False
Q. 41. The clerk may serve a subpoena by sending it in the regular mail. _____

Q. 42. If a subpoena has been requested within seven business days of the trial, it may not be served by mail. _____

Q. 43. A peace officer may be compelled to serve a subpoena. _____
Q. 44. If a peace officer is unable to serve the subpoena, he or she must state the diligence used in attempting to locate the witness. ____
Q. 45. Only the defense may request a writ of attachment. ____
Q. 46. Witnesses who fail to appear after being served with a subpoena may be fined up to $100. ____
Q. 47. Judges do not have discretion to reduce the fine or remit the fine if the witness subpoenaed eventually appears and testifies. ____
Q. 48. When a witness is required to post bail, the clerk who issued the subpoena may set the bail. ____

**PART 3**

**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, Sec. 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 other times set for disposition of uncontested 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 hearing;
- 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.

**A. Notice**

Section 3 of Article 28.01 of the Code of Criminal Procedure says that notice of a pre-trial hearing is sufficient if given:

- 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 to the defendant at least six days prior to the date set for hearing; or
- if the defendant has no attorney, by mail addressed to the defendant at the address shown on the bond; if the bond shows no address, 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 that it was received.
B. 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. Others do not hold pre-trial hearings. Courts that do use the pre-trial process do so to resolve issues relating to the case, but not concerning the merits of the case. The court should not use the pre-trial process as a tool to thwart a defendant’s effort at obtaining a trial.

The Code of Criminal Procedure sets out general purposes and procedures for arrainging citizens accused of committing criminal offenses. The purpose of an arraignment is to establish the identity of the defendant and to take the defendant’s plea, determining if the defendant wants to hire an attorney or waive having an attorney represent them. If the defendant refuses to enter a plea at the time of arraignment, then the court must enter a plea of not guilty. Arts. 27.16 and 45.024, C.C.P. A plea of not guilty means that the defendant is informing the court that he or she denies guilt or has a defense in the case, and that the State must prove what is charged in the complaint.

Arraignment is required for all felonies and for misdemeanors where the sentence involves possible incarceration. Art. 26.01, C.C.P. Where the penalty is by fine only, the judge is not required to conduct an arraignment, but it is still utilized in municipal courts to identify the persons before them and request a plea.

In addition to arraignment, a pre-trial hearing can handle the following matters (Art. 28.01, Sec.1, C.C.P.):

- exceptions to the form or substance of the indictment or information, which initiates proceedings in county and district 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, or to keep evidence from being introduced;
- discovery, used to obtain facts and information about the case;
- entrapment, when law enforcement officers induce a person to commit a crime not contemplated by the person solely to institute a criminal prosecution against the person;
- motion for appointment of interpreter; and
- election of whether the jury or judge decides punishment on a finding of guilt in a jury trial.

C. 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 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.
Q. 49. How can pre-trial hearings be an effective means of caseflow management? 

Q. 50. List methods of giving notice of a pre-trial hearing to a defendant’s attorney. 

Q. 51. List ways in which the defendant is notified of a pre-trial hearing. 

Q. 52. If a defendant refuses to plead, what must the court do? 

True or False
Q. 53. A plea of not guilty means that a person is denying guilt or has a defense. 
Q. 54. The court may require defendants to file all motions at least seven days before the pre-trial hearing date. 

PART 4
CONTINUANCES

A continuance is a postponement of a hearing, trial, or other proceeding to a subsequent day or time. Only judges may grant continuances. Clerks should work with judges to establish a policy for processing motions for continuance.

Article 29.03 of the Code of Criminal Procedure requires requests for continuances to be in writing, but does not state a time during which the parties must submit their motions for continuance to the court. Motions must be sworn to by a person having personal knowledge of the facts relied on for the continuance. Art. 29.08, C.C.P. To help courts manage continuances, courts should establish a policy requiring 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 defendants, defense attorneys, and prosecutors. Look to Articles 29.04 to 29.07 for specific procedural rules on motions for continuance.

Upon receipt of a motion for 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. The clerk should also enter this information on the case file or jacket.

A. By Operation of Law

Article 29.01 of the Code of Criminal Procedure provides for continuances by operation of law, i.e., the judge does not have the discretion to deny the motion. These are for the following reasons:

- a defendant has not been arrested;
- a corporation or association has not been served with the summons; or
- there is not sufficient time for trial at that term of court.
B. **By Agreement in Open Court**

The court may continue a criminal action by consent and agreement of both the defense and prosecutor in open court, only for as long as is necessary. Art. 29.02, C.C.P.

C. **By Sufficient Cause Shown**

The prosecutor or the defendant may request a continuance for cause. The request must be in writing, but it does not have to be in the form of a sworn affidavit. It must fully state the reason for the motion. The judge then determines if the motion contains sufficient cause to grant a continuance for as long as is necessary. Art. 29.03, C.C.P.

A continuance for cause is the most common type of continuance. Since the granting or denying of a continuance requires a decision, a judge may not delegate this duty to a clerk.

D. **Religious Holy Days**

A defendant, defense attorney, prosecutor, or juror may request a continuance for a religious holy day. Arts. 29.011 and 29.012, C.C.P. Religious holy day means a day on which the tenets of a religious organization prohibit its members from participating in secular activities, such as court proceedings. Religious organization is defined in Section 11.20 of the Tax Code.

A person seeking the continuance must file with the court an affidavit stating:

- the grounds for the continuance; and
- that the 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 other participants in the trial of the continuance.

E. **Legislative Continuances**

Legislative continuances apply to members and members-elect of the Texas Legislature. A legislative member or member-elect who is either a party or legal counsel for a party may delay any case set for trial until 30 days after the date on which the Legislature adjourns. The legislator requesting a continuance should file an affidavit with the court stating the grounds for the continuance and his or her intent to participate actively in the preparation or presentation of the case. If the attorney for a party to any criminal case is a member or member-elect of the Legislature who was employed on or after the 15th day before the date on which the suit is set for trial, the continuance is discretionary with the court. Otherwise, the continuance is mandatory. Secs. 30.003(b) and (c-1), Civil Practice and Remedies Code.
Q. 55. List reasons why a court would continue a case without a motion.

Q. 56. Who may request a continuance in open court?

Q. 57. How long can a continuance last?

Q. 58. Who may request a continuance when the trial date falls on a religious holiday?

Q. 59. In what form must a request for a continuance for a religious holiday be made?

Q. 60. What information must be in the request for the continuance for a religious holiday?

Q. 61. What is the role of the clerk when he or she receives a request for a continuance?

True or False
Q. 62. A motion for continuance for cause may be requested by telephone. ____
Q. 63. A clerk may not grant a motion for a continuance. ____
Q. 64. If a defendant calls and wants to reset the case, the clerk has authority to reset the case. ____

PART 5
PROSPECTIVE JURORS AND JURY SELECTION

If an accused pleads not guilty and does not waive a trial by jury, the judge is required to issue a writ commanding the proper officer (usually the court clerk) to summons a venire, a list of prospective jurors summoned to serve for a particular term of court.

The court should develop a written policy that details the procedures for jury selection, preparing the jury candidate list, summoning the prospective jurors, etc.

A. Prospective Jurors

In municipal courts, six qualified persons from the venire are 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 of the Code of Criminal Procedure. See, Sec. 30.00013(a), G.C. 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.

Article 45.027(a) of the Code of Criminal Procedure requires the judge to issue a writ or venire commanding the proper officer (in municipal court, it is usually the court clerk) to summon a venire from which six qualified persons shall be selected to serve as jurors in the case. Typically, clerks summon prospective jurors approximately three to four weeks prior to the date of the trial. Jurors may be selected from tax rolls, utility rolls, voter registration rolls, or in any other nondiscriminatory 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 an adequate
number of qualified persons after exemptions, excuses, and challenges. Courts are prohibited from summoning prospective jurors to appear for jury service on the date of the general election for state and county officers. Sec. 62.0125, G.C. 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. To help clerks better manage the jury selection process, the notice should state the qualifications and exemptions for jury duty. Either included there or on a separate sheet should be a request for personal information that will aid the defense and prosecution in selecting jurors. Prospective jurors can either mail in this information, or they can bring it in with them on the day of the trial.

1. **Qualifications**

   a. **Required**


   - be at least 18 years of age;
   - be a citizen of this state and county in which the person is to serve as a juror (in municipal court, they must also be a resident of the city);
   - 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;
   - be of sound mind and good moral character;
   - not be a witness in the case;
   - not have served on the grand jury that issued the indictment (for felonies);
   - 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;
   - be able to read and write;
   - not have served as a petit juror for six days during the preceding three months in the county court or the preceding six months in the district court;
   - not be interested, directly or indirectly, in the subject matter of the case; and
   - not be related by consanguinity or affinity within the third degree to a party in the case (Chapter 573, G.C.).

   b. **Hearing Impaired**

People who are hearing-impaired are still qualified to be prospective jurors. Sec. 62.1041, G.C. A hearing-impaired individual is defined to mean an individual who has a hearing impairment, regardless of whether the individual also has a speech impairment that inhibits the individual’s comprehension of proceedings or communication with others. Sec. 57.001(4), G.C. Courts are required to appoint a qualified interpreter for deaf or hearing-impaired jurors or to provide some
type of auxiliary equipment, such as a communication access realtime transcription (CART) provider, to aid the jurors during trial proceedings.

c. **Legal Blindness**

Section 62.104 of the Government Code addresses the issue of whether a legally blind person is qualified to sit as a juror in a civil case. The statute defines legally blind as having not more than 20/200 of visual acuity in the better eye with correcting lenses; or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. The statute does not disqualify a person who is legally blind to sit as a juror in a criminal case.

2. **Exemptions**

a. **Legal Exemptions**

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

- 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 (be sure to take a look at your exemption form; in 2009, the age of the unattended child was raised from 10 to 15 and changed again in 2011 from 15 to 12);
- 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 of the Government Code and the period authorized under Section 62.011(b)(6) of the Government Code exceeds two years (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 (note this 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. See, Sec. 62.001, G.C.).

b. **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 tax-assessor 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.

c. **Excuse of Juror for Religious Holy Day**

If a prospective juror is required to appear at a court proceeding on a religious holy day observed by the prospective juror, the court or the court’s designee shall release the prospective juror from jury service entirely or until another day of the term.

The prospective juror must file an affidavit stating the grounds for the release and that the juror holds religious beliefs that prohibit him from taking part in a court proceeding on the day for which the release from jury duty is sought.

“Religious organization” is defined in Section 11.20 of the Tax Code.

d. **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.

e. **Establishing a Postponement**

Section 62.0142 of the Government Code 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. **Establishing an Exemption**

A person may establish an exemption from jury service without appearing in person by filing a signed statement of his or her exemption with the clerk of the court before the date on which he or she is summoned to appear. Art. 35.04, C.C.P. and Sec. 62.107, G.C.

B. **Nonresidents**

A jury summons must include a notice that a person claiming a disqualification or exemption based on a lack of citizenship or residence in the county will no longer be eligible to vote if they fail to provide proof of citizenship. Sec. 62.0142, G.C.

Clerks must maintain a list of names and addresses of persons who are excused or disqualified from jury service because they reside outside the county. On the third business day of each month, the clerk must send to the voter registrar of the county a copy of the list of persons
excused or disqualified in the previous month because the persons do not reside in the county. The voter registrar must add these persons to the county’s suspended voter list. Sec. 62.114, G.C.

C. Personal Information of Prospective Jurors

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who may serve or does serve as a juror is confidential. Because this information is confidential, it may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel. A party in the trial or a bona fide member of the news media, however, may apply to the court and, on a showing of good cause, the court must permit disclosure of the information sought. 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;
- social security 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
- when and where the person has previously served as juror.

D. Juror Compensation

Section 61.001 of the Government Code provides that each grand juror or petit juror in a civil or criminal case in district court, county court, county court at law, or justice court is entitled to receive reimbursement for travel and other expenses, not less than $6 for the first day or fraction of the first day, and $40 for each day or part of each day served as a juror thereafter.

Municipal courts are not required to pay jurors unless the municipality provides for reimbursement for expenses to the person in an amount determined by the municipality. Sec. 61.001(c), G.C. Municipal courts are, however, required to collect a $4 fee to be used for reimbursement to counties for the cost of those jurors. The fee must be collected on all convictions except for parking or pedestrian offenses and remitted quarterly to the State Comptroller. Art. 102.0045, C.C.P.

Section 61.003 of the Government Code says that a district, county, court court at law, or justice 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 Victims Compensation Fund;
- the Child Welfare Services Fund;
• any program selected by the commissioners’ court that is operated by a public or private nonprofit organization and provides shelter and services to victims of family violence; or
• any other program approved by the commissioners’ court of the county.

The donation is voluntary, and if the prospective juror donates his or her juror pay, the donation can be for all or a specific amount of the juror’s pay. The Comptroller’s Office is responsible for seeing that the donations are properly accounted. Since municipal courts are not required to pay jurors, the Comptroller has not devised a form for municipal courts to report juror donations and there is no means for municipal courts to do so.

E. Jury Selection

On the day of the trial, the prospective jurors summoned to appear arrive at the courtroom so that jury selection may begin.

When prospective jurors arrive for jury service, the clerk should provide a copy of the uniform juror handbook (a one page two-sided brochure) developed by the State Bar of Texas for courts to provide to jurors. The jurors should read the handout before the trial begins, and then the court may collect them to hand out to other jury panels. Chapter 23, G.C. Courts that do not have the uniform juror handbook can call the State Bar at 512.463.1463 for free copies or download a copy at TMCEC’s website at www.tmcec.com/Resources/Pamphlets.

The clerk should have copies of the jury list and juror information sheets for the judge, prosecutor, and defendant. When jury selection is over, the clerk should collect the juror information sheets. The defendant and prosecutor should not be allowed to remove them from the courtroom because the information is confidential. Art. 35.29, C.C.P.

1. Challenge to the Array

The prosecution and the defense may challenge the array (membership) of the jury panel. A challenge may be that the officer summonsing the jury willfully summoned prejudiced or biased persons. Art. 35.07, C.C.P. A party must make the challenge in writing, distinctly stating the grounds for such a challenge, and 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 to sustain the challenge. The judge must hear the challenge to the array 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.

2. Jury Shuffle

A jury shuffle is required when either the prosecution or defense makes a request to change the order of the jurors’ names. When a request is made, the judge will have the clerk shuffle the list of jurors. A computer can randomly change the order of the venire. If the court does not have a computer, the clerk should write the names of the jury panel on separate pieces of paper or cards and place them in a receptacle so that they may 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 seated in the order selected. A copy of the new jury list is given
to the prosecutor, the defendant, and the judge. Only one shuffle is allowed under the law. Art. 35.11, C.C.P.

3. Voir Dire

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.

A person is disqualified to serve as a petit juror in a particular case if he or she:

- is a witness in the case;
- is interested, directly or indirectly, in the subject matter of the case;
- is related by consanguinity or affinity within the third degree, as determined under Chapter 573 of the Government Code, to a party in the case;
- has a bias or prejudice in favor of or against a party in the case; or
- has served as petit juror in a former trial of the same case or in another case involving the same questions of fact.

4. Peremptory Challenges

Besides removal for cause under the voir dire process, the State and defense are also allowed three peremptory challenges each. Here, the prosecution and defense may remove up to three prospective jurors without stating a reason for removal, as long as the reasoning is not illegal (such as one 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.

5. The Jury

After voir dire and peremptory challenges, the prosecution and defense submit their lists of challenges to the court clerk, who compiles them and then writes or prints the names of the jurors not stricken in order. Then the clerk gives a copy of the list to the prosecution, the defense, and the judge and calls the first six names on the list that have not been stricken by either party. Art. 35.26, C.C.P. These six persons form the municipal court jury.

6. Pick-Up Jury

If, after challenges, strikes, or legal exemptions, there are an insufficient number of jurors 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, although this number fluctuates based on the population and how many trials are scheduled. By the time some of the prospective jurors have claimed legal exemptions and others have been removed for cause or by peremptory strikes, the court should still have enough jurors to hear the case.
F. Failure to Appear for Jury Service

Any person summoned for jury duty who fails to attend may be fined not more than $100 for contempt. Art. 45.027, C.C.P. Any person who is charged with this type of contempt is entitled to notice and a hearing before the court.

Q. 65. What is a venire? ________________

Q. 66. How many jurors are selected to hear cases in municipal courts? ________________

True or False

Q. 67. The judge is required to issue a writ of venire when a defendant does not waive his or her right to a jury trial. ____

Q. 68. Jurors may be selected only from city tax rolls. ____

Q. 69. When a person does not reside within a city, he or she may not serve as a juror in municipal court. ____

Q. 70. A person who is not registered to vote may not serve on a jury. ____

Q. 71. A person who is accused of or has been convicted of misdemeanor theft may not be a juror. ____

Q. 72. A person must be able to read and write to be a juror. ____

Q. 73. A juror must be unbiased. ____

Q. 74. A person who has legal custody of a child under the age of 12 is automatically exempt from jury duty. ____

Q. 75. A person who is a full-time student may claim an exemption from jury duty. ____

Q. 76. A person who is legally blind is prohibited by law from being a juror in a criminal case. ____

Q. 77. An employee of the State Legislature may be eligible for an exemption from jury duty. ____

Q. 78. A person who cares for an invalid is automatically exempt from jury duty. ____

Q. 79. The judge may reschedule a prospective juror’s jury service for medical and hardship reasons. ____

Q. 80. Persons who are over 70 years of age may request a permanent exemption from jury duty. ____

Q. 81. The municipal court clerk is required to file a person’s request for a permanent exemption with the county tax assessor-collector. ____

Q. 82. A person who is over 70 years of age may not be summoned to sit as a juror even if he or she does not request a permanent exemption. ____

Q. 83. Municipal courts are not required to pay persons who serve as jurors in their courts. ____

Q. 84. List information that the court may want to require from jurors. ______________________

Q. 85. How can a juror request an exemption? ______________________
Q. 86. When may a clerk grant a juror’s request to postpone jury service? ________________

Q. 87. What is the penalty for providing false information in a request for an exemption or excuse from jury service? ________________

Q. 88. What must a clerk do if a person claims an exemption from jury service based on lack of residence? ________________

Q. 89. Since personal information about jurors is confidential, how should clerks handle paperwork containing this information? ________________

Q. 90. Under what circumstances may personal information about jurors be released? ________________

Q. 91. What is the maximum penalty that may be assessed when a juror fails to appear in municipal court? ________________

Q. 92. When a juror fails to appear, with what offense is he or she charged? ________________

Q. 93. Who may challenge the membership of the jury? ________________

Q. 94. Who may ask the court for a jury shuffle? ________________

Q. 95. Describe how the prospective jurors may be shuffled. ________________

Q. 96. After the jury is shuffled, what should the clerk do with the new list of names? ________________

Q. 97. When a judge sustains the challenge to the array, what does the judge do? ________________

True or False

Q. 98. Voir dire is a process where jurors may be removed if they have preconceived opinions about a case. ____

Q. 99. Only the defense may ask the court to remove a juror because the juror has already decided that the defendant is guilty. ____

Q. 100. Removing a juror during voir dire is called removal for cause. ____

Q. 101. What happens when either the prosecution or defense strikes a juror? ________________

Q. 102. How many jurors may the prosecution and defense remove without cause? ________________

Q. 103. How are the six persons selected for the jury? ________________

Q. 104. Why would a court have to order additional jurors to be summoned for a trial? ________________

Q. 105. Who usually summons the pick-up jury? ________________
Jurisdiction refers to a court’s legal authority to hear certain actions. A municipal judge may sit at any time to try cases over which he or she has jurisdiction in accordance with the Code of Criminal Procedure and Rules of Evidence. Art. 4.15, C.C.P.

A. Defendant’s Appearance
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. 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.

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.

B. Right to Jury Trial
Defendants in municipal courts, like defendants in all other courts with criminal jurisdiction, have the right to a jury trial. However, defendants 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.

C. “The Rule”
The proceedings and trials in municipal 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” (Rule 614 of the Texas Rules of Evidence) is invoked by either the defense or the prosecution, requiring that witnesses who are not parties be excluded from hearing each other’s testimony. Art. 36.03, C.C.P. The witnesses must wait in a room outside the courtroom and may not discuss the case among themselves. One exception to “The Rule” allows the victim to remain in the courtroom if the court finds that the victim’s testimony would not be materially affected by his or her presence. Art. 36.03, C.C.P.

D. Day of Trial
Generally, the overall process for jury trials and trials before the judge is similar, but local practices may differ from court to court. The biggest difference is that in a jury trial, the jury is the trier of the facts and makes the decision of whether a defendant is guilty or not guilty. The jury can also decide punishment if the defendant elects for the jury to do so before the trial begins. Arts. 45.036 and 37.01, Sec. 2(b)(2), C.C.P. In a trial before the judge, the judge hears the evidence, makes a decision of guilty or not guilty, and if guilty, decides the punishment.

1. Opening Announcement
The bailiff or court clerk should enter the courtroom before the judge and request that all persons stand. 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 others be seated.

2. **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 proceed to trial. Some may request to take a driving safety course or ask the judge to grant deferred disposition. After the introductory statement by the judge and the processing of defendants who change their mind about having a trial, the court may proceed with trials. This is where pre-trial hearings are effective to keep a jury from being summoned when the defendant might change his or her plea upon talking to the judge.

3. **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. If a defendant does not answer, the judge may ask the clerk or bailiff to step outside the courtroom and call the name of the defendant. This procedure is required when a defendant has a bond filed with the court.

When a defendant fails to appear and a bond is filed with a case, after the clerk or bailiff completes the docket call, he or she should swear to an affidavit indicating that the name was called and file the affidavit with the case. This affidavit may be used later as probable cause for issuing warrants for failure to appear or for a bond forfeiture.

4. **Jury Selection in Jury Trials**

Before a jury trial begins, the clerk should have already provided the defense, State, and judge with the personal information that the court requested from potential jurors. At the conclusion of voir dire or at the conclusion of the trial, the clerk should collect the juror information sheets and file them with the case.

After the announcement that court is in session, the judge may make an introductory statement to the jurors about court proceedings. The cases set for jury trials are 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 may do so at this time.

5. **The Trial**

In both the jury trial and the trial before the judge, the judge calls the defendant to the bench to identify the defendant and ask for a plea. Next, the prosecutor reads the complaint to the defendant.

• After opening statements from the prosecutor and the defense, the prosecutor presents the State’s case by calling witnesses to testify against the defendant.
• After a 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, and the defendant is not allowed to argue with the witness.

• After the prosecution presents its case-in-chief (presenting its evidence to establish the elements of the offense and the defendant’s guilt), the defendant may make an opening statement, if it was reserved until this point, and present his or her case by calling witnesses.

• 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. If the defendant does not testify, the defendant’s silence cannot be used against him or her. However, if the defendant testifies, the State may cross-examine the defendant.

• Both sides may put on rebuttal evidence if they so choose. Rebuttal evidence is evidence that either side may present to dispute the other side’s evidence.

• In a jury trial, the judge reads a charge to the jury before closing arguments, which is a statement about 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 to review. Other judges require the parties to prepare the court’s charge for the court’s review.

• Finally, the defense and prosecution can present a closing argument on behalf of their case. The closing arguments may be based only on the testimony presented during the trial. The State has the right to present the first and last argument.

For step-by-step checklists to conduct a jury trial, see the TMCEC Bench Book, available online at www.tmcec.com or in hard copy.

E. 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 at trial. If the defendant is guilty, the judge renders a judgment of guilty and assesses punishment according to the penalty allowed for the particular offense. In some instances, based on the circumstances of the case, the judge may even exercise his or her discretion to place the defendant on deferred disposition. If the judge finds that the defendant is not guilty, the judge enters a judgment of not guilty, dismisses the case, and releases the defendant without any liability.

F. 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 the bailiff or a court officer to deliberate the case. Broadcasting, recording, or photographing a jury while the jury is deliberating is prohibited. If a court has security cameras in the room in which the jury is deliberating, the cameras will have to be turned off. Art. 36.215, C.C.P. It is also a good idea for the court to have policies in place regarding the jurors’ possession and or use of cell phones or other internet-capable devices in the deliberation room.
Municipal court 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. Then, in the presence of the attorneys, the judge may answer proper questions. The bailiff generally transmits written messages from the jury to the judge.

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 make the decision of punishment, after a finding of guilty, the jury also assesses the punishment. If the defendant did not elect that the jury make the decision of the punishment, the judge decides punishment if the jury’s decision is guilty. If the decision of the jury is not guilty, the judge enters a finding of not guilty, dismisses the case, and releases the defendant from all liability.

If a jury fails to agree to a verdict after being kept together for a reasonable amount of time, then a mistrial occurs. The case may be tried again as soon as practicable. Art. 45.035, C.C.P.

G. Judgment

The judgment is the written decision of the court, signed by the judge showing the conviction or acquittal of the defendant. Article 42.01 of the Code of Criminal Procedure contains the information required to be in a judgment. Although not all of the info is relevant to fine-only cases, the pertinent information must be included.

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

1. Not Guilty

If a defendant is found not guilty by either the jury or the judge, the court discharges the defendant without any liability. The defendant does not have to pay any costs. Upon acquittal of a defendant, the trial court is required to advise the defendant of the right to have all records of the case expunged. Art. 55.02, Sec.1, C.C.P.

2. 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, or, if the defendant is not satisfied with the judgment of the court or the verdict of the jury, he or she may appeal his or her case or request a new trial.

If the offense is a traffic violation, an Alcoholic Beverage Code violation under Chapter 106, or the Penal Code violation of theft of gasoline and the defendant does not appeal, the clerk is required to send notice of final conviction to the Department of Public Safety. Secs. 543.201-543.206, T.C., and Art. 42.019, C.C.P.

If the defendant served time in jail, the judge must credit the defendant for any time served in jail on that charge from the time the defendant was arrested until conviction. Arts. 42.03 and 45.041(c), C.C.P. The pre-conviction jail-time credit is not less than $50 for each period of time served as specified by the court in the judgment of the case. “Period of time” is defined as not less than eight hours or more than 24 hours. Art. 45.048, C.C.P. Judgment forms should be
reviewed to be certain that they contain the required information regarding “period of time” to be specified for jail credit.

If the trial was a jury trial, Article 102.004 of the Code of Criminal Procedure requires the court to impose, in addition to other required court costs, a $3 fee upon conviction by a jury. The defendant must also pay a $5 fee upon conviction if the prospective jurors were summoned by a peace officer. Art. 102.011(a)(7), C.C.P.

H. Defendant’s Failure to Appear

Defendants who have been in custody and fail to appear for trial, regardless of whether it is a jury trial or a trial before the judge, can be charged with the offense of failure to appear. Sec. 38.10, P.C. This is a Class C misdemeanor with a maximum fine of $500. The prosecutor makes the decision to charge this offense. After the prosecutor makes the decision, clerks process this charge by preparing the complaint. Like other complaints, any credible person acquainted with the facts can be the affiant.

After the judge determines that there is sufficient probable cause, the judge can issue a warrant for the failure to appear charge along with an arrest warrant for the underlying charge for which the defendant failed to appear. There must be a sworn complaint and probable cause affidavit for that offense also.

If a defendant has a bond filed with the court and fails to appear, 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 shows good cause why the judgment should be set aside). If a cash bond is 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 trial, the judge may order a defendant to pay the actual costs incurred for impaneling the jury; however, 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. The court may enforce an order to pay by contempt as provided in Section 21.002(c) of the Government Code. Art. 45.026, C.C.P. Clerks perform an analysis of the costs of summoning a jury. Items to include in the analysis are:

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

A defendant has the right to request a jury trial as well as to withdraw the request. However, if the defendant withdraws the request for a jury trial not earlier than 24 hours before the time of trial, the defendant must pay a jury fee of $3 if he or she is convicted of the offense or if final disposition of the defendant’s case is deferred. Art. 102.004, C.C.P.
True or False
Q. 106. Adult defendants requesting a jury trial must personally appear for the trial. ____
Q. 107. Defendants who fail to appear may still be tried in their absence. ____
Q. 108. If a defendant refuses to plead, the court must enter a not guilty plea for him or her. ____
Q. 109. Trials in municipal courts are not open to the public. ____
Q. 110. Municipal courts may exclude city council members from attending trials. ____
Q. 111. Municipal courts may not exclude the news media from attending trials. ____
Q. 112. Witnesses may be excluded from trial only when “The Rule” is invoked. ____
Q. 113. Victims must always be excluded when “The Rule” is invoked. ____
Q. 114. What should clerks do with the juror information sheets? ____________________________
Q. 115. What fee must municipal courts assess when a defendant fails to withdraw a request for
jury trial 12 hours before the trial and is then later convicted? ____________________________

True or False
Q. 116. At trial, the prosecution presents its evidence first. ____
Q. 117. The defense does not have a right to cross-examine the prosecution’s witnesses. ____
Q. 118. The defendant cannot be compelled to testify. ____
Q. 119. The charge to the jury is given after both the defense and prosecution have concluded their
evidence. ____
Q. 120. A jury charge is a statement of the law that applies in the case being tried. ____
Q. 121. If a trial is before the judge, the judge makes the decision of whether the defendant is
guilty or not guilty. ____
Q. 122. Clerks may influence a judge’s decision about a particular case if the defendant was
difficult to handle. ____
Q. 123. What is a judgment? __________________________________________________________
Q. 124. What is a verdict? ______________________________________________________________

True or False
Q. 125. During deliberation, if a juror has a question, the defense or prosecution may answer the
question. ____
Q. 126. When can a mistrial be declared in a jury trial? ________________________________________
Q. 127. After a mistrial has been declared, when can the court conduct another trial? __________

Q. 128. Where are judgments and verdicts required to be rendered? __________

True or False
Q. 129. When a defendant is found not guilty, he or she must still pay court costs. ____
Q. 130. When a defendant is found guilty, he or she may request a new trial or appeal the case.

____

Q. 131. If a case is a traffic violation, what must the clerk send to the Department of Public Safety upon conviction? __________

True or False
Q. 132. The judge is required to enter in the judgment the period of time for jail credit. ____
Q. 133. Municipal court must grant jail-time credit in the amount of $50 for each part of a day a defendant has spent in jail before conviction. ____
Q. 134. Municipal courts are required to collect a $3 jury fee upon conviction by a jury. ____
Q. 135. When a peace officer summons prospective jurors, the defendant must pay a $5 fee for each juror. ____

PART 7
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. Prior to September 1, 2011, defendants had only one day to file a motion for new trial in a non-record court. 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 to the defendant in the same case. Art. 45.039, C.C.P.

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 is mailed to the court and received according to the time limits in the mailbox rule, the document is timely filed.
In a non-record court, when a new trial has been granted, the 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 along with briefs 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 defense may amend the motion for new trial 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 the 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.

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.

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. 136. Defendants in non-record municipal courts have two days from the date of judgment to request a new trial. _____

Q. 137. When is the State entitled to a new trial? ________________________________

Q. 138. How does the mailbox rule affect how a motion for new trial is filed? ______________

Q. 139. What is the last day that a judge may rule on a motion for new trial? ______________

Q. 140. What happens if a court does not receive a motion for new trial by the time deadline for the judge to rule on the motion? ________________________________

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PART 8
COURT INTERPRETERS

Article 38.30 of the Code of Criminal Procedure requires that an interpreter be sworn in to interpret for a defendant or witness who does not understand the English language. Article 38.31 of the Code of Criminal Procedure requires a qualified interpreter be appointed if a defendant or witness is deaf or hard of hearing. Section 62.1041 of the Government Code requires courts to
reasonably accommodate jurors who are hard of hearing or deaf. All interpreters must be sworn before performing interpretation.

Section 57.002(5) of the Government Code defines licensed court interpreter to mean “an individual licensed under Subchapter C by the Texas Commission of Licensing and Regulation to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.” Effective September 1, 2014, Section 157.001 of the Government Code will define licensed court interpreter as an individual licensed under that chapter by the Judicial Branch Certification Commission to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.

Article 38.31 of the Code of Criminal Procedure defines a qualified interpreter as an interpreter for the deaf who holds a current legal certificate issued by the National Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters at the Department of Assistive or Rehabilitative Services. Section 57.001(1) of the Government Code defines certified court interpreter to mean an individual who is a qualified interpreter as defined in Article 38.31 of the Code of Criminal Procedure or Section 21.003 of the Civil Practice and Remedies Code, or certified under Subchapter B by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual.

A. Licensed Interpreters and County Population

Section 57.002 of the Government Code requires municipal courts to appoint certified or licensed court interpreters. There is an exception to this for foreign language interpreters. A court may appoint a spoken language interpreter who is not certified or licensed if:

- the court is in a county with a population of less than 50,000; or
- the court is in a county with a population of 50,000 or more and:
  - the language necessary in the proceeding is a language other than Spanish; and
  - 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.

Interpreters appointed for a person who is hard of hearing or deaf must be certified regardless of the population of a county.

1. Other 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.

2. Court Proceedings

Chapter 57 of the Government Code provides for a state-operated licensing and certification program for court interpreters for the deaf and hard of hearing and for foreign language interpreters, and establishes rules regarding certified and licensed interpreters that apply to court proceedings. Note that effective September 1, 2014, the provisions in Subchapter C of Chapter
Section 57.001(7) of the Government Code defines court proceedings to include an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution. The Code Construction Act defines the word “includes” as 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 are more than the list enumerated in Section 57.001. Article 38.30 of the Code of Criminal Procedure requires the appointment of a deaf or hard of hearing interpreter in any criminal proceeding; while Article 38.31 requires a foreign language interpreter at an arraignment, hearing, examining trial, or trial. The court bears the cost of the interpreter.

Attorney General John Cornyn addressed the “interpreter issue” in Opinion 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 is a court proceeding and whether there must be a licensed court interpreter at the proceeding. 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 a plea from a defendant.

Effective September 1, 2011, licensed court interpreters have two designations: basic and master. The designation is based on the score achieved on the licensing exam. A basic designation will permit the interpreter to interpret in proceedings justice and municipal courts that are not municipal courts of record, other than a proceeding before the court in which the judge is acting as a magistrate. A master designation will permit the interpreter to interpret court proceedings in all courts in the State, including justice and municipal courts.

B. Telephone Interpreters

Article 38.30 of the Code of Criminal Procedure provides that a qualified telephone interpreter may be sworn to interpret for the person in a trial of a Class C misdemeanor or a proceeding before a magistrate if:

- an interpreter is not available to appear in person before the court; 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 57.001 of the Government Code; or
- federally certified court interpreters.

C. Non-English Speaking Defendants and Witnesses

The court is required to appoint an interpreter when either a defendant or witness does not understand the English language. Art. 38.30, C.C.P. The role of the interpreter is to translate and explain the proceedings and to give the defendant a voice in the proceedings.
D. Hearing Impaired Defendants, Witnesses, and Jurors

A hearing impaired individual is defined to mean an individual who has a hearing impairment, regardless of whether the individual also has a speech impairment that inhibits the individual’s comprehension of proceedings or communication with others. Sec. 57.001(4), G.C.

When a defendant or witness is deaf or hard of hearing, the court must appoint a qualified interpreter. Art. 38.31, C.C.P. Courts can also appoint a communication access realtime transcription (CART) provider to interpret.

E. Violation of Interpreter Rules

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 under Subchapter A of Chapter 57 of the Government Code. Section 57.026, G.C. A person commits a Class A misdemeanor if the person violates Subchapter A of Chapter 57 or a rule adopted under Subchapter A. A person who violates Subchapter A or rules adopted under the subchapter is also subject to administrative penalties assessed by the Department of Assistive or Rehabilitative Services. Sec. 57.027, G.C.

Likewise, a person may not advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license under Subchapter C of Chapter 57 (to be renumbered as Chapter 157 effective September 1, 2014). A person commits a Class A misdemeanor if the person violates the rules pertaining to licensed foreign language interpreters, and is also subject to administrative penalties assessed by the Department of Licensing and Regulation (or the Judicial Branch Certification Commission effective September 1, 2014).

True or False

Q. 141. Defendants who do not speak English are required to bring an interpreter with them to translate court proceedings. ____

Q. 142. A family member or friend can be a language interpreter as long as he or she knows both English and Spanish. ____

Q. 143. Courts are required to appoint interpreters for witnesses who do not speak English. ____

Q. 144. An interpreter for a defendant who is hard of hearing must be a certified interpreter. ____

Q. 145. A court that is in a city under 50,000 in population does not have to appoint licensed or certified interpreters. ____

Q. 146. When is a municipal court that is located in a county with a population of at least 50,000 not required to appoint a licensed court interpreter for a non-English speaking defendant? ____________________________

Q. 147. When may a court use a qualified telephone interpreter? ________________________________

Q. 148. What are courts required to do if a juror is deaf or hearing impaired? ____________________
PART 9
COURT REPORTERS

Only courts of record are required to provide court reporters 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 elected or appointed 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, whichever 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.

Section 52.047(a) of the Government Code requires official court reporters to furnish a transcript to a person requesting a transcript not later than the 120th day after:
- the application for the transcript is received by the court reporter; and
- the transcript fee is paid or the person establishes indigence.

True or False
Q. 151. Official court reporters are required to take an oath of office just like an elected or appointed official. _____
Q. 152. Court reporters must keep their records of a trial for a 20-day period beginning the last day of the trial or motion for new trial is denied or until an appeal is final. _____
Q. 153. Courts of record must have a court reporter instead of a recording device. _____

PART 10
CONTEMPT

Municipal judges have the power to hold people in contempt of court. Sec. 21.002, G.C. Contempt power is vested in courts so that the proceedings will be conducted with dignity and in
an expeditious manner to see that justice is done. There is no statutory definition of contempt, but common law establishes it as conduct that tends to impede the judicial process by disrespectful or uncooperative behavior in open court or through the unexcused failure to comply with clear court orders.

**A. Direct and Indirect Contempt**

Contempt may occur through direct or indirect means. Direct contempt is an act that occurs in the judge’s presence and under circumstances that require the judge to act immediately to quell a 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; attorneys appearing late for trial; or filing offensive papers in the court. If a person is charged with indirect contempt, the person has a right to notice of the charge and a trial or hearing in open court, as well as the right to counsel.

**B. Civil and Criminal Contempt**

Contempt may be civil or criminal. Civil contempt includes wilfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings, obstruct justice, are directed against the dignity of the court, or bring the court into disrepute.

**C. Penalties**

1. **General Penalty**

   Contempt in municipal court is punishable by up to three days confinement in jail and a monetary sanction of up to $100. Sec. 21.002(c), G.C. Because contempt is not a separate offense, or a criminal offense for that matter, the court does not collect any court costs for it.

2. **Failure to Execute Summons, Subpoena, or Attachment**

   The failure of a sheriff or an officer to execute a summons, subpoena, or attachment may constitute contempt with a sanction of $10 to $200. Art. 2.16, C.C.P.

3. **Failure to Appear for Jury Duty**

   A potential juror’s failure to appear for jury duty in municipal court can constitute contempt with a maximum sanction of $100. Art. 45.027(c), C.C.P.

4. **Failure to Appear Pursuant to a Witness Subpoena**

   A witness who fails to respond or appear pursuant to a subpoena can be held in contempt with a maximum sanction of $100. Art. 24.05, C.C.P.

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**Q. 154.** What is the purpose of contempt power? ________________________________

**Q. 155.** Name the kinds of contempt and define them. ________________________________

**Q. 156.** What is the general penalty for contempt in municipal courts? ________________________________
Q. 157. What is the penalty for contempt by an officer’s failure to execute process?

Q. 158. What is the penalty for failure to appear for jury duty in municipal court?

Q. 159. What is the penalty for a witness’s failure to appear pursuant to a subpoena?
ANSWERS TO QUESTIONS

INTRODUCTION
Q. 1. It is a contest between opposing sides: the defense and the prosecution.
Q. 2. The judge in bench trials and the jury in jury trials.
Q. 3. The State (prosecutor).
Q. 4. Guilt beyond a reasonable doubt.
Q. 5. In a trial before the judge, the judge’s role is to listen to the evidence and render a judgment based upon that evidence.
Q. 6. The judge in a jury trial instructs the jury as to the law involved in the case. A judge presides over the trial and has the duty of protecting the rights of those involved. Judges must make sure that the attorneys and pro se defendants follow the rules of evidence and trial procedure.

PART 1
Q. 7. True.
Q. 8. True.
Q. 10. True.
Q. 11. False (defendants are entitled to a jury trial, meaning they automatically get a jury trial, must waive that right if they do not want one, and must ask for a bench trial if they want one).
Q. 12. True.
Q. 15. True.
Q. 16. False.
Q. 17. False.

PART 2
Q. 18. The clerk’s role in the trial process includes providing information to defendants, preparing for the trial, managing court participants, scheduling cases for trial, issuing subpoenas, and summoning the jury.
Q. 20. Preparatory procedures may include:
- Complaint prepared;
- Complaint reviewed for typing errors, dates, properly sworn, and court seal affixed;
- Copy provided to defendant;
- Prosecutor has file or copy of file to prepare case for trial;
• Trial docket typed and posted;
• Subpoenas issued;
• Jury summoned;
• Juror handbooks available;
• Interpreters notified to be available, if needed; and
• All trial forms reviewed and made available to the judge.

Q. 21. The court may go to trial on a citation when the defense and prosecution agree in writing to go to trial on the citation and file the agreement with the court.

Q. 22. Each clerk will have a different answer for this question, but it may include such issues as peace officer’s days and times off and on duty; availability of judge and prosecutor; type of case; type of trial (bench or jury); age of defendant; etc.

Q. 23. The disadvantages of a predetermined scheduling system are: (1) it is difficult for the court to manage the trial docket because the court never knows how many defendants will actually appear at that particular date and time; and (2) defendants may have to wait a long time for their cases to be called.

Q. 24. The advantages of a predetermined scheduling system are: (1) it provides a definite date and time for defendants to appear when they are issued a citation; and (2) a judge will be available when the defendant appears.

Q. 25. To determine if an offense has occurred.

Q. 26. The clerk’s role is to establish procedures to coordinate the processing of citizen complaints with the police department, prosecutor, code enforcement, etc.

Q. 27. The defendant.

Q. 28. The disadvantage of using the assignment by court clerk method is that it causes the clerk’s office to handle more telephone calls and foot traffic.

Q. 29. The assignment by the court clerk method helps clerks to have better management control over the dockets because the court talks with the defendants before scheduling a hearing or trial. Only those defendants who specifically request a trial are set on the trial docket. The number of defendants set on each docket is controlled by the court clerk.

Q. 30. It is a writ issued to a person or persons giving an order to appear as a witness.

Q. 31. Both the defense and the prosecution.

Q. 32. The judge, the court clerk, and the deputy clerk.

Q. 33. True.

Q. 34. False (the Code of Criminal Procedure contains no such requirement for fine-only misdemeanor cases).

Q. 35. True.

Q. 36. False.

Q. 37. The court may subpoena a person having custody, care, or control of the child to produce the child in court.

Q. 38. No.
Q. 39. It is a subpoena that directs a witness to bring with him or her any instrument of writing or other tangible thing desired as evidence.

Q. 40. The subpoena should give a reasonably accurate description of the document or item desired as evidence.

Q. 41. False (a clerk may not serve a subpoena and a mailed subpoena must be sent certified mail return receipt requested).

Q. 42. True.

Q. 43. True.

Q. 44. True.

Q. 45. False (the State can also request a writ of attachment).

Q. 46. True.

Q. 47. False.

Q. 48. False (the judge may set bail).

PART 3

Q. 49. Pre-trials help courts in caseflow management by:
(1) handling the defendant’s challenges to the charges filed;
(2) disposing of issues that do not relate to the merits of the case; or
(3) assuring in advance that other times set for disposition of uncontested cases will not be taken up by other matters.

Clerks may be able to list other ways that conducting pre-trials help manage their trial dockets.

Q. 50. A defendant’s attorney may be notified of a pre-trial hearing in one of the following ways:
(1) in open court;
(2) by personal service on the attorney; or
(3) by mail at least six days prior to the date set for the hearing.

Q. 51. Defendants may be notified of a pre-trial hearing in one of the following ways:
(1) in open court;
(2) by personal service on the defendant;
(3) by mail at least six days prior to the date set for hearing; or
(4) if the defendant has no attorney, by mail 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.

Q. 52. The court must enter a plea of not guilty.

Q. 53. True.

Q. 54. True.
PART 4
Q. 55. The reasons that a court would continue a case without a motion are:
   (1) the defendant has not been arrested;
   (2) a corporation or association has not been served with the summons; and
   (3) there is not sufficient time for trial at that term of court.
Q. 56. The defense and the prosecution may by agreement request a continuance in open court.
Q. 57. A continuance may be only for as long as is necessary.
Q. 58. A defendant, defense attorney, prosecutor, or juror.
Q. 59. The request must be made by an affidavit.
Q. 60. The request must state the grounds for the continuance and that the party holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.
Q. 61. When a clerk receives a request for a continuance, the clerk should present it to the judge and notify the prosecutor or the defense, whichever the case may be, of the continuance.
Q. 62. False (motions must be in writing and sworn).
Q. 63. True.
Q. 64. False.

PART 5
Q. 65. A list of prospective jurors to be summoned to serve for a particular term of the court.
Q. 66. Six.
Q. 67. True.
Q. 68. False.
Q. 69. True.
Q. 70. False.
Q. 71. True.
Q. 72. True.
Q. 73. True.
Q. 74. False (it is an exception but must be claimed first).
Q. 75. True.
Q. 76. False (the statutes only contemplate a civil case).
Q. 77. True.
Q. 78. False (it is an exception but must be claimed first).
Q. 79. True.
Q. 80. True.
Q. 81. True.
Q. 82. False (it must be requested).
Q. 83. True.

Q. 84. The court may want to require the following information from jurors:
- home address;
- home telephone number;
- social security 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
- when and where the person has previously served as juror.

Q. 85. A prospective juror may establish an exemption without appearing in person by filing a signed statement of the grounds for the exemption with the clerk of the court at any time before the date of trial.

Q. 86. The clerk is required to grant the postponement of jury service 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.

Q. 87. 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 nor more than $1,000.

Q. 88. Clerks must maintain a list of names and addresses of persons who are excused or disqualified from jury service because of nonresidence in the county. On the third business day of each month, the clerk must send to the voter registrar of the county a copy of the list of persons excused or disqualified in the previous month because the persons do not reside in the county. The voter registrar must add these persons to the county’s suspended voter list.

Q. 89. Clerks should make sure that this information is not available to the public. It may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel, except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror.

Q. 90. On a showing of good cause, the court shall permit disclosure of the information sought on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror.
Q. 91. $100.
Q. 92. Contempt.
Q. 93. The prosecutor, the defendant, or the defendant’s attorney may challenge the membership of the jury.
Q. 94. Either the prosecutor or the defendant or defendant’s attorney may demand a jury shuffle.
Q. 95. If the court is computerized, the court may have the computer shuffle and randomly select the names. If the court does not have a computer, the clerk should place the names of the jury panel in a receptacle, which should be shaken to mix up the names.
Q. 96. Regardless of how the names are shuffled, the names are recorded in the order that they are drawn or selected by the computer. The prospective jurors are then seated in the order selected. A copy of this new list is then given to the prosecution, defense, and judge.
Q. 97. The judge orders a new jury panel to be summoned. The judge must order someone other than the person who summoned the original panel to summon the new panel.
Q. 98. True.
Q. 100. True.
Q. 101. The juror is removed. The prosecutor or defendant does not have to state a reason for asking the court to remove the juror.
Q. 102. Each side may remove three jurors without assigning a reason to the request for removal. A juror may be removed for any reason, except for an illegal one, such as race. This is called a peremptory strike.
Q. 103. After voir dire and peremptory challenges, both the prosecutor and defendant give their lists to the court clerk who writes or prints the first names on the lists that have not been struck by either party. Then the clerk gives a copy of the list to the prosecutor, defendant, and judge.
Q. 104. If, after voir dire and peremptory challenges, the court does not have enough jurors to hear the case, the court would order a pick-up jury.
Q. 105. Usually, a peace officer is ordered to summons a pick-up jury.

PART 6
Q. 106. False (a defendant may, with the consent of the prosecutor, appear by his or her attorney and the trial may proceed without the defendant being present).
Q. 107. False.
Q. 108. True.
Q. 110. False.
Q. 111. True.
Q. 112. True.
Q. 113. False.
Q. 114. The clerk should give a copy of the juror information sheets to the prosecutor, defendant, and judge. At the conclusion of the trial, the clerk should collect them and file them with the case.

Q. 115. A $3 fee.

Q. 116. True.

Q. 117. False.

Q. 118. True.

Q. 119. True.

Q. 120. True.

Q. 121. True.

Q. 122. False.

Q. 123. The judgment is the decision of the judge.

Q. 124. The verdict is the decision of a jury.

Q. 125. False.

Q. 126. If a jury fails to agree on a verdict after being kept together for a reasonable amount of time.

Q. 127. Another trial may be conducted as soon as practicable.

Q. 128. In open court.

Q. 129. False.

Q. 130. True.

Q. 131. A notice of final conviction within seven days of the date of judgment.

Q. 132. True.

Q. 133. False (the court must credit not less than $50 for a period of time that is specified in the judgment—the “period of time” can be from eight hours to 24 hours).

Q. 134. True.

Q. 135. False (only one $5 fee is collected upon conviction, not one for each juror).

PART 7

Q. 136. False (the law provides for five days).

Q. 137. The State is never entitled to a new trial in municipal court.

Q. 138. Under 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 day after the date the document is required to be filed with the clerk.

Q. 139. The judge must rule on a motion for new trial not later than the 10th day after the date that the judgment was entered.

Q. 140. The motion is overruled by operation of law.
PART 8
Q. 141. False (the court is required to provide a licensed interpreter).
Q. 142. False (if the court is located in a county with a population of more than 50,000, the court must appoint a licensed interpreter; if the city is located in a county of less than 50,000, the court must qualify the interpreter under the Rules of Evidence).
Q. 143. True.
Q. 144. True.
Q. 145. False (only a city located in a county that has a population of less than 50,000 may appoint an interpreter that is not licensed, and the interpreter must be qualified under the Texas Rules of Evidence).
Q. 146. A court in a county with population of at least 50,000 may appoint a spoken language interpreter who is not certified or licensed if:
   • the language necessary in the proceeding is a language other than Spanish; and
   • 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.
Q. 147. A qualified telephone interpreter may be sworn to interpret for the person in a trial of a Class C misdemeanor or a proceeding before a magistrate if:
   • an interpreter is not available to appear in person before the court; 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 57.001 of the Government Code; or
   • federally certified court interpreters.
Q. 148. Provide an interpreter or some type of auxiliary aid.
Q. 149. The court.
Q. 150. Class A misdemeanor.

PART 9
Q. 151. True.
Q. 152. True.
Q. 153. False.

PART 10
Q. 154. Contempt power is given to the courts so that the proceedings will be conducted with dignity and in an expeditious manner so that justice may be done.
Q. 155. Direct contempt means an act that occurs in the judge’s presence and under circumstances that require the judge to act immediately to quell disruption, violence, disrespect, or physical abuse. Indirect contempt is an act that 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; or filing offensive papers with the court. If a person is charged with indirect contempt, the person has a right to notice of the charge, a right to a trial or hearing in open court, and the right to counsel. Civil contempt includes wilfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings, obstruct justice, are directed against the dignity of the court, or bring the court into disrepute.

Q. 156. A fine not to exceed $100 and/or three days in jail.
Q. 158. A fine of not more than $100.
Q. 159. A fine not to exceed $100.
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INTRODUCTION

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

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

Q. 1. What is a judgment? _____________________________________________________
Q. 2. Define adjudication. ______________________________________________________
Q. 3. How is a judgment satisfied? _______________________________________________
Q. 4. Who can make a decision about how a defendant satisfies a judgment? _____________

PART 1
SENTENCING AND PUNISHMENT

A. Penalties

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

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

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

The court may also direct the defendant:

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

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

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

Although the city government or joint airport board establishes penalty ranges under state guidelines, it is within the sole discretion of the judge to set fines within the penalty range. Some judges determine the fine on a case-by-case basis, while other judges establish a minimum
suggested fine schedule that may be printed on the back of citations or given to clerks at the window. This schedule is for defendants who do not want to contest the charges filed against them in court and is sometimes referred to as the “window fine.”

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

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

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

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

2. State Law Offenses

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

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

3. Class C Misdemeanors

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

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

For some violations of Class C misdemeanors, the penalty is different depending on the age of the defendant. For example, defendants under the age of 21 charged with the offense of public intoxication are subject to different penalties than are those 21 or older. A person 21 or older
faces a penalty of a fine up to $500 while a person under the age of 21 is punished in the same manner as a minor charged with an Alcoholic Beverage Code offense. Sec. 49.02(e), P.C. The penalties for those offenses are found in Section 106.071 of the Alcoholic Beverage Code and include a fine of up to $500, community service, driver’s license suspension, and an alcohol awareness course. Sec. 106.071, A.B.C.

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

B. Restitution

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

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

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

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

C. Payment of Fine and Costs

1. Jail Time Credit

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

The rate of credit is not less than $50 for a period of time specified in the judgment. “Period of time” is defined as not less than eight hours or more than 24 hours. Arts. 45.041 and 45.048, C.C.P. When a judge enters judgment, he or she must specify the amount of time that the defendant must serve to receive jail credit (e.g., $100 per eight hours, or $50 per 24 hours, whatever rate the judge chooses to set).
As custodian of the records, court clerks should properly record jail-time credit. In some instances, the defendant may have enough jail-time credit to satisfy the total fine and court costs; in other instances, it may be just part of the amount owed. If a defendant does not pay any money to the court because he or she had sufficient jail credit for both fine and court costs, the Comptroller does not require the court to remit court costs that were not collected in money.

2. Payment by Credit Card

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

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

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

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

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

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

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

3. Payment by Community Service

Judges may require defendants who fail to pay previously assessed fines or costs, or who are determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. Art. 45.049, C.C.P.

When a defendant discharges a fine and/or costs by performing community service, the person is satisfying the judgment by means other than cash. The defendant may discharge an obligation to perform community service by paying at any time the fine and costs assessed.
A community supervision and corrections department or a court-related services office may provide administrative duties and other services necessary for placement in community service programs.

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

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

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

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

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

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

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

4. Installment Payments

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

5. Waiver of Fine and Costs

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

<table>
<thead>
<tr>
<th>True or False</th>
</tr>
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</table>

Q. 5. When a judge enters a judgment, the penalty is the fine and costs and in some cases, other sanctions. ____

Q. 6. Municipal courts may not require restitution. ____

Q. 7. Statutes do not establish limits on the amount of maximum possible penalties that municipalities may create in their ordinances. ____

Q. 8. If a judge believes that the maximum fine is not high enough, the judge may assess a higher fine. ____

Q. 9. Fine penalties for violations of state law offenses vary. ____

Q. 10. The maximum possible fine for a Class C Penal Code offense is $500. ____

Q. 11. Offenses outside of the Penal Code that are fine-only, regardless of the amount of the fine, are Class C misdemeanors. ____

Q. 12. When a municipal court orders restitution upon convictions, it may be in an amount up to the amount of the fine assessed, except for the offense of issuance of bad check. ____

Q. 13. The maximum restitution that municipal courts may require for the issuance of a bad check is $5,000. ____

Q. 14. Clerks should keep records of restitution payments and coordinate payments to victims. ____

Q. 15. Judges who know that a defendant has had a prior conviction can impose a higher fine regardless of how the offense was charged by the officer or prosecutor. ____

Q. 16. What are judges required to do when a defendant is arrested, placed in jail, and later convicted? _____________________________________________________________

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

Q. 18. What is the clerk’s responsibility regarding records of defendants who have been in jail and later convicted? ____________________________________________________________

Q. 19. When may a court collect fines, fees, and bonds by credit card? ____________________

Q. 20. What amount may the processing fee not exceed? ____________________

Q. 21. What happens if a credit card is not honored by the credit card company? ____________

Q. 22. If a service charge is assessed, at what amount may it be set? ____________________
True or False

Q. 23. When a defendant fails to pay a previously assessed fine, the court may require a defendant to perform community service to discharge the fine. ____

Q. 24. Judges must specify in a community service order the amount of hours to be worked. ____

Q. 25. Community service may only be performed for a governmental entity or a nonprofit organization. ____

Q. 26. If a judge determines that working more than 16 hours a week will not be a hardship, the court may order more time. ____

Q. 27. A judge is not liable for damages arising from an act or failure to act in connection with manual labor if the failure to act was performed under a court order and not intentional, willfully, or wantonly negligent. ____

Q. 28. When a defendant defaults in payment of a fine and the court determines that the defendant is indigent, the court must waive payment of the fine and court costs. ____

Q. 29. The time payment fee is required to be paid by a defendant who pays any part of a fine, costs, or restitution on or after the 31st day after a judgment is rendered. ____

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PART 2
REPORT OF CONVICTION

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

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

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

True or False

Q. 30. Courts are required to report to the Department of Public Safety all convictions for violations of laws regulating the operation of a vehicle on a highway. ____
Q. 31. When a defendant posts a bond and fails to appear for traffic offenses, the court must report the bond forfeiture to the Department of Public Safety when there is a final judgment on the forfeiture. _____

Q. 32. If a court fails to properly report traffic convictions to the Department of Public Safety, the judge or clerk may be removed for misconduct in office. _____

Q. 33. Courts are required to report to the Department of Public Safety within 30 days of the date of conviction. _____

PART 3
FINE ENFORCEMENT AND COLLECTION

A. Default in Payments

1. Capias Pro Fine

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

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

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

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

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

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

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

Art. 45.046, C.C.P. This commitment hearing can be done over an electronic broadcast system, meaning a two-way electronic communication of image and sound between the defendant and the court, and includes secure internet videoconferencing.

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

2. Indigency Hearings

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

3. Civil Collection of Fines

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

**B. Contracts**

1. **With the Department of Public Safety**

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

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

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

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

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

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

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

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

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

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

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

3. With Public and Private Vendors

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

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

Vendors and attorneys sending a communication to an accused person regarding the amount of payment that is acceptable to the court under the court’s standard policy for resolution of a case, must include a notice of the person’s right to enter a plea or go to trial on any offense charged. Article 103.0031(b) provides that a city that enters into a contract with a private attorney or vendor may authorize the addition of a collection fee in the amount of 30 percent on each item that has been referred for collection. Article 103.0031(i) allows cities to enter into a contract to collect a debt incurred on an offense that was committed before June 18, 2003, but no collection fee may be added to those amounts.

Q. 34. What is a capias pro fine?

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

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

Q. 37. When a defendant is arrested for default in payment of fine, who must conduct the indigency hearing?
Q. 38. If a defendant is indigent, what must the court do? ____________________________

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

Q. 40. A contract with DPS (“OmniBase”) for denial of driver’s license renewal applies to what offenses? ____________________________

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

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

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

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

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

PART 4
ALTERNATIVE SENTENCING

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

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

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

1. Offenses to Which DSC/MOC Applies

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

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

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

3. **Eligibility and Requirements**

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

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

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

4. **Costs**

   a. **Mandatory**

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

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

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

c. **Optional Driving Record Fee**

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

5. **When Course Granted**

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

6. **Course Requirements**

a. **DSC**

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

b. **MOC**

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

c. **Special Safety Belt Course**

If the offense charged is either Section 545.412 or 545.413(b) of the Transportation Code involving securing children in child safety seat systems or safety belts, defendants have a right to request a driving safety course. The court, after determining if the defendant is eligible, must require a driving safety course that contains four hours of instruction on the effectiveness and safety of using a child safety seat systems and safety belts. Secs. 545.412(g) and 545.413(i), T.C. If the defendant completes the course, the court must dismiss the case and report the completion date of the driving safety course for inclusion in the defendant’s driving record.

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

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

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

8. **Satisfactory Completion**

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

9. **Failure to Submit Required Evidence**

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

10. **Appeal**

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

11. **Payment of Fine**

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

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

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

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

B. Deferred Disposition

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

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

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

1. Deferral of Proceedings for Fine-Only Offenses

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

a. Plea

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

b. Court Costs

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

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

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

**c. Fine**

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

**d. Alcoholic Beverage Code Offenses**

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

**e. Time Period**

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

**f. Discretionary Terms**

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

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

**g. Mandatory Terms**

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

- If the defendant is under the age of 25 and charged with a moving traffic violation, the court *shall* require as a term of deferred disposition, a driving safety course. The defendant must submit proof of taking the course. See the *Traffic Law* chapter of this Study Guide for a list of moving violations as defined by DPS. In addition, the judge may order the defendant to complete another driving safety course geared towards drivers under 25, and commonly known as “Alive @ 25.”
• If the defendant has a provisional driver’s license and is charged with a moving violation, the court shall require as a term of deferred disposition that the defendant be examined by DPS as required by Section 521.161(b)(2) of the Transportation Code, which requires DPS to test a person’s ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the person will be licensed to operate. The person must pay DPS a $10 fee for the examination. Note: Persons under the age of 18 have provisional driver’s licenses. Sec. 521.123, T.C. The defendant must submit proof of being examined by DPS.

• If the offense is an Alcoholic Beverage Code offense or the Penal Code offense of public intoxication and the defendant is younger than 21 years of age, as a term of the deferral, the court must require the defendant to take an alcohol awareness course. Sec. 106.115, A.B.C.

• The court must require community service as a term of probation when granting deferred if the offense is one of the following:
  - purchase of alcohol by a minor;
  - attempt to purchase alcohol by a minor;
  - consumption of alcohol by a minor;
  - possession of alcohol by a minor;
  - misrepresentation of age by a minor; or
  - public intoxication.

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

h. Satisfactory Completion

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

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

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

i. Special Expense Fee

The judge may impose a special expense fee in an amount not to exceed the amount of the fine assessed, but deferred. Art. 45.051(c), C.C.P. This special expense fee can be paid at any time prior to the end of the probationary period. The defendant is not required to also pay the fine. The special expense fee is in lieu of the fine.

j. Failure to Comply with the Terms

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

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

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

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

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

**k. Docket Entries**

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

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

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

- the final judgment—whether the case was dismissed or there was a conviction;
- any special expense fee paid, method of payment, and receipt number of payment;
- show cause hearing date, if any;
- fine imposed, method of payment, and receipt number, if any; and
- appeal made, if any.
I. Reports to Department of Public Safety

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

- Alcoholic Beverage Code offenses – Courts must report to DPS the order of deferred disposition for all minors charged with offenses under the Alcoholic Beverage Code. The report is made at the time the deferred disposition is granted. Sec. 106.117, A.B.C.

2. Deferral of Proceedings for Chemically Dependent Persons

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

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

a. Plea

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

b. Court Costs

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

c. Time Period

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

d. Application for Treatment

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

e. Satisfactory Completion

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

f. Expunction

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

If evidence of completion is not determined to be satisfactory to the court, the court may:
- impose the fine assessed; or
- impose a lesser fine.

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

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

h. **Docket Entries**

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

At the end of the deferral period, the clerk should note in the docket:
- the final disposition—whether there was a dismissal or a conviction;
- fine imposed, method of payment, and receipt number, if any; and
- appeal, if any.

<table>
<thead>
<tr>
<th>Q. 46. What offenses are not eligible to be dismissed by completing a driving safety course?</th>
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<td>Q. 47. When must a defendant enter a plea to be eligible to take a driving safety course?</td>
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True or False

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

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

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

Q. 51. Defendants completing a driving safety course do not have to pay court costs. _____
Q. 52. A defendant who is not entitled to take a driving safety course must pay an administrative fee equal to the amount of the fine that could have been imposed. 

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

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

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

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

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

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

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

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

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

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

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

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

Q. 65. When a defendant with a provisional driver’s license charged with a moving violation is granted deferred, the only mandatory requirement is to take a driving safety course.
Q. 66. List the information a clerk should document in the docket when a judge grants a defendant deferred disposition. ___________________________________________
______________________________________________________________________

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

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

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

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

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

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

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

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

PART 5
APPEALS

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

B. Appellate Courts
1. Appeals from Municipal Courts
Appeals from a municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court. In cases where the county court has no jurisdiction, appeals shall be heard by whatever is deemed the proper court. Art. 45.042, C.C.P.
a. When Appellate Court Does Not Have Jurisdiction

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

b. When Appellate Court Refuses Jurisdiction

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

2. Appeals to a Municipal Court

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

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

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

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

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

C. Appeals from Non-Record Municipal Courts

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

D. Appeals from Municipal Courts of Record

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

E. Bond Pending Appeal

Pending the determination of any motion for new trial or the appeal from any misdemeanor conviction, the defendant is entitled to be released on reasonable bail. If a defendant on bail is convicted and appeals, the bond is not discharged until he or she files an appeal bond as required by the Code of Criminal Procedure for appeal from the conviction. Art. 44.04, C.C.P.
F. Appeal Bonds

1. Rules

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

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

2. Types of Appeal Bonds

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

3. Amount of Appeal Bond

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

G. Appearance Not Required to Post Appeal Bond

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

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

H. Time to Present Court with Bond

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

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

1. Computing Time

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

2. Mailbox Rule

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

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

I. Perfection of Appeal

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

J. Notice of Appeal

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

K. When a Defendant Pays the Fine

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

L. Effect of Appeal

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

M. Role of the Clerk

1. Ministerial Duty

“The courts typically characterize the powers and duties of the district clerks as ministerial functions.” Tex. Atty. Gen. Op. JM-694 (1987). The Texas Court of Criminal Appeals has also characterized the role of the court clerk in the appellate process. The forwarding of appeals is a mandatory ministerial duty and not discretionary for the clerk or the judge for that matter.
When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it with the date it was filed in the court, and then give it to the judge who will decide whether or not to approve the bond. Even if the judge does not approve the bond, the clerk has a mandatory ministerial duty to send the case to the appellate court. The appellate court will make the decision whether it has jurisdiction of the case.

2. Sending Case to Appellate Court

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

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

N. Conviction or Affirmance of Judgment on Appeal

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

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

O. Withdrawal of Appeal

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

Q. 75. Does someone charged with a city ordinance violation have the right to appeal his or her conviction? ____________________________________________________________

Q. 76. Does someone who fails to appear and is later arrested and convicted have a right to appeal her conviction? ____________________________________________________________

Q. 77. Which court has jurisdiction over municipal court appeals? _____________________

Q. 78. When a defendant fails to file his or her bond with the municipal court timely, what happens to the appeal? ____________________________________________________________

Q. 79. What happens when an appellate court determines that it does not have jurisdiction to hear a case? ____________________________________________________________

Q. 80. What happens to a case appealed from a non-record court? _____________________

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

Q. 82. List types of appeal bonds. ____________________________________________________________
Q. 83. What must the amount of an appeal bond be? _________________________________

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

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

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

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

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

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

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

Q. 91. Explain the mailbox rule. ________________________________________________

Q. 92. When is a defendant’s appeal completed? ____________________________________

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

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

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

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

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

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

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

Q. 100. If an appeal is from a court of record, can a defendant withdraw an appeal? __________
APPENDIX A: CHECKLIST FOR HANDLING APPEALS

APPEALS CHECKLIST
FOR NON-RECORD MUNICIPAL COURTS

☐ All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.

☐ Defendant is not required to go to trial in order to appeal.

☐ Judgment is entered (conviction). Art. 45.041, C.C.P.

☐ Defendant can plead guilty or nolo contendere and appeal.

☐ If defendant does not complete a driving safety course or the terms of deferred disposition, after the court enters final judgment, the defendant may still appeal.

☐ Defendant gives notice of appeal (but is not required to do so). Art. 45.0426(c), C.C.P.

☐ Defendant appeared at trial or in open court – 10 days from date of judgment to file appeal bond. Arts. 44.16 and 45.0426(a), C.C.P.

☐ Mailbox Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed. (Keep envelope) Art. 45.013, C.C.P.

☐ If the appeal bond is not timely, the municipal court must still send it to the appellate court.

☐ Defendant appears by mail or in person at the clerk’s window – court must either personally deliver notice of the amount of fine and appeal bond or notify the defendant by certified mail, return receipt requested. Defendant has up to 31 days from the date of receiving the notice to file an appeal bond. Art. 27.14(b), C.C.P.

☐ If appeal bond is not timely filed, the municipal court must still send it to the appellate court.

☐ Appeal appearance bond must be at least two times the amount of the fine and court costs, but in no case less than $50. Art. 45.0425(a), C.C.P.

☐ Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond. Arts 17.38, 44.20, C.C.P.

☐ Conditions of the appeal bond – Must recite that the defendant has been convicted and appealed and will make a personal appearance before the court to which the appeal is taken instanter, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the appealed case before the appellate court. Art. 45.0425(b), C.C.P.

☐ When court receives bond, clerk should date stamp day received.

☐ Bond filed with court perfects appeal. Art. 45.0426(a), C.C.P.

☐ Give bond to judge to make a determination if the surety is sufficient. Art. 44.04(e), C.C.P. If appeal bond otherwise meets the requirements of the Code of Criminal Procedure, the court must approve the bond. Art. 45.0425, C.C.P.
Clerk makes copies of all original papers in the case file.

Clerk sends the case with all original papers and the bond with a certified transcript to the appellate court (usually county court). Art. 44.18, C.C.P.

Case is tried de novo (new trial) in county court. Arts. 44.17 and 45.042(b), C.C.P.

If defendant is convicted in appellate court, appellate court collects fine and deposits it in the county treasury.

Withdrawal of appeal

- Defendant may not withdraw appeal from a non-record municipal court.

If bond filed after deadline, the appellate court shall remand the case to the municipal court to collect judgment. (If the court receives the case back, the court should notify the defendant that the fine and costs are due in the municipal court. If the defendant fails to pay the fine and costs, the municipal court can issue a capias pro fine for collection of the judgment.)

If the bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.
CHECKLIST FOR APPEALS
FROM MUNICIPAL COURT OF RECORD

☐ All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.
☐ Defendant is required to go to trial and a record of the trial must be made.
☐ Judgment is entered (conviction). Art. 45.014, C.C.P.
☐ Defendant makes a written motion for a new trial not later than 10th day after date on which judgment is rendered. Sec. 30.00014(c), G.C.
  ☐ The motion may be amended with permission of the court not later than the 20th day after the date on which the original motion is filed.
  ☐ The court may extend the time for filing or amending not to exceed 90 days from the original filing deadline.
  ☐ If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.
☐ If the motion for new trial is denied, the defendant must give notice of the appeal not later than the 10th day after the date on which the motion for new trial was overruled. Section 30.00014(d), G.C.
  ☐ The notice of appeal may be given orally in open court, if the defendant requested a hearing on the motion for new trial.
  ☐ If there is no hearing on the motion for new trial, the notice of appeal must be in writing and must be filed with the court not later than the 10th day after the motion for new trial is overruled. The court may extend the time period not to exceed 90 days from the original filing deadline for good cause.
☐ The appeal bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. Sec. 30.00015(a), G.C.
☐ The appeal bond must be in the amount of $100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater. Sec. 30.00015(b), G.C.
  ☐ Conditions of appeal bond – Must state that the defendant was convicted in the case and has appealed; and be conditioned on the defendant’s immediate and daily personal appearance in the court to which the appeal is taken. Sec. 30.00015(c), G.C.
☐ Defendant must pay a $25 fee for the preparation of the clerk’s record. City must establish the fee by ordinance. The clerk shall note the payment of the fee on the docket of the court. The fee will be refunded to the defendant if the case is reversed and dismissed on appeal. Secs. 30.00014(f) and 30.00017, G.C.
☐ Defendant must pay a fee for an actual transcription of the proceedings. Sec. 30.00014(g), G.C.
☐ Defendant must pay for a reporter’s record. Sec. 30.00019(b), G.C.
Record on appeal – must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00016, G.C.

The clerk’s record must conform to the provision in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00017, G.C.

The bills of exception must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Sec. 30.00018, G.C.) (A formal statement in writing of the objections or exceptions taken by a party during the trial of a cause to the decisions, rulings, or instruction of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and, in order to attest its accuracy, signed by the judge.)

The reporter’s record must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00019, G.C.

Transfer of the record – Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file the reporter’s record, a written description of material to be included in the clerk’s record in addition to the required material, and any material to be included in the clerk’s record that is not in the custody of the clerk. Sec. 30.00020(a), G.C.

On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals. Sec. 30.00020(b), G.C.

After the judge approves the record, the clerk shall promptly send the record to the appellate court clerk for filing. Sec. 30.00020 (c), G.C. The appellate court clerk notifies the defendant and prosecutor that the record has been filed.

The appellate court determines appeals from the municipal court of record on the basis of errors that are set forth in the appellant’s motion for new trial and presented in the transcript and statement of facts. Sec. 30.00014(b), G.C.

Brief on appeal

Appellant must file a brief with the appellate court clerk not later than the 15th day after the date on which the clerk’s record and reporter’s record are filed with the appellate court clerk.

The appellee must file the appellee’s brief with appellate court clerk not later than the 15th day after the date on which the appellant’s brief is filed.

Each party, on filing the party’s brief with appellate court clerk, shall deliver a copy of the brief to the opposing party and to the municipal judge. Sec. 30.0021, G.C.

Withdrawal of appeal

Defendant may submit a written motion to withdraw appeal.

If bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.

The appellate court clerk shall mail copies of the decision to the parties and to the municipal judge as soon as the decision is rendered.
Disposition on appeal – Appellate court may:
- Affirm the judgment of the municipal court of record;
- Reverse and remand for a new trial;
- Reverse and dismiss the case; or
- Reform and correct the judgment.

If appellate court reverses and dismisses the case, the court must refund the $25 fee for the preparation of the clerk’s record to the defendant. Sec. 30.00014(f), G.C.

If appellate court grants a new trial, it is as if the municipal court of record granted the new trial. The new trial is conducted by the municipal court of record. Sec. 30.00026, G.C.

If the judgment is affirmed, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant, and the fine of the municipal court when collected shall be paid into the municipal treasury. Art. 44.281, C.C.P.
INTRODUCTION

Q. 1. It is the final decision of a court and includes a dismissal if there is an acquittal or an adjudication of guilt and an assessment of punishment.

Q. 2. It is the formal pronouncement of the judgment. Adjudicate means that the judge makes a final determination of fact and enters a judgment. Generally, the judge renders judgment, which means that the judge pronounces judgment, and then enters a judgment. This is a judicial act that only a judge may perform.

Q. 3. A judgment is satisfied when the defendant has completed everything the judgment ordered him or her to do, most often by paying the fine and costs in full.

Q. 4. Only the judge.

PART 1

Q. 5. True.


Q. 7. False.


Q. 10. True.

Q. 11. True.

Q. 12. False (there is no cap on restitution, except on the offense of issuance of bad check, when ordered as part of the sentence upon conviction; when ordered as a condition of deferred, restitution can be in an amount up to the fine that could have been assessed).


Q. 15. False.

Q. 16. The court is required to give the defendant credit on his or her sentence for the time that the defendant spent in jail from the time of his or her arrest and confinement until his or her sentence by the trial court.

Q. 17. “Period of time” is defined as not less than 8 hours or more than 24 hours as specified in the judgment of a case.

Q. 18. As custodian of the records, clerks should properly record jail-time credit on a defendant’s case file and in the docket.

Q. 19. Only after the governing body (city council) has authorized payment of fees, fines, court costs, or other charges by credit card.

Q. 20. The processing fee may not exceed five percent of the amount of the fee, fine, court costs, or other charge being paid.

Q. 21. If a defendant’s credit card is not honored by the credit card company, the city may collect a service charge from the person who owes the fee, fine, court costs, or other charge. (Note: The municipal court may also issue a capias pro fine.)
Q. 22. The amount of the service charge is the same as the fee charged for the collection of a check drawn on an account with insufficient funds.
Q. 23. True.
Q. 24. True.
Q. 25. True.
Q. 27. True.
Q. 28. False (if the court determines, after a defendant has defaulted in payment of fine and or costs, that the defendant is indigent and that each alternative method of discharging a fine or cost under Article 45.049 of the Code of Criminal Procedure would impose a hardship on the defendant, then the court may waive the fine and costs).
Q. 29. True.

PART 2
Q. 30. True.
Q. 31. True.
Q. 32. True.
Q. 33. False (must be reported not later than the seventh day).

PART 3
Q. 34. A capias pro fine is a writ issued by a court having jurisdiction of a case after judgment and sentence for unpaid fines and costs. If the defendant is not in custody when judgment is rendered or if the defendant fails to satisfy the judgment, the court may issue a capias pro fine.
Q. 35. Court clerks should research court records to be certain that an error in recordkeeping has not occurred. Then clerks should present the judge with information that the defendant still owes a fine and costs or part of a fine and costs and that the judgment has not been satisfied.
Q. 36. Only the judge.
Q. 37. The judge who has jurisdiction over the case.
Q. 38. The court has a duty to inquire into reasons for non-payment to avoid jailing indigent defendants and if the defendant is indigent allow the defendant to first discharge the fine through community service or through a time payment plan. However, if the court determines that an alternative method of discharging the fine under Article 45.049 of the Code of Criminal Procedure would impose an undue hardship, the court may waive the fine and costs.
Q. 40. Any fine-only offense.
Q. 41. When a defendant perfects an appeal of the case for which the warrant of arrest was issued or judgment arose; when a defendant posts bond or gives other security to reinstate the charge for which the warrant was issued; when the defendant pays the
fine and costs owed on the outstanding judgment or makes suitable arrangement to pay the fine and costs within the court’s discretion; when the case is dismissed.

Q. 42. Any city may contract.

Q. 43. Vehicle registration may be denied for certain traffic offenses that have a maximum possible penalty of $200.

Q. 44. Article 103.0031 of the Code of Criminal Procedure provides authority for a city to contract with a private attorney or vendor to collect fines, fees, restitution, and other debts or costs.

Q. 45. The debt or failure to appear must be owed on the 61st day after the defendant was ordered to pay or failed to appear.

PART 4

Q. 46. The following offenses cannot be dismissed through a driving safety course:
- Speeding 25 mph or more over the speed limit
- Driving 95 mph or more
- Offense committed in a construction or maintenance zone when workers are present
- Passing a school bus loading or unloading children
- Leaving the scene of a collision after causing damage to a vehicle that is driven or attended
- Leaving the scene of a collision and failing to give information and/or render aid
- Serious traffic violation
- Offense committed by a person who held a commercial driver’s license at the time of the offense or holds a CDL at the time of the request for DSC, including when the person is driving his or her own vehicle

Q. 47. On or before the answer date on the citation.

Q. 48. False (the defendant must enter a plea on or before his appearance date; after trial, it is within the judge’s discretion to grant).

Q. 49. False (the judge can grant a DSC in his or her discretion).

Q. 50. True.

Q. 51. False.

Q. 52. False (defendants entitled to take a DSC may be required to pay an administrative fee of up to $10; those granted a DSC under the court’s discretionary power may be required to pay an administrative fee up to the amount of the fine that could have been imposed).

Q. 53. Violation of the child safety seat offense under Section 545.412 or failure to secure a child in a safety belt under Section 545.413 of the Transportation Code.

Q. 54. 90 days.

Q. 55. Evidence of completing the course (uniform certificate); a certified copy of his or her driving record as maintained by the Department of Public Safety; and an affidavit.
(Note: If the defendant is on active military duty, the court most likely will not have the defendant’s driving record from DPS.)

Q. 56. Only the judge.

Q. 57. The following offenses are not eligible for deferred disposition:

- Offenses committed in a construction work zone when workers are present.
- A minor charged with the offense of consuming an alcoholic beverage if the minor has been previously convicted twice or more of this offense.
- A minor charged with the offense of driving under the influence of an alcoholic beverage if the minor has been previously convicted twice or more of this offense.
- A minor who is not a child (under age 17) and who has been previously convicted at least twice of an offense to which Section 106.071 of the Alcoholic Beverage Code applies.
- A defendant charged with a traffic offense who has a commercial driver’s license or had one at the time the traffic offense was committed.

Q. 58. The judge can require the defendant to pay court costs before granting deferred disposition, or allow the defendant to pay in installments; by performing community service; or by both installments and community service during the probation.

Q. 59. 180 days.

Q. 60. False (fines are only imposed upon conviction).

Q. 61. True.


Q. 63. True.

Q. 64. True.

Q. 65. False (the defendant must also take a driving safety course).

Q. 66. The following information should be entered in the docket when a judge grants deferred disposition: (1) the date the judge ordered the sentence to be suspended and the disposition deferred; (2) the deferral period; (3) the court costs paid; (4) the fine assessed; (5) whether there was a plea of guilty or nolo contendere, or whether there was a finding of guilt after a trial.

Q. 67. Dismiss the case.

Q. 68. The clerk should note in the docket that the complaint is dismissed (after the judge signs the dismissal judgment).

Q. 69. The court may assess a special expense fee to be paid before the end of the deferral period.

Q. 70. The special expense fee may not exceed the amount of the fine that could be imposed.

Q. 71. When a defendant fails to present satisfactory evidence of compliance of the terms of the deferral within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to appear to show cause why the order of deferral should not be revoked.

Q. 72. The court does not submit to DPS a record of a traffic case where deferred disposition has been granted unless the defendant fails to complete the terms of deferred
disposition and the judge enters a final judgment of guilty. Then the judge reports a conviction to DPS.

Q. 73. The court is required to report an order of deferred disposition for all minor Alcoholic Beverage Code offenses.

Q. 74. If a defendant fails to comply with the terms of deferred disposition and the court enters a final judgment against the defendant, the defendant may appeal the case.

PART 5

Q. 75. Yes.
Q. 76. Yes.
Q. 77. The county court.
Q. 78. If the defendant fails to file an appeal bond within the required time limit, the municipal court sends the appeal to the county court. The county court has to make the decision whether or not to take jurisdiction of the case. If the county court decides that it does not have jurisdiction, it sends the case back to municipal court.
Q. 79. The appellate court sends the case back to municipal court, which can then collect its judgment.
Q. 80. The trial in the appellate court is de novo, a new trial as if the case had originally commenced in that court.
Q. 81. The appeal is based upon errors reflected in the record of the trial.
Q. 82. The types of appeal bonds are: cash appeal bond, surety appeal bond, and personal appeal bond.
Q. 83. An appeal bond may not be less than two times the amount of the fine and court costs, but it may be more. In no case can it be less than $50.
Q. 84. True.
Q. 85. False (must be sent certified mail return receipt requested).
Q. 86. False (defendant has 31 days from the date defendant receives notice of the amount of the appeal bond).
Q. 87. If the defendant appears in open court, the defendant has 10 days after the judgment is entered to present the court with an appeal bond.
Q. 88. No (the court counts the following day as day one).
Q. 89. Yes.
Q. 90. No.
Q. 91. The mailbox rule provides that a document may be filed with the court by mailing it in a first class postage prepaid envelope, properly addressed to the clerk, on or before the date the document is required to be filed. It is considered timely filed if the clerk receives it not later than the 10th day after the date that it is required to be filed. Hence, an appeal bond is timely filed if it is received timely under the mailbox rule.
Q. 92. A defendant’s appeal is completed when the defendant presents the court with an appeal bond in the required time period.
Q. 93. When the defendant was under duress to plead guilty or nolo contendere or to pay the fine. *Hogan v. Turland*, 430 S.W.2d 720 (Tex. Crim. App.—Austin 1967).

Q. 94. The clerk’s role is characterized as ministerial. When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it with the date it was filed with the court and then give it to the judge. The clerk has a mandatory ministerial duty to send the appeal to the appellate court.

Q. 95. No.

Q. 96. Along with the transcript, the court is required to send all the original documents in the case. The court keeps copies for its file.

Q. 97. All proceedings in municipal court cease.

Q. 98. If there is a conviction in the county court, the county keeps the fine money and reports the court costs to the State.

Q. 99. No, not without a writ of procedendo.

Q. 100. Yes.
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INTRODUCTION

State laws require municipal courts to file reports with certain state agencies and to remit court costs and some fines to the State. The agencies responsible for obtaining the information and money from the courts typically provide guidelines and forms. Usually clerks submit the reports, although in some instances, statutes provide that the judge is responsible for the maintenance and submission. These duties, although required of the judge, are generally ministerial and administrative in nature. For this reason, the judge may delegate these duties to the clerk.

There are three state agencies that require reporting from all municipal courts: the State Comptroller of Public Accounts (CPA); the Department of Public Safety (DPS); and the Office of Court Administration (OCA).

Some reports help courts to enforce appearance and payment of fines in their courts. For example, when a juvenile fails to appear or pay, the court submits a report to the DPS to deny issuance of or to suspend the driver’s license until the juvenile appears and complies with court orders. Other reports help build the defendant’s criminal record to be used by other courts if the defendant is later charged with another offense. For example, when a defendant completes a driving safety course, the court submits a report to the DPS to add that course to the defendant’s driving record so that future courts can know if the defendant is eligible or ineligible for a driving safety course.

Clerks should always submit required reports timely to avoid the consequences of improper reporting. For example, the statute governing the reporting of traffic convictions to DPS provides that failure to timely submit reports may constitute misconduct of office and be grounds for removal from office. State statutes also provide that if the court does not submit a monthly report of statistics to the OCA, the judge or clerk may be ordered to report by a court of superior jurisdiction. Failure to timely and properly report court costs to the State carries financial consequences. The State will collect the unpaid amounts from the city including the 10 percent handling fee that the city would ordinarily keep if the city had properly reported.

Sometimes courts—particularly those without computers—have difficulty collecting data and preparing reports. These courts must develop manual processing procedures and rules for maintaining the data to help them manage the day-to-day collection of the information to enable them to timely and properly report. If court records are maintained electronically, computer software programs are designed to properly capture the required information for the reports.

This chapter discusses required and optional reports and the specific requirements of these reports. The goal of this guide is to help clerks understand how to properly report to DPS, OCA, and the CPA.

PART 1

REPORTS TO THE DEPARTMENT OF PUBLIC SAFETY

A. Transportation Code

Each magistrate, judge of a non-record court, and clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. Sec. 543.201, T.C. Courts are required to report traffic convictions and
bond forfeitures on a form or by a data processing method acceptable to DPS. Section 543.202 of the Transportation Code requires courts to report the following information:

- the name, address, physical description including race or ethnicity, date of birth, and driver’s license number of the person charged;
- the registration number of the vehicle involved;
- whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;
- the person’s social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver’s license or commercial driver’s learner’s permit;
- the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;
- whether a search of the vehicle was conducted and whether consent for the search was obtained;
- the plea, the judgment, whether the person completed a driving safety course; and whether bail was forfeited;
- the date of the conviction; and
- the amount of the fine or forfeiture.

1. **Reporting Driving Safety and Motorcycle Operator Course Dismissals**

   Defendants may elect to take a driving safety course (DSC) or a motorcycle operator training course (MOC), whichever is applicable, to have certain traffic violations dismissed. Art. 45.0511, C.C.P. When the defendant completes the course and timely submits proof to the court, the court must dismiss the case and report to DPS the date of completion of the course. Art. 45.0511(l), C.C.P.

2. **Reporting Teen Court Dismissals**

   If a defendant charged with a traffic offense is granted teen court under Article 45.052 of the Code of Criminal Procedure, the court is required to report the completion date of the teen court program to DPS. Art. 45.052(d), C.C.P.

3. **Reporting Traffic Cases Dismissed Under Deferred Disposition**

   The court is prohibited from submitting a record of a dismissal following successful completion of a deferred disposition under Article 45.051 of the Code of Criminal Procedure to DPS unless the judge subsequently adjudicates the defendant’s guilt because the defendant failed to comply with the terms of the deferred. Then the judge must submit the record not later than the seventh day after the date on which the judge adjudicated guilt. Sec. 543.204, T.C.
4. Reporting Certain Convictions for Administrative DL Suspension

a. Fictitious License or Certificate by Person Under 21

Section 521.453 of the Transportation Code says that a person under the age of 21 may not possess, with the intent to represent that the person is 21 years of age or older, a document that is deceptively similar to a driver’s license or a personal identification certificate issued by DPS unless the document displays the statement “NOT A GOVERNMENT DOCUMENT” diagonally printed clearly and indelibly on both the front and back of the document in solid red capital letters at least one-fourth inch in height. This offense is a Class C misdemeanor.

The court in which the person is convicted may require the defendant to surrender all the driver’s licenses held by the person. If the court requires a defendant to surrender his or her driver’s license, the clerk must send the license with a report of the final conviction or final bond forfeiture to DPS by the 10th day after the license is surrendered. Sec. 521.347(a), T.C. A conviction is not considered final if the court defers disposition and does not subsequently proceed with an adjudication of guilt and impose sentence. A bond forfeiture is final if the forfeiture is not vacated. Sec. 521.347(c), T.C.

DPS will automatically suspend a person’s driver’s license upon conviction of this offense upon receiving the report of conviction from the court. The period of suspension shall be for the period set by the court of not less than 90 days or more than one year. If the court does not set the period, DPS shall suspend the license for one year. Sec. 521.346, T.C.

b. Reporting Subsequent Offenses for Passing a School Bus

On a second or subsequent conviction for the offense of passing a school bus, the court may order the defendant’s driver’s license be suspended. Sec. 545.066(d), T.C. The suspension cannot be for any longer than six months beginning from the date of conviction.

c. Failure to Comply with the Nonresident Violator Compact

All but six states in the U.S. have signed on to the Nonresident Violator Compact (NVC). Created in 1977, the NVC recognized that out-of-state motorists charged with traffic offenses were faced with inequitable options for handling traffic citations, including mandatory posting of a bond, automatic detention, or immediate transport to court, all requiring significant law enforcement resources as well. The NVC seeks to allow motorists to receive the same treatment regardless of their state of origin while at the same time promoting compliance with the traffic laws of each state.

The compact requires that the issuing officer of any citation to an out-of-state motorist who has a driver’s license from a compact state may not require a bond, and must be given a citation rather than face full custodial arrest. Sec. 703.002, Art. III(a), T.C. If the motorist then fails to comply with the terms of their promise to appear, the court must then report the failure to DPS. Sec. 703.002, Art. III(c), T.C.

Once the motorist’s home state receives notice from DPS, the home state must notify the defendant and initiate a driver’s license suspension action. Sec. 703.002, Art. IV(a), T.C. If the suspension is deemed appropriate under that state’s laws, the defendant’s driver’s license will be suspended until satisfactory evidence is presented of the motorist’s compliance. Sec. 703.002,
Art. IV(a), T.C. Members of the compact may also request the suspension of the driver’s license of any Texas resident who fails to respond to a citation in the other state’s respective jurisdiction. Ch. 703, T.C. All states, and the District of Columbia, are members except Alaska, California, Michigan, Montana, Oregon, and Wisconsin.

(1) Procedures

When an out-of-state violator fails to respond to a citation or to pay a fine for a violation, the court reports this to DPS on the Notice of Failure to Comply form, which includes vital information about the defendant, the court, and the alleged violation. This form can be ordered in six parts, or courts can use the single form with six copies. The steps to report non-compliance of an out-of-state violator are as follows:

- mail the original form (first page) to the defendant;
- hold form in file for 15 days to await response from the defendant;
- if the defendant fails to answer notice, mail second and third pages of the form to DPS;
- retain the fourth, fifth, and sixth pages of the notice in the court file; and
- when the defendant resolves the case; mail the fourth page (defendant’s receipt) to the defendant and fifth page (notice of withdrawal of suspension) to DPS.

The form is available on the TMCEC website in the Forms Book under Government and Agency Forms, as are copies of all the DPS reporting forms.

(2) Statutorily Exempt Violations

The NVC applies to violations of traffic violations, but Section 703.002, Article III of the Transportation Code says that no action will be taken under the terms of the NVC for the following violations:

- offenses which mandate personal appearance;
- moving traffic violations that alone carry a suspension;
- equipment violations;
- inspection violations;
- parking or standing violations;
- size and weight limit violations;
- violations of law governing the transportation of hazardous materials;
- motor carrier violations;
- lease law violations; and
- registration law violations.

(3) Time Limit for Reporting

It is important for the court to promptly file these reports because DPS may not transmit a report on any violation if the date of the transmission is more than six months after the date on which the traffic citation was issued. Sec. 703.002, Art. III(f), T.C.
5. **Failure to Report**

If a judge, magistrate, or clerk fails to submit a traffic conviction report to DPS, he or she may be removed from office for misconduct. Sec. 543.206, T.C. Misconduct of office is any unlawful behavior by a public officer in relation to the duties of his or her office. It includes a failure to act when there is an affirmative duty to act.

6. **Time to Report Convictions or Forfeiture of Bail**

Courts are required to report the convictions or forfeiture of bail to DPS by the seventh day after the date of the conviction or forfeiture of bail containing the information noted above. Sec. 543.203, T.C. To count the seven days, start with the day after the date of final judgment or when the final judgment of bond forfeiture was entered. Sec. 311.014, G.C. Do not wait for payment to be made.

Many clerks remember when the court had 30 days from date of conviction to send the report to DPS. In 2009, this time deadline was shortened to just seven days. This is because DPS has only 10 days from the date of conviction to report certain convictions for commercial motor vehicles and commercial driver’s license holders to the federal government. Many clerks have expressed concern that the defendant still has three more days in which to appeal the conviction at the point this report is due. DPS has stated that it would rather the courts report and then submit a conviction correction report than not report and jeopardize DPS being late in submitting its federal reports. Thus, clerks should make it a point to submit these reports timely—submitting once a week is an easy way to remember—and have access to the conviction correction reports.

7. **Methods of Reporting**

Courts must contact DPS to get a secure identification number. DPS now requires electronic reporting.

B. **Alcoholic Beverage Code**

Courts are required to report to DPS certain information regarding Alcoholic Beverage Code offenses committed by minors. The Alcoholic Beverage Code defines a minor as a person under the age of 21.

The information maintained by DPS regarding Alcoholic Beverage Code offenses reported by courts is confidential and may not be released, except to law enforcement agencies and to courts to enable them to carry out their official duties. Secs. 106.117(c) and (d), A.B.C.

1. **Reporting Convictions**

Upon conviction, the judge is required to order in the judgment, the suspension or denial of issuance of the minor’s driver’s license for the following Alcoholic Beverage Code offenses:

- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Possession of Alcohol by a Minor (Sec. 106.05); and
- Misrepresentation of Age by a Minor (Sec. 106.07).
The suspension or denial is effective the 11th day after the judgment. The court’s report of the suspension or denial of issuance of driver’s license notifies DPS of the conviction. The length of suspension or denial is:

- 30 days for a first conviction;
- 60 days for a second conviction (only if the complaint is enhanced to allege that there was a prior conviction); and
- 180 days for a third or subsequent conviction. If a defendant is under 17 years of age, the third conviction must be transferred to juvenile court unless the city has a juvenile case manager. Art. 45.056, C.C.P. In addition, municipal court does not have jurisdiction over third and subsequent Alcoholic Beverage Code offenses committed by minors age 17 and over because the penalty includes confinement in jail. Sec. 106.71, A.B.C.

2. **Failure to Complete Alcohol Awareness Program or Community Service**

The judge is required to order that a defendant attend an alcohol awareness program and complete a certain number of community service hours for the following offenses:

- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Driving Under the Influence of Alcohol by Minor (DUI) (Sec. 106.041);
- Possession of Alcohol by a Minor (Sec. 106.05); and
- Misrepresentation of Age by a Minor (Sec. 106.07).

If the defendant fails to show evidence of completion of the alcohol awareness program or the performance of the community service:

- the judge is required to order DPS to suspend or deny issuance of the driver’s license for a period of time not to exceed six months (Sec. 106.115(d), A.B.C.); and
- the clerk reports the judge’s order to DPS, which notifies DPS of the beginning and ending of the suspension or denial of issuance period. Sec. 521.345, T.C.

3. **Orders of Deferred Disposition for an Alcoholic Beverage Code Offense**

Courts must report to DPS an Alcoholic Beverage Code offense deferred under Article 45.051 of the Code of Criminal Procedure. Sec. 106.117(a)(3), A.B.C.

- The report must be submitted to DPS when the court grants the deferred. (If the defendant fails to complete the terms of the deferral, the court, upon entering a conviction, orders the defendant’s driver’s license suspended. The court, however, does not have to notify DPS of this suspension if the defendant failed to complete the alcohol awareness course during the deferral period because the court is required to order DPS to suspend the defendant’s driver’s license for a period not to exceed 180 days.)
• Notice of the deferred disposition must be in a form prescribed by DPS and must contain the driver’s license number, if any, of the defendant. Sec. 106.117(c), A.B.C.
• If the defendant fails to complete the alcohol awareness program—a mandatory condition of deferred disposition—the court must order DPS to suspend or deny issuance of the driver’s license and report this order to DPS.

4. **Acquittals of Driving Under the Influence**

Section 106.117(a)(4) of the Alcoholic Beverage Code requires courts to report to DPS the acquittal of the offense of driving under the influence of alcohol (DUI) by a minor. The court must submit this report to DPS.

**C. Penal Code**

1. **Public Intoxication by a Minor**

When a person under the age of 21 is charged with the offense of public intoxication, the court must follow the punishment rules required when a person is convicted of committing an Alcoholic Beverage Code offense. Sec. 49.02(e), P.C.

The court must:

• set the fine at no more than $500;
• order DPS to suspend or deny issuance of the driver’s license;
• require community service; and
• require attendance at an alcohol awareness program.

If the defendant does not complete the alcohol awareness program or perform the community service, the court must order DPS to suspend or deny issuance of a driver’s license for a period not to exceed six months. Secs. 106.071 and 106.115, A.B.C. This suspension or denial of issuance of a driver’s license is handled in the same manner as Alcoholic Beverage Code convictions. The following lists the procedures for reporting:

• The suspension takes effect on the 11th day after the date the minor is convicted (date judgment is entered).
• Clerks should submit the report as soon as possible after the judgment date.
• If the conviction is for a first offense, the suspension or denial of issuance of a driver’s license is for 30 days.
• If the charge is filed as a second offense, then the conviction is a second conviction and the suspension or denial is for 60 days.

2. **Possession of Alcoholic Beverage in Motor Vehicle**

The offense of possession of an alcoholic beverage in a motor vehicle in Section 49.031 of the Penal Code is commonly referred to as “open container.” Although this offense is in the Penal Code, it is considered a traffic offense. Courts are required to report convictions of this offense to DPS.
3. **Theft of Gasoline**

Municipal court has jurisdiction over theft under Section 31.03 of the Penal Code if the pecuniary loss is less than $50 (not withstanding any enhancements). The court must report all convictions of theft of gasoline to DPS. After DPS receives a report of a second conviction of theft of gasoline, DPS will automatically suspend the defendant’s driver’s license. Sec. 521.349, T.C.

Section 521.349 of the Transportation Code authorizes DPS to automatically suspend the defendant’s driver’s license for 180 days from the date of final conviction when there is a special affirmative finding. In the event the defendant’s license is revoked or the defendant does not have a driver’s license, the period of license denial is 180 days after the date the person applies for reinstatement or issuance of a driver’s license. If the defendant has previously been denied a license under this section or had a license suspended, the period of suspension is one year from the date of a final conviction. The period of license denial is one year after the date the person applies to DPS for reinstatement or issuance of a driver’s license.

D. **Health and Safety Code – Failure to Complete Tobacco Awareness Program**

The court must order a person under the age of 18 convicted of a tobacco offense to complete a tobacco awareness program. Sec. 161.253, H.S.C. Tobacco offenses include possession, purchase, consumption, or receipt of cigarettes or tobacco products. If the defendant fails to complete the tobacco awareness program or tobacco related community service, the court is required to order DPS to suspend or deny issuance of a driver’s license for a period not to exceed 180 days. Sec. 161.254, H.S.C.

Although the statute does not provide how long the court has to submit the report to DPS, it should be submitted as soon as possible after the judge orders the suspension so that DPS can immediately start the suspension process.

E. **Education Code - Failure to Attend School**

Article 45.054 of the Code of Criminal Procedure, governing the offense of failure to attend school, permits the court to order DPS to suspend or deny issuance of a driver’s license or permit. Art. 45.054(f), C.C.P.

- The suspension or denial of issuance of a driver’s license and permit cannot exceed 365 days. Art. 45.054(f), C.C.P.
- The report should be submitted as soon as possible after the order of suspension or denial.

F. **Persons Under 17: Failure to Appear, Pay, or Violation of a Court Order**

When a person under the age of 17 fails to pay a fine and/or court costs, violates a court order, or fails to appear, the municipal court conducts a contempt hearing. If the court finds the juvenile in contempt, the court may order DPS to suspend or deny issuance of the driver’s license as a sanction of the contempt. Art. 45.050(c)(2), C.C.P.
• When the court reports the order, DPS shall suspend or deny issuance of a driver’s license until the child fully complies. Secs. 521.201(8), 521.294(6), and 521.3451, T.C.

• A minor whose license is suspended or revoked under this statute must pay a $100 reinstatement fee to DPS. Sec. 521.313, T.C. The defendant, however, cannot get his or her driver’s license until the court has sent in a report that the defendant has made a final disposition on the case.

G. New Trial

When a defendant requests a new trial, the court does not report a conviction or order of driver’s license suspension or denial unless the defendant is not granted the new trial and does not appeal. If a new trial is granted, the court reports upon conviction at the second trial when the defendant does not appeal. The report is submitted in the same manner as if no new trial had been granted.

H. Appeals

When a defendant appeals his or her conviction, the municipal court does not report the conviction or driver’s license suspension because the municipal court judgment is not a final conviction. In non-record courts, if the defendant is convicted at the county level, the county court reports the conviction to DPS. In municipal courts of record, if the judgment is affirmed on appeal, the municipal court reports the conviction.

For purposes of reporting convictions of traffic laws, the report must be made by the seventh day following the date of conviction. As defendants generally have 10 days to appeal, the court cannot wait for the appeal time to run before submitting the report. Thus, courts should be prepared to submit a conviction correction form when the defendant appeals and the judgment is no longer final.

I. Chart of Forms

Note that DPS no longer accepts the DR-18 form. Conviction reporting should be done electronically. Courts must contact DPS to get reporting information.

<table>
<thead>
<tr>
<th>Alcoholic Beverage Code</th>
<th>DL-115 (formerly DIC-15)</th>
<th>DIC-81</th>
<th>DR-18</th>
<th>DIC-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 106:</td>
<td>Under Age 17</td>
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<tr>
<td>(Minors Under Age 21)</td>
<td>• Failure to appear: DPS</td>
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<td></td>
<td>suspends or denies driver’s</td>
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<td></td>
<td>license (Sec. 521.3452,</td>
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<td></td>
<td>T.C.).</td>
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<td></td>
<td>• Failure to pay: court</td>
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<td></td>
<td>conducts a contempt</td>
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<tr>
<td></td>
<td>hearing under Art. 45.050,</td>
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<td></td>
<td>C.C.P., and orders driver’s</td>
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<td></td>
<td>license suspended or</td>
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<td>denied as a sanction of</td>
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<tr>
<td></td>
<td>contempt.</td>
<td></td>
<td></td>
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</tbody>
</table>
| **Education Code** | **Failure to Attend School** - Sec. 25.094, E.C.; Art. 45.054(f), C.C.P.  
Court may order driver’s license suspended not to exceed 365 days. | **Under Age 17**  
- Failure to appear: DPS suspends or denies driver’s license (Sec. 521.3452, T.C.).  
- Failure to pay: court conducts a contempt hearing under Art. 45.050, C.C.P., and orders driver’s license suspended or denied as a sanction. |
| --- | --- | --- |
| **Health and Safety Code** | **Possession, Purchase, Consumption, or Receipt of Cigarettes or Tobacco Products by Minor Under Age 18** - Sec. 161.252, H.S.C.  
Failure to complete the tobacco awareness program or tobacco related community service: must order DPS to suspend or deny issuance of driver’s license (Sec. 161.254, H.S.C.). | **Under Age 17**  
- Failure to appear: DPS suspends or denies driver’s license (Sec. 521.3452, T.C.).  
- Failure to pay: court conducts a contempt hearing under Art. 45.050, C.C.P., and orders driver’s license suspended or denied as a sanction. |
<table>
<thead>
<tr>
<th>Penal Code</th>
<th>Public Intoxication Minor - Sec. 49.02(e), P.C.</th>
<th>Under Age 17</th>
<th>Transportation Code</th>
<th>Under Age 17</th>
<th>Convictions of offenses under Sec. 521.453, T.C.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Driver’s license suspensions or denial of driver’s license on convictions.</td>
<td>• Failure to appear: DPS suspends or denies issuance of driver’s license (Sec. 521.3452, T.C.).</td>
<td>• Failure to appear: DPS suspends or denies issuance of driver’s license (Sec. 521.3452, T.C.).</td>
<td>• Failure to appear: DPS suspends or denies issuance of driver’s license (Sec. 521.3452, T.C.).</td>
<td>• Driver’s license suspension is not less than 90 days or more than one year. (Sec. 521.346, T.C.)</td>
</tr>
<tr>
<td></td>
<td>• Orders of deferred disposition.</td>
<td>• Failure to pay: court conducts a contempt hearing under Art. 45.050, C.C.P., and orders driver’s license suspended or denied as a sanction.</td>
<td>• Failure to pay: court conducts a contempt hearing under Art. 45.050, C.C.P., and orders driver’s license suspended or denied as a sanction.</td>
<td>• Failure to pay: court conducts a contempt hearing under Art. 45.050, C.C.P., and orders driver’s license suspended or denied as a sanction.</td>
<td>• All traffic convictions and final bond forfeitures including city traffic ordinances (Sec. 543.201, T.C.).</td>
</tr>
<tr>
<td></td>
<td>• Failure to complete alcohol awareness program: court must order suspension or denial of driver’s license.</td>
<td>• Convictions of offenses under Sec. 521.453, T.C.</td>
<td>• Convictions of offenses under Sec. 521.453, T.C.</td>
<td>• Convictions of offenses under Sec. 521.453, T.C.</td>
<td>• Dismissals of DSC or MOC (Art. 45.0511, C.C.P.).</td>
</tr>
<tr>
<td></td>
<td>• Failure to complete community service: court must order suspension or denial of driver’s license.</td>
<td>• Convictions of offenses under Sec. 521.453, T.C.</td>
<td>• Convictions of offenses under Sec. 521.453, T.C.</td>
<td>• Convictions of offenses under Sec. 521.453, T.C.</td>
<td>• Convictions of offenses under Sec. 521.453, T.C.</td>
</tr>
</tbody>
</table>

True or False
1. Courts are required to keep and maintain certain information on defendants charged with traffic violations. _______
### True and False Questions

<table>
<thead>
<tr>
<th>Number</th>
<th>Statement</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Courts must report nonresident defendants convicted of traffic violations within six months.</td>
<td></td>
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<tr>
<td>3.</td>
<td>Courts must report to DPS forfeitures of bail on defendants charged with traffic violations even though the defendant has not been convicted.</td>
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<tr>
<td>4.</td>
<td>Courts must report dismissals when a defendant charged with a traffic offense completes deferred disposition.</td>
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<tr>
<td>5.</td>
<td>If a court fails to report traffic convictions to DPS, the judge or clerk could be removed from office for misconduct.</td>
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<tr>
<td>6.</td>
<td>Courts must report traffic convictions not later than the seventh day of conviction.</td>
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<tr>
<td>7.</td>
<td>When a defendant is convicted of an Alcoholic Beverage Code offense, what information must the court report to DPS?</td>
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<tr>
<td>8.</td>
<td>When is a suspension or denial of a driver’s license for a conviction of an Alcoholic Beverage Code offense effective?</td>
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<tr>
<td>9.</td>
<td>What DPS form does the court use to report a conviction for an Alcoholic Beverage Code offense?</td>
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<tr>
<td>10.</td>
<td>What is the maximum driver’s license suspension length a judge can order when a defendant fails to complete an alcohol awareness program?</td>
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<tr>
<td>11.</td>
<td>What form is the court required to use to notify DPS of the court’s order suspending the driver’s license of a defendant who failed to complete the alcohol awareness program?</td>
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</tr>
<tr>
<td>12.</td>
<td>When can the court order a driver’s license suspension for a defendant under 17 who fails to pay a fine and costs?</td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>When a defendant charged with an Alcoholic Beverage Code offense is granted deferred disposition, what must the court report to DPS?</td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>If a defendant is found not guilty of the offense of driving under the influence of alcohol by a minor, what is the court required to report to DPS?</td>
<td></td>
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<tr>
<td>15.</td>
<td>Although the offense of possession of an alcoholic beverage in a motor vehicle is a Penal Code offense, what is the court required to report to DPS?</td>
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<tr>
<td>16.</td>
<td>What is the court required to report for conviction of theft of gasoline?</td>
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<tr>
<td>17.</td>
<td>If a defendant does not complete a tobacco awareness program, what is the court required to order DPS to do?</td>
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<tr>
<td>18.</td>
<td>Who is required to keep a record of defendants charged with traffic offenses?</td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td>Who may keep the records of defendants charged with traffic offenses?</td>
<td></td>
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</tbody>
</table>

**True and False**

<table>
<thead>
<tr>
<th>Number</th>
<th>Statement</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.</td>
<td>The court is required to send notice of all traffic convictions to DPS.</td>
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</tr>
<tr>
<td>21.</td>
<td>The court must notify DPS of convictions for city ordinance traffic offenses.</td>
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</tbody>
</table>
22. The court must report final judgments on bond forfeitures for traffic offenses.

23. When a defendant is granted a time payment plan to pay a fine, the court waits until the final payment before reporting the conviction to the DPS.

24. When a defendant discharges a traffic fine by community service, the court does not report that traffic conviction to DPS because the court did not collect any money.

25. List information to be reported to DPS on drivers of CMVs.

26. When a defendant is convicted of an offense that requires automatic driver’s license suspension, what may the court do with the defendant’s driver’s license?

27. For offenses that require automatic driver’s license suspension, what is the minimum and maximum amount of time the court may suspend the license?

28. When a defendant is convicted of an offense that requires an automatic driver’s license suspension, what form must the court use to report that conviction?

29. When a court reports to the DPS a defendant’s completion of a driving safety course, what information must the court report?

30. What must the court report when a defendant charged with a traffic offense completes teen court?

31. What does a court do when a defendant under the age of 17 fails to appear or fails to pay a fine for a traffic offense?

32. If an out-of-state defendant fails to appear, what can the court do?

33. If an out-of-state defendant resolves the case with the court, what is the court required to do?

34. List violations committed by an out-of-state violator that the court may not report under the Nonresident Violator Compact.

35. Why should clerks report an out-of-state violator as soon as they fail to appear or fail to pay?

36. When a court grants deferred disposition to a defendant charged with a traffic offense, what does the court report to DPS?

37. If a court suspends or denies issuance of a defendant’s driver’s license for a conviction for the offense of failure to attend school, for how long may the suspension or denial be?

38. What happens if a defendant appeals his or her traffic conviction?

39. When a defendant convicted of a traffic offense is granted a new trial, when does a court report a conviction?
PART 2

REPORTS TO THE TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

Section 106.116 of the Alcoholic Beverage Code requires courts to furnish upon request a notice of conviction of Alcoholic Beverage Code offenses to the Department of State Health Services. These offenses include:

- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Driving Under the Influence of Alcohol by a Minor (Sec. 106.041);
- Possession of Alcohol by a Minor (Sec. 106.05); and
- Misrepresentation of Age by a Minor (Sec. 106.07).

The report must be in the form approved by DSHS, but no form exists. If the DSHS wants to obtain information from a court, it will send a request to the court with a copy of the form on which to submit the information.

PART 3

REPORTS TO THE TEXAS PARKS AND WILDLIFE DEPARTMENT

Municipal courts have jurisdiction over fine-only offenses under state law. The Parks and Wildlife Code contains dozens of offenses that are punishable as a Class C Parks and Wildlife Code misdemeanor, punishable by a fine of not less than $25 and not more than $500. Although not expressly mentioned in the Parks and Wildlife Code, arguably, municipal courts would have jurisdiction over these offenses, provided they are committed in the city’s territorial limits.

Section 12.107 of the Parks and Wildlife Code requires a justice of the peace, clerk of any court, or any other officer of the state who receives a fine imposed by a court for a violation of the code to send the fine to the Parks and Wildlife Department (PWD) within 10 days after the date of collection. A statement must accompany the fine containing the docket number of the case, the name of the person fined, and the section of the code or regulation/rule violated.

There is some question over how much of the fine must be remitted to the PWD. Section 12.107(b) provides that in county courts, 80% of the fine must be remitted, while in justice courts, 85% of the fine must be remitted. The Attorney General in Attorney General Opinion GA-0745 opined that this provision does not require the remittance of any special expense fee collected from a defendant placed on deferred disposition for a Parks and Wildlife Code offense.

PART 4

REPORT TO THE OFFICE OF COURT ADMINISTRATION

The Office of Court Administration (OCA) is a state agency established in 1977 under the direction and supervision of the Texas Supreme Court. Its mission is to provide administrative assistance and technical support to all of the courts in Texas. The Texas Supreme Court appoints the Administrative Director of OCA who also serves as the Executive Director of the Texas Judicial Council. Secs. 72.011 and 72.012, G.C.
The Texas Judicial Council is composed of 16 ex officio and six appointed members, and is the policy-making body for the state judiciary. The Council uses the information reported by the courts to the OCA to study methods to simplify judicial procedures, expedite court business, and better administer justice. It examines the work accomplished by the courts and submits recommendations for improvement of the system to the Legislature, the Governor, and the Supreme Court.

A. Notification of City Appointments and Elections

The city secretary is required to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge, and clerk of municipal court within 30 days after the date of the person’s election or appointment. Sec. 29.013, G.C. The city secretary must also notify the Texas Judicial Council of any vacancies in those offices within 30 days.

B. Official Municipal Court Monthly Report

It is a duty of each judge, clerk, or other court official to report statistical information pertaining to the business transacted in the court to OCA. If an official fails to submit the report, OCA may request the information from the official. If, after a reasonable amount of time, the official does not supply the information, he or she is presumed to have willfully refused the request. Sec. 71.035, G.C.

At that time, the Attorney General may file and prosecute an action for mandamus on behalf of the Texas Judicial Council. A writ of mandamus is an order from a court of superior jurisdiction compelling the lower court judge or clerk to perform a particular act that he or she has a duty to do. In this instance, the writ would order the court to submit the monthly report. All courts, except the Supreme Court and the Court of Criminal Appeals, must submit a monthly report.

1. Time Requirement

Municipal judges or clerks must submit to OCA the court activity report for each month by the 20th day following the end of the month being reported. Secs. 171.1 and 171.2, T.A.C.

2. Monthly Report Form

Courts use the *Official Municipal Court Monthly Report* form provided by OCA to report the activity of the court every one-month period. The report requires the court to identify the name of the municipality, presiding judge, and court clerk along with the mailing address of the court and the name and office telephone number of the person who actually prepares the report. For copies of the report and reporting guidelines, contact OCA at 512.463.1625.

3. Form of the Report

The report does not require the court to report every activity, but is designed to report information on the primary activity of the court as defined by OCA. A revised form, collecting substantially more information than in recent years, was implemented in September 2011. The OCA publishes a booklet of specific instructions for completing the report. Clerks can obtain the instruction booklet by calling 512.463.1625 or by visiting www.courts.state.tx.us/oca. TMCEC has several archived webinars presented by OCA personnel concerning OCA reporting; these archived webinars can be accessed on at TMCEC’s online learning center at online.tmcec.com.
If a court does not have any activity in a section of the monthly report, the court must still report and show “zero” activity.

40. What is the Office of Court Administration (OCA)?

41. What is the mission of OCA?

42. What does the Texas Judicial Council do?

43. List the names of offices that the city secretary is required to report to the Texas Judicial Council when a person is either elected or appointed to the office.

44. How long does the city secretary have to make the report?

45. When is a person presumed to have willfully refused to supply information to the Office of Court Administration?

46. How is the duty to supply information to the Office of Court Administration enforced?

47. Which courts are not required to submit monthly statistical reports to OCA?

48. How often is court activity reported to OCA?

49. What identifying information must the court place on the form?

50. If the court has no activity, how does the court report that fact?

PART 5
REPORTS TO STATE COMPTROLLER OF PUBLIC ACCOUNTS

State statutes require courts to collect court costs and fees from defendants convicted of fine-only offenses. Some of the costs and fees are retained by the city; some are required to be remitted to the State. City councils do not have general authority to adopt fees or court costs unless expressly authorized to do so by statute. Art. 45.203(d), C.C.P. Likewise, judges do not have authority to impose a cost or fee without any legal basis.

Funds that are collected without authority are considered by the State to be unjust enrichment. If the State determines that costs or fees are collected without authority, the Comptroller of Public Accounts (CPA) requires the money to be returned to the defendants, or if the court is unable to locate the defendants, to turn the money over to the State (to the unclaimed property division of the CPA).
State statutes provide authority in five instances for municipalities to adopt ordinances for the collection of court costs. Article 45.203 of the Code of Criminal Procedure authorizes cities to establish a fee by ordinance, not to exceed $25 for executing warrants for failure to appear or violation of promise to appear. There is also authority to create by ordinance a building security fee, a technology fee, a juvenile case manager fee, and service fees for collection of fines, costs, and bonds by credit card or electronically.

A. General Information

1. Definition of Conviction

For the purpose of collecting most court costs, Section 133.101 of the Local Government Code defines conviction in a case as when:

- a judgment, a sentence, or both a judgment and a sentence are imposed on the defendant;
- the person receives community supervision, deferred adjudication, or deferred disposition; or
- the court defers final disposition of the case or imposition of the judgment and sentence.

This definition of “conviction” can be confusing, as court personnel know that the successful completion of a deferred disposition results in a dismissal of the case and not a conviction. However, for the purpose of court costs, a case that is deferred and subsequently dismissed does require the assessment of court costs.

2. Time to Report

Court cost reports must be filed with the CPA by the last day of the month following each calendar quarter. If the treasurer does not collect any fees during a calendar quarter, the treasurer must still file a report in the regular manner and report that no fees were collected. Sec. 133.055(b), L.G.C.

For fees collected for convictions of offenses committed on or after January 1, 2004, a municipality or county shall report the fees collected for a calendar quarter categorized according to the class of offense. Sec. 133.0569(b), L.G.C.

3. Accrued Interest and Handling Fee

Cities may maintain court costs and fees in an interest bearing account. If reported timely, the city may keep the interest as well as any applicable handling fee. The handling fee is 10 percent of the Consolidated Fee, State Judicial Support Fee, and State Jury Reimbursement Fee; and 5 percent of the State Traffic Fine.

Under Section 133.058 of the Local Government Code, the city may retain 10 percent of any collected fee reported timely. This is a general statute that would govern any fee that does not explicitly provide for a handling fee, unless the statute provides for a higher percentage.

If a city fails to report timely, the city must remit 100 percent of the court costs collected, including handling fees and interest. Sec. 133.055, L.G.C.
4. **Record Keeping**

Although courts are not required to have a separate bank account for court costs, separate records must be kept of collected funds. Costs to be remitted to the State as well as certain local court costs are dedicated and cannot be co-mingled with the city’s general revenue.

5. **Remitting Electronically**

Some cities are required to remit court costs and fees electronically. If $250,000 or more in court costs and fees are remitted to the CPA in a state fiscal year (September through August), payments of $10,000 or more must be made by electronic funds transfer in the following fiscal year. When a city is affected by this rule, the CPA must notify the city no less than 60 days before the first payment is required to be made. Sec. 404.095, G.C. and Sec. 3.9, Part I, of Title 34, T.A.C. Although a non-qualifying city may not be required to remit electronically, it may voluntarily remit in this manner, but the reporting must still be done manually.

6. **Allocation and Proration**

When judges allow defendants to pay fines and court costs through an installment plan, clerks must ensure proper reporting and remittance of the court costs and fees. The CPA requires courts to allocate money collected first to court costs and fees, then to fines. They rely on Attorney General Opinion M-1076 (1972). This opinion was reaffirmed in February 2004, in Opinion GA-0147, holding that money collected by a court must be allocated to all court costs before the fine.

When a court collects all costs owed during one quarter even though they were paid through installments, the clerk reports all the costs on that quarter’s report. If the court collects only part of the costs in a reporting quarter, the court must prorate the costs collected among all the court costs, including the local court costs, and report the State’s portion on the quarterly report. If the court does not prorate and report, the city must forfeit its handling fees.

To prorate, the court should use the following formula:

\[
\text{Amount collected} = \frac{\text{Percentage to apply}}{\text{Total costs/fees}} \times \text{to each cost/fee}
\]

The following is an example of how to use the formula: a defendant convicted of the offense of speeding is assessed a fine of $175 and court costs of $92.00, but only pays $46.00.

\[
\begin{align*}
\text{\$46.00} & = 50\% \text{ to each cost/fee} \\
\text{\$92.00} & \\
50\% & \times 40.00 \quad \text{CF} = 20.00 \\
50\% & \times 30.00 \quad \text{STF} = 15.00 \\
50\% & \times 6.00 \quad \text{SJRF} = 3.00 \\
50\% & \times 4.00 \quad \text{SJSF} = 2.00 \\
50\% & \times 2.00 \quad \text{IDF} = 1.00 \\
50\% & \times 5.00 \quad \text{AF} = 2.50 \\
50\% & \times 3.00 \quad \text{TFC} = 1.50 \\
50\% & \times 2.00 \quad \text{TPDF} = 1.00 \\
50\% & \times 92.00 \quad = 46.00 
\end{align*}
\]
In the example, the arrest fee and the local traffic fund fee, which stay with the city, are included in the proration. If the court assesses other local fees such as the $3 building security fee or the $50 warrant fee, the proration should also include those fees.

7. **Community Service Credit**

A judge may require a defendant to discharge fines and court costs by performing community service. If the offense occurs on or after January 1, 2004, the court credits no less than $50 toward the fine for every eight hours of community service performed. The judge may grant more than $50 for every eight hours of community service performed, but may not grant less than the $50. Art. 45.049, C.C.P.

If a defendant discharges the total amount due the court, including fine and court costs, by community service, the court does not have to remit to the CPA money that it did not collect. If the defendant discharges only part of the total amount due by community service and pays money for part of the judgment, the community service credit goes first to the fine and then to court costs. Any money collected must be credited and allocated first to court costs. Tex. Atty. Gen. Op. M-1076 (1972).

8. **Jail-Time Credit**

A judge must credit a defendant for time served in jail from the time of arrest to conviction and for time served after conviction. Art. 45.041(c), C.C.P. The rate of credit is not less than $50 for a period of time specified in the judgment. “Period of time” is defined to mean not less than eight hours or more than 24 hours. Arts. 45.041 and 45.048, C.C.P.

As custodians of the records, court clerks are responsible for properly recording jail-time credit. Jail-time credit may either discharge the total fine and costs owed, or just satisfy a portion of the fine and costs. If a defendant does not pay any money to the court because the defendant had sufficient jail-time credit for both fine and court costs, the CPA does not require the court to remit court costs that were not collected in money. However, if the jail credit does not discharge the total amount owed by the defendant, any actual money collected must be credited first to court costs. Tex. Atty. Gen. Op. M-1076 (1972).

9. **Cash Bond Forfeiture for Fine and Costs**

A judge may enter a judgment of conviction and forfeit a cash bond to satisfy a defendant’s fine and costs if the defendant, who posted a cash bond and entered a written and signed plea of nolo contendere and a waiver of jury trial, fails to appear. Art. 45.044, C.C.P. The court must immediately notify the defendant in writing of the judgment, stating that the forfeiture satisfies the defendant’s fine and costs.

The defendant has a right to request a new trial not later than the 10th day after the date of the judgment. If the defendant does not request a new trial, the judgment becomes final.

Since there is a conviction, court costs must be paid to the State. When the defendant has been in jail, the defendant must be given jail credit if applicable. If the credit satisfies all of the fine and costs, the court must refund the bond. If the jail credit does not completely satisfy the fine and costs, any money retained by the court from the bond would be allocated to the court costs first.
10. Court Costs for Deferred Disposition

When deferred disposition is granted by the judge under Article 45.051 of the Code of Criminal Procedure, the judge may immediately collect court costs. Art. 45.051(a), C.C.P. As an alternative, the judge may allow a defendant to enter into an agreement for payment of court costs in installments during the defendant’s period of probation, require the defendant to discharge the payment of the court costs by performing community service, or require both payment of the court costs in installments and performance of community service. Art. 45.051(a-1), C.C.P.

If the defendant complies, the court must dismiss the case. If the court ordered a special expense fee, this fee is a local fee and may be used for any lawful purpose designated by the city. If the defendant fails to comply with the terms of the deferral, the court imposes a fine and converts any monies paid toward the special expense fee into payment for the fine. The court collects court costs once in a deferral.

11. Court Costs for Driving Safety Course

Court costs must be collected when the court grants the request to take a driving safety course under Article 45.0511 of the Code of Criminal Procedure. The court may also collect a non-refundable $10 administrative fee. Art. 45.0511(f), C.C.P. If a driving safety course is granted under Subsection (d) of Article 45.0511 (the discretionary provision), the court may, under Subsection (f)(2) of 45.0511, assess a special non-refundable expense fee not to exceed the maximum possible amount of the fine that could have been imposed.

If the defendant complies, the court must dismiss the case. The administrative fee paid by the defendant stays with the city, while the costs are appropriately remitted to the State. If the defendant fails to comply, the court imposes a fine and the defendant is not entitled to a refund of the administrative fee.

12. Court Costs on Appeals

When a defendant files an appeal bond, all further proceedings in a case cease. Art. 45.044, C.C.P. In a non-record court when a conviction is appealed, the municipal court judgment is nullified. Therefore, the municipal court does not collect court costs (or the fine). If the defendant is convicted in county court, the county court collects the costs and reports them to the CPA.

In a record court, if the county court affirms the judgment, the municipal court collects the fine and costs and reports the costs. Art. 44.0281, C.C.P.

If a city has contracted with DPS and a defendant has been submitted under the Failure to Appear Program (OmniBase), upon appeal, if the defendant wants to renew his or her driver’s license, the defendant must pay the $30 fee to the municipal court. This is the only exception to paying court costs on appeal. Sec. 706.005(a)(1), T.C.

13. Waiver of Fine and Costs

Judges may waive court costs in three instances:

- when teen court is granted;
• when the court determines that a defendant was a child at the time of the offense and has defaulted in payment of a fine and/or costs and that performing community service would be an undue hardship; and

• when the court determines that a defendant has defaulted in payment of a fine and/or costs and that the defendant is indigent and performing community service would be an undue hardship. Arts. 45.052 and 45.0491, C.C.P.

If a judge waives court costs, the court should document its findings in the order of waiver. When teen court is granted and the judge waives the fees and costs, the court should have an order waiving the costs and/or fees.

14. Legislative Changes

Court costs are subject to change each legislative session. Changes apply to offenses that occur on or after the date that the changes go into effect. According to Section 51.607 of the Government Code, notwithstanding the effective date of a legislative act, court costs and fees do not affect courts until January 1st of the year following the legislative session. Therefore, courts have to keep court costs charts from prior years in order to know the correct amount to collect for past offenses. County and district courts have express direction to calculate costs based on the costs in effect on the date of conviction; while municipal and justice courts continue to calculate costs based on the costs that were in effect on the date of the offense.

Appendix A includes the court costs chart in effect for offenses committed on or after January 1, 2014. For older court costs charts back to 1999, visit the TMCEC website.

B. Current Court Costs

1. Consolidated Fee

The consolidated fee of $40 is collected upon conviction for fine-only misdemeanor offenses other than pedestrian or parking offenses. Sec. 133.102, L.G.C. If reported timely, the court can keep a 10 percent handling fee.

This fee consolidates the following individual court costs:

• Abused Children’s Counseling
• Crime Stoppers Assistance
• Breath Alcohol Testing
• Bill Blackwood Law Enforcement Management Institute
• Law Enforcement Officers Standards and Education Standards
• Comprehensive Rehabilitation
• Judicial and Court Personnel Training Fund
• Operator’s and Chauffeur’s License
• Criminal Justice Planning
• Juvenile Crime and Delinquency
• Fugitive Apprehension
• Correctional Management Institute
• Fair Defense Account
• Law Enforcement Officers Standards and Education
2. **State Traffic Fine**

The State Traffic Fine is a $30 court cost collected upon conviction of Subtitle C, Rules of the Road, Transportation Code offenses. This includes parking and pedestrian offenses. The city keeps a 5 percent handling fee if it is reported and remitted timely to the CPA. Sec. 542.4031, T.C.

3. **State Juror Reimbursement Fee**

The $4 State Juror Reimbursement Fee went into effect September 1, 2005. It is collected upon conviction of all fine-only offenses except pedestrian and parking offenses. The city keeps a 10 percent handling fee if reported and remitted timely. Art. 102.0045, C.C.P.

4. **State Judicial Support Fee**

The State Judicial Support Fee went into effect December 1, 2005. It is collected upon conviction of all fine-only offenses except pedestrian and parking offenses. In 2007, the amount of this fee increased from $4 to $6, effective January 1, 2008. The city keeps a 10 percent handling fee if reported and remitted timely. Sec. 133.105, L.G.C.

The city treasurer must deposit the 10 percent (60 cent) handling fee into the general fund of the municipality to promote the efficient operation of the municipal court and the investigation, prosecution, and enforcement of offenses that are within the jurisdiction of the court.

5. **Indigent Defense Representation Fee**

The court is required to collect a $2 fee to be used to fund indigent defense representation through the fair defense account established under Section 71.058 of the Government Code. The fee is collected on all fine-only offenses except parking and pedestrian offenses starting January 1, 2008. The city keeps a 10 percent handling fee. Sec. 133.107, L.G.C.

6. **State Moving Violation Fee**

Starting January 1, 2010, a cost of 10 cents was instituted and imposed on all moving violations. The city gets to keep 10 percent, or one cent. The portion remitted to the State is deposited in the Civil Justice Data Repository Fund. Sec. 102.121, G.C. and Art. 102.022, C.C.P.

7. **Truancy Prevention and Diversion Fund**

Effective January 1, 2014, courts are required to collect a $2 fee to be known as the Truancy Prevention and Diversion Fund. The cost applies to all fine-only offenses except parking and pedestrian offenses. The city must remit the entire fee to the State to appropriate the money to the Criminal Justice Division of the Governor’s Office for distribution to local governmental entities for truancy prevention and intervention services. However, the city (or the custodian of funds) may retain 50 percent of the money collected for the purpose of operating or establishing a juvenile case manager program, if the county or municipality has established or is attempting to establish a juvenile case manager program.

This fee will be collected by all municipal courts and is in addition to the juvenile case manager fee discussed below. No city ordinance is necessary to collect this fund; it is a base state court cost. Article 102.015 of the Code of Criminal Procedure makes clear that this fund is subject to
audit by the CPA. In conjunction with laws regulating when costs are calculated and collected, this cost will be collected on conviction or deferral of all fine-only offenses, other than parking and pedestrian, that are committed on or after January 1, 2014.

8. Child Safety Seat Court Cost Repealed

A 15 cent court cost was imposed on convictions for child safety seats violations under Section 545.412 of the Transportation Code beginning January 1, 2010. The purpose of the cost was to fund the purchase of child safety seats for needy families. While the law was well-intentioned, it was ineffective, as the administrative costs were higher than the revenue derived from the court cost. Section 102.122 of the Government Code was repealed effective September 28, 2011.

51. May a city pass an ordinance to collect court costs without authorization by state law? ____________________________

52. For the purpose of collecting consolidated court costs, how is “conviction” defined? ____________________________

53. When must a city submit a report on court costs to the State? ____________________________

54. If the city keeps the court costs in an interest bearing account, what happens to the interest? ____________________________

55. If the city does not report timely, what happens to the handling fee? ____________________________

56. Even if the court deposits court costs into the city treasury, what type of records is the court required to keep? ____________________________

57. When is a city required to remit court costs electronically? ____________________________

True or False

58. When the court collects only part of the fine and costs, the clerk may allocate all of the money to the fine. _____

59. Courts may choose to wait until all court costs are collected before remitting them to the State. _____

60. When a court prorates court costs and fees, the costs and fees owed to the State must be paid before the costs and fees retained by the city. ______

61. If a defendant discharges a fine and costs by community service, the city must pay the court costs from the city’s general revenue fund. _____

62. A defendant cannot discharge court costs by jail credit. ______

63. Courts may grant deferred disposition and allow defendants to pay court costs during the
deferral. _____
64. If a defendant is granted a driving safety course, the defendant must pay court costs. ______

65. What happens to municipal court proceedings when a defendant files an appeal bond with the court? ____________________________________________
66. When a case is appealed, must the court collect the court costs? ____________________________
67. When may a judge waive court costs and the fine? ________________________________
________________________________________________________________________
________________________________________________________________________
68. When the Legislature changes court costs, when do the changes apply? ________________
________________________________________________________________________
69. What must a city do if its court does not collect any court costs or fees during a calendar quarter? __________________________________________________________________
________________________________________________________________________

True or False
70. The Consolidated Fee is collected on all Class C misdemeanor convictions. ______
71. The court keeps a 10 percent handling fee on the Consolidated Fee if remitted and reported timely. ______
72. The State Traffic Fine is collected on all traffic convictions. ______
73. The court keeps a 10 percent handling fee on the State Traffic Fine. ______
74. The State Juror Reimbursement Fee is collected on all Class C misdemeanor convictions. ______
75. The 60 cents retained by the city from the State Judicial Support Fee must be used to promote the efficient operation of the municipal court and the investigation, prosecution, and enforcement of offenses that are within the jurisdiction of the court. ______
76. Only cities that have a juvenile case manager program must collect the $2 Truancy Prevention and Diversion Fund. ______

PART 6
LOCAL COURT COSTS

A. State Court Costs Retained by the City

1. Child Safety Fund

a. Parking Offenses

If a parking offense is charged under a city ordinance in a city with a population greater than 850,000, the governing body shall require the assessment of a two to five dollar fee for the Child Safety Fund upon conviction. If a parking offense is charged under a city ordinance in a city with
a population fewer than 850,000, the court may collect a court cost not to exceed five dollars upon conviction if the governing body orders the collection of the fund. Art. 102.014, C.C.P.

b. School-Crossing Zone

Article 102.014(c) of the Code of Criminal Procedure provides that the court must assess a $25 fee for the Child Safety Fund for any offense under Subtitle C of the Transportation Code committed in a school-crossing zone. Chs. 541-600, T.C.

School crossing zone is defined in Section 541.302 of the Transportation Code as “a reduced-speed zone designated on a street by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies.” In order for the court to assess $25 for offenses committed in the school-crossing zone, the Subtitle C offense must have occurred during the time that the reduced speed limit is in effect.

c. Passing a School Bus

Article 102.014(c) also provides that the court is required to assess $25 for the Child Safety Fund for the offense of passing a school bus. Sec. 545.066, T.C.

d. Failure to Attend School & Parental Offense

Courts must also collect $20 for the Child Safety Fund for the following offenses:

- parent contributing to nonattendance (Sec. 25.093, E.C.); and
- failure to attend school (Sec. 25.094, E.C.).

e. How Fund is Administered

Administration of the Child Safety Fund depends on the size of the city. If a city has a population greater than 850,000, it must deposit the money in the Municipal Child Safety Fund established in the treasury, for the purpose of providing school crossing guard services. Ch. 106, L.G.C. The city may contract with one or more school districts to provide school-crossing guard services and may also provide services to an area of the city that is not a part of the school district. The employment, training, equipping, and location of school crossing guards by a political subdivision are a government function. The city is required to determine the number of school crossing guards needed by the city and then provide for the use of school crossing guards to facilitate the safe crossing of streets by children going to or leaving public, parochial, private, elementary, and secondary schools. The city must also consider the recommendations of schools and traffic safety experts when determining the need for school crossing guards. Ch. 343, L.G.C.

After contracting with a school district, the city may deduct from the fund the administrative cost of contracting for the services and distributing the funds to the school districts, but this may not exceed 10 percent of the fund. After paying the expenses of the school crossing guard services, any remaining money in the fund may be used for programs designed to enhance child safety, health, or nutrition; including child abuse intervention and prevention, and drug and alcohol abuse prevention. Art. 102.014(f), C.C.P.
Prior to September 1, 2009, if a city had a population of less than 850,000, the money collected for the Child Safety Fund had to be used for any existing school crossing guard program. If the city did not operate such a program or if the money exceeded the amount necessary to fund it, the city could deposit the additional money in an interest-bearing account or expend it for programs designed to enhance child safety, health, or nutrition; including child abuse prevention and intervention, and drug and alcohol abuse prevention. Since 2009, the city may expend the additional money on programs designed to “enhance public safety and security.” Art. 102.014, C.C.P.

2. Local Traffic Fund

Section 542.403 of the Transportation Code provides that a person shall pay a $3 court cost upon conviction of a Rules of the Road offense under Subtitle C of the Transportation Code. Although the courts commonly call this the “traffic fund,” the statute does not give it that name and refers to it as just a court cost. The city must deposit this money in the municipal treasury.

Courts must also be careful not to assess the three-dollar cost on traffic offenses outside of Subtitle C, of Title 7, including failure to maintain financial responsibility, driver’s license offenses, registration offenses, and commercial driver’s license offenses.

3. Arrest Fee

Courts must collect a $5 arrest fee upon conviction when a peace officer issues a written notice to appear (citation) for a violation of a traffic law, municipal ordinance, or penal law of this state, or makes a warrantless arrest. Art. 102.011(a), C.C.P.

If a charge is initiated by a formal charging instrument (complaint), the arrest fee may not be collected. Also, when a peace officer files a charge by complaint and obtains a warrant of arrest, the court may not collect the arrest fee. Likewise, the arrest fee may not be collected for the offenses of failure to appear or violation of promise to appear since these charges are initiated by complaint and a warrant is issued.

If a city officer issued the citation or made the warrantless arrest, the city keeps the arrest fee. If a peace officer with statewide authority, such as a DPS officer, issued the citation, 20 percent ($1) must be reported to the State the last day of the month following the quarter in which it was collected. The statute does not require the arrest fee be used for a specific purpose, and it may be deposited into the general revenue fund.

4. Warrant Fees

a. Warrant Fee

The Warrant Fee is collected when a peace officer performs certain services. Article 102.011(a)(2) of the Code of Criminal Procedure requires a $50 warrant fee be collected upon conviction if a warrant, capias, or capias pro fine is processed or executed by a peace officer.

A warrant, capias, or capias pro fine is executed if the officer serves the warrant by arresting the defendant. As the statute does not define processing, the judge must determine what he or she will consider as processing. Some processes that a peace officer might conduct are telephone calls to the defendant, courtesy letters, or entering the warrant into the local police department.
computer. Regardless of what the judge accepts as processing, documentation of the processing by a peace officer must be provided to the judge before he or she may assess the fee.

If a law enforcement agency other than the agency of the court’s jurisdiction that processed the warrant, capias, or capias pro fine executes it, that agency may request the $50 fee. The request must be made within 15 days after the arrest. If that agency fails to request the fee, it is still required to be collected, but is paid into the issuing city’s treasury. If a peace officer employed by the city from which the warrant, capias, or capias pro fine was issued executes or processes the warrant, the $50 would be collected and paid into the city treasury. If a peace officer with statewide authority executes or processes the warrant, 20 percent ($10) must be remitted to the State the last day of the month following the quarter in which it was collected. If the warrant is executed or processed but there is no conviction, no fee may be assessed or collected.

Likewise, if a warrant, capias, or capias pro fine is not processed or served by a peace officer, the court may not assess the fee. For instance, when the warrant is given to a private collection agency to process, the fee may not be collected because a collection agency does not employ peace officers. However, if the court gives the warrant to the local police department for some type of processing before sending the warrant to the collection agency, the court may assess the fee.

The statute does not require that this fee be used for any specific purpose. It may be placed in the city’s general revenue fund and used for any lawful purpose.

b. Special Expense Fee

Article 45.203 of the Code of Criminal Procedure says that cities must by ordinance prescribe rules, not inconsistent with state law, as may be proper to enforce the collection of fines. This statute also provides authority to adopt an ordinance for the collection of a special expense fee not to exceed $25 for the issuance and service of a warrant of arrest for the offenses of failure to appear (Sec. 38.10, P.C.) and violate promise to appear (Sec. 543.009. T.C.).

This statute requires the warrant of arrest to be executed; just processing it does not count. The fee may not be collected if a defendant voluntarily surrenders to the court or appears after a courtesy letter from the court or peace officer. The statute requires that the fee be deposited into the municipal treasury. Some cities pay the fee to peace officers who serve the warrant outside their regular duty hours. Attorney General Opinion JM-462 (1986) addresses this issue. The opinion says in part that members of a regular police force may legally serve arrest warrants outside of their regular hours, but may not receive the warrant fee as compensation for such service. Cities must compensate officers as they otherwise would for overtime. Cities should visit with their city attorney regarding the payment of any fees to peace officers.

5. Fees Assessed upon Dismissal of Cases

a. For Driving Safety Course

In addition to the $10 administrative fee charged when granting a driving safety course (or amount of the fine charged when granting a discretionary driving safety course), courts may charge a fee for obtaining a copy of the defendant’s driving record from DPS when the defendant requests to take a driving safety course. The fee is based on the cost of using the state electronic
internet portal (formerly Texas Online). If the court collects the fee, the court must send the money to the CPA quarterly.

b. For Teen Court

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 assess another $10 fee to cover the cost of administering the teen court. 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 located in a county on the Texas-Louisiana border, it may assess two $20 fees instead of the $10 fees. The $20 fees apply to 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.

Article 45.052(g) of the Code of Criminal Procedure 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.

c. For Remediying Certain Defects

Statutes provide discretion for judges to collect fees in certain instances if a defendant remedies particular defects. Although none of the statutes say where the fees are deposited, they do not require the money to be sent to the State. Generally, most cities deposit the fees in the general revenue account.

Some courts mistakenly assess fees when dismissing the charge of failure to maintain financial responsibility. Although the court is required to dismiss the charge if the defendant had valid insurance or other proof of financial responsibility at the time of the arrest, there is no authority to assess a fee when dismissing the charge. For a discussion of these compliance dismissals or “probation-related” dismissals, see the Traffic Law chapter of this study guide.

6. Additional Fees that May be Assessed at Trial

The court is required to assess certain fees for services of a peace officer. These fees are paid by the defendant upon conviction and can be used by the municipality for any legal purpose. Other fees are required to be assessed depending on the type of trial requested or the actions of the defendant.

a. For Summoning a Defendant

When a peace officer serves a summons on a defendant, upon conviction, the court must collect $35 for the officer’s services. Art. 102.011(a)(4), C.C.P. A summons may be served by delivering a copy to the defendant personally, by leaving it at the defendant’s house or usual place of abode with some person of suitable age, or by mailing it to the defendant’s last known address. Arts. 23.03 and 15.03(b), C.C.P.
b. **For Summoning a Witness**

When a peace officer summons a witness by serving a subpoena and the defendant is convicted, the defendant must pay $5 for the services of the peace officer. Art. 102.011(a)(3), C.C.P.

c. **Jury Fees**

When a peace officer summons a jury and the defendant is convicted, the defendant must pay $5 for the services of a peace officer. Art. 102.011(a)(7), C.C.P. Municipal courts must assess a jury fee of $3 upon conviction by a jury, and this may apply even to a defendant who withdraws a request for a jury trial not earlier than 24 hours before the time of the trial. Art. 102.004, C.C.P.

d. **For Summoning the Parents of a Juvenile**

When a peace officer summons the parents of a juvenile to appear with their child in court, upon conviction, the court must assess a fee of $35. Art. 102.011(a)(4), C.C.P.

e. **Cost of Peace Officer Overtime when Testifying**

Defendants must pay the costs of overtime paid to a peace officer for time spent testifying at or traveling to or from trial. Art. 102.011(i), C.C.P. Since the costs are for time spent testifying in the case, no overtime may be assessed if the officer did not testify. The amount collected varies depending on the officer’s salary and the amount of time spent testifying.

Clerks should work with police departments to make sure the judge has information about officers’ salaries so that the judge may assess this cost. The court should have an affidavit for the officer to sign after testifying so that the court has documentation of the officer’s time and the cost to assess.

f. **Travel Costs to Convey Prisoner or Execute Process**

Article 102.011(b) of the Code of Criminal Procedure requires defendants convicted of a misdemeanor or felony to pay all necessary and reasonable expenses for meals and lodging incurred by peace officers when performing the following services:

- conveying a prisoner after conviction to the county jail;
- conveying a prisoner arrested on a warrant or capias issued in another county to the court or jail of the county; or
- traveling to execute criminal process, summon or attach a witness, or execute process not otherwise described by Article 102.011, C.C.P.

7. **Failure to Appear for Jury Trial**

A municipal court may order a defendant who does not waive a jury trial and fails to appear for trial to pay the costs incurred for impaneling the jury. Art. 45.026, C.C.P. The court may release a defendant from the obligation to pay for good cause. If the court requires the defendant to pay the costs, the order may be enforced as contempt under Section 21.002(c) of the Government Code. Because a defendant may present a reason for not appearing for a jury trial, the court should set the issue for a show cause hearing to give the defendant an opportunity to present his or her reason.
The amount of this cost will vary depending upon the costs incurred by the court. The clerk should do an analysis of the costs for summoning a jury and have it available for the judge, so that the judge may assess the cost. Some possible costs include:

- cost of jury summons (paper and printing costs);
- cost of envelopes and stamps; and
- time spent preparing jury summons, handling requests for exemptions before trial, and managing the jury on the day of trial.

8. **Expunction Fees**

A defendant who petitions the municipal court for an expunction must pay a $30 fee when filing the petition with the municipal court. This fee is to be used to defray the cost of notifying state agencies of orders of expunction. Expunctions are discussed in detail in the *Children and Minors* chapter of the Level II Study Guide.

<table>
<thead>
<tr>
<th>True or False</th>
<th>Question</th>
</tr>
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<tbody>
<tr>
<td>77.</td>
<td>The municipal court in a city with a population greater than 850,000 is required to assess a fee of $8 on parking convictions, depending on the amount set by city council. _____</td>
</tr>
<tr>
<td>78.</td>
<td>The municipal court in a city with a population less than 850,000 is required to collect a fee of up to $5 on parking convictions if the city orders the collection. _____</td>
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<tr>
<td>79.</td>
<td>A city with a population of less than 850,000 is not required to order the collection of the parking fee for the Child Safety Fund. _____</td>
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<td>80.</td>
<td>When a defendant is convicted of a Subtitle C offense in a school-crossing zone, the defendant is required to pay $25 for the Child Safety Fund. _____</td>
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<tr>
<td>81.</td>
<td>A defendant convicted of passing a school bus does not have to pay $25 to the Child Safety Fund unless the offense occurs within a school-crossing zone. _____</td>
</tr>
<tr>
<td>82.</td>
<td>A school-crossing zone is a reduced speed zone to facilitate the safe crossing of students in public schools only. _____</td>
</tr>
<tr>
<td>83.</td>
<td>Someone convicted of the offense of parent contributing to nonattendance does not have to pay the $20 for the Child Safety Fund. _____</td>
</tr>
<tr>
<td>84.</td>
<td>A city with a population greater than 850,000 is required to use the Child Safety Fund for the purpose of providing school crossing guard services. _____</td>
</tr>
<tr>
<td>85.</td>
<td>A city with a population of less than 850,000 must use the money collected for the Child Safety Fund for a school crossing guard program if the city operates one. _____</td>
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<tr>
<td>86.</td>
<td>The $3 Traffic Fund court cost must be collected on all traffic convictions. _____</td>
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<tr>
<td>87.</td>
<td>The court must deposit money collected for the Traffic Fund into the city treasury. _____</td>
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<tr>
<td>88.</td>
<td>The court is required to assess the $5 arrest fee when a defendant is convicted after a warrantless arrest. _____</td>
</tr>
<tr>
<td>89.</td>
<td>The court is required to assess the $5 arrest fee when a defendant is convicted after being issued a citation. _____</td>
</tr>
<tr>
<td>90.</td>
<td>If a defendant is convicted of the offense of failure to appear, the court is required to assess</td>
</tr>
</tbody>
</table>
the $5 arrest fee. _____
91. When a city police officer issues a citation and there is a conviction, the city must pay the arrest fee to the State. _____
92. If a peace officer with statewide authority issues the citation and files it in municipal court, the city may keep all of the $5 arrest fee. _____
93. The warrant fee may be collected only when a peace officer executes or processes the warrant, capias, or capias pro fine. _____
94. If an agency, other than the one issuing the warrant, executes the warrant, that agency may request the $50 fee. _____
95. When a peace officer with statewide authority arrests a person, the court is required to remit $10 of the warrant fee to the State upon conviction. _____
96. If a city wants to collect a fee not to exceed $25 for failure to appear warrants, the city must adopt an ordinance authorizing the collection of the fee. _____
97. Cities may pay peace officers the $25 special expense fee for serving warrants outside their regular duty hours. _____
98. The $10 collected when a court grants a driving safety course must be deposited into the city treasury. _____
99. When a defendant fails to complete a driving safety course, the court is required to refund the $10 fee or allow the defendant to apply the fee to the fine. _____
100. If the court collects a $10 fee to be paid to the teen court program, the program does not have to account to the court for how it uses the money. _____
101. Judges have authority to waive court costs and fees when a defendant participates in a teen court program. _____
102. If a judge allows a defendant to reimburse a victim by paying in installments, the court can require the defendant to pay a $12 fee. _____
103. When a peace officer serves a summons on a defendant, how much must the defendant pay if he or she is convicted? ________________
104. When a peace officer serves a subpoena, how much must a defendant pay if he or she is convicted? ________________
105. When a peace officer summons a jury, how much must a defendant pay if he or she is convicted? ________________
106. What must a child pay for the peace officer’s service of the summons to his or her parent? ________________
107. What is the amount of the jury fee the court must assess when a defendant is convicted by a jury? ________________

True or False
108. When an officer testifies during regular duty hours, the defendant, if convicted, must pay the
costs of the officer’s time testifying in court. 

109. When an off-duty peace officer appears at the trial but does not testify, the court may not assess the costs of the peace officer appearing for the trial. 

110. To assess the costs of an officer testifying, the judge may guess at the amount if the peace officer has not provided information to the court of his or her salary. 

111. If a defendant fails to appear for a jury trial and the court assesses a cost for impaneling the jury, how may the defendant be released from paying these costs? 

112. What are some items that a clerk may consider when preparing an analysis for costs incurred for summoning and impaneling a jury? 

113. What cost must a petitioner pay when requesting an expunction from municipal court? 

114. What cost may a municipal judge assess when a city police officer travels to serve municipal court warrants or capiases? 

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B. Local Fees Created by Ordinance

The Legislature has provided authority for cities to adopt ordinances to collect some fees. If a city does not adopt the appropriate ordinances, it cannot collect the fees. 

There are fees that are added to cases as the result of the actions of defendants. The following information lists fees that courts have authority to, and must, in some situations, collect. Included with each fee is an explanation of the fee, reporting requirements, and if it is a dedicated fee, the specific purpose for which the city must use the money collected. 

1. Juvenile Case Manager Fee

Article 102.0174 of the Code of Criminal Procedure provides city councils authority to create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense to pay a Juvenile Case Manager Fee not to exceed $5. Prior to a 2011 amendment, a city could collect and accumulate these funds prior to the establishment of the position and the hiring of a juvenile case manager. Article 102.0174 was amended, effective September 1, 2011, to prohibit a local government from collecting the juvenile case manager fee if they do not employ a juvenile case manager. 

The fee collected under Article 102.0174 (the juvenile case manager fee) is distinct from the Truancy Prevention and Diversion Fund fee collected per Article 102.015 of the Code of Criminal Procedure.
2. Building Security Fee

Article 102.017 of the Code of Criminal Procedure provides authority for cities to create a $3 Building Security Fee. After the city adopts an ordinance to establish the fund, the court must assess the fee upon all convictions.

The money collected under this fund is dedicated to providing security services for municipal courts. It may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts, including:

- the purchase or repair of x-ray machines and conveying systems;
- handheld metal detectors;
- walk-through metal detectors;
- identification cards and systems;
- electronic locking and surveillance equipment;
- bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
- signage;
- confiscated weapon inventory and tracking systems;
- locks, chains, alarms, or similar security devices;
- the purchase or repair of bullet-proof glass; and
- continuing education on security for court personnel and security personnel.

In 2011, the expanded the list of approved uses for this fund to include warrant officers and related equipment. Sec. 102.107(d-1)(12).

Attorney General Opinion JC-0014 (1999) states that given the legislative history and the express terms of Article 102.017(d), security items that may be purchased are limited to the items in Article 102.017. However, in 1999, the Legislature amended Article 102.017 and added the word “including.” The Code Construction Act (Ch. 311, G.C.) says that the word “including” is a term of enlargement and not of limitation or exclusive enumeration, and use of the term does not create a presumption that components not expressed are excluded. Hence, the purchase of security items is not limited to the list, but must be specifically for court security.

3. Technology Fee

Article 102.0172 of the Code of Criminal Procedure provides authority for a governing body of a municipality to adopt an ordinance to establish a technology fund. The ordinance creates a fee in an amount not to exceed $4 to be collected upon all convictions.

The fund must be dedicated to finance the purchase and maintenance of technological enhancements for the municipal court, including:

- computer systems;
- computer networks;
- computer hardware;
- computer software;
imaging systems;
• electronic kiosks;
• electronic ticket writers; and
• docket management systems.

The fund is to be administered by or under the direction of the governing body of the municipality. Again, the Code Construction Act (Ch. 311, G.C.) defines “include” and “including” as terms of enlargement and not of limitation or exclusive enumeration. Hence, the purchase of technological enhancements is not limited to the list of items described above.

True or False

115. The Juvenile Case Manager Fee can be used to finance a juvenile case manager or a teen court coordinator. _____
116. The Building Security Fee must be established by ordinance before the municipal court may collect it. _____
117. The purpose of the Building Security Fee is to provide all city buildings with security. _____
118. The city must use the Building Security Fee to purchase security items for the court. _____
119. The Technology Fee may only be assessed if the city establishes the fund by ordinance. _____
120. The Technology Fee may not be less than $4. _____
121. The Technology Fee may be used to pay for maintenance of court technology. _____

PART 7
FINES AND COSTS DIVIDED BETWEEN STATE AND CITY

Some of the fines and costs collected by the municipal court are divided between the State and the city. In these instances, if a court prorates court costs because of a partial payment, the State’s portion does not take precedence over the city’s portion.

A. Restitution Fee

If the court orders reimbursement to a victim to be made in specified installments, the court may require the defendant to pay a one-time restitution fee of $12. Six dollars of the restitution fee is retained by the city and the other half must be remitted to the State for the Crime Victims Compensation Fund. Art. 42.037(g), C.C.P.

B. Time Payment Fee

Municipal courts are required to collect a $25 fee from a defendant who pays any part of the fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, costs, or restitution. The fee is to be deposited in the municipal treasury. Sec. 133.103, L.G.C.

Each quarter, treasury custodians are required to send 50 percent of the time payment fee to the CPA. The other 50 percent is retained by the city. The city is required to use 10 percent of the
fee ($2.50) for improving the efficiency of the administration of justice. The other $10 may be used by the city for any lawful purpose.

C. Over Gross Weight Violations

On conviction of an offense involving operating or loading overweight vehicles under Section 621.506 of the Transportation Code, the court is required to remit the court costs and 50 percent of the fine to the Comptroller unless the offense occurred within 20 miles of an international border, in which event, the entire amount may be retained by the city. The city must use the money for road maintenance. Sec. 621.506(g), T.C. The statute does not say how frequently the fine money must be remitted. The Comptroller’s Office has set the reporting cycle to coincide with the quarterly cycle for the basic court costs and fees.

D. Excess Motor Carrier Fines

Only certain cities may enforce excess motor carrier violations under Chapter 644 of the Transportation Code and those cities may only keep part of the revenue generated. To enforce these types of violations, municipal police officers must be certified by DPS. Police officers of any of the following municipalities are eligible to apply for the certification:

- a municipality with a population of 50,000 or more;
- a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 500,000 or more;
- a municipality with a population of less than 25,000 any part of which is located in Harris County and contains or is adjacent to an international port;
- a municipality with a population of at least 34,000 that is located in a county that borders two or more states;
- a municipality in any county bordering Mexico;
- a municipality with a population of less than 5,000, that is located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to Harris County;
- a municipality that is located within 25 miles of an international port and in a county that does not contain a highway that is part of the national system of interstate and defense highways that is adjacent to Harris County; or
- a municipality with a population of less than 8,500 that is the county seat and contains a highway that is part of the national system of interstate and defense highways.

In each fiscal year, a municipality may keep fines from the enforcement of Chapter 644 in an amount not to exceed 110 percent of the municipality’s actual expenses for enforcement of Chapter 644 in the preceding fiscal year, as determined by the CPA after reviewing the most recent municipal audit conducted under Section 103.001 of the Local Government Code. If there are no actual expenses for enforcement of Chapter 644 in the most recent municipal audit, a municipality may retain fines in an amount not to exceed 110 percent of the amount the CPA estimates would be the municipality’s actual expenses for enforcement of Chapter 644 during the year. The municipality must send to the CPA the amount of the fines that exceeds the limit imposed by the CPA. Sec. 644.102, T.C.
Cities that participate in the enforcement of excess motor carrier violations must complete a worksheet provided by the CPA used to calculate the costs of enforcement. To get information regarding this worksheet, the court should call the Local Government Assistance Division of the State Comptroller’s Office toll free at 800.531.5441.

122. If the court orders a defendant to pay a victim restitution in installment payments, what is the amount of the restitution fee that the court may require? ________________

123. How must the court account for the restitution fee? ________________

124. When is a time payment fee required to be collected? ________________

125. How is the time payment fee disbursed? ________________

True or False

126. When a city is not within 20 miles of an international border, the city must remit to the State 50 percent of the fines collected for over gross weight violations. _____

127. When a city enforces excess motor carrier violations, the city may keep fines from these offenses as long as the amount does not exceed 110 percent of the city’s actual expenses for enforcement in the preceding fiscal year. _____

PART 8
FINES

A. Disposition of Traffic Fines

Section 542.401 of the Transportation Code requires cities to expend fine money collected for convictions of Title 7 of the Transportation Code offenses for:

- construction and maintenance of roads, bridges, and culverts; and
- enforcement of laws regulating the use of highways by motor vehicles.

Because courts collect fines for offenses in many different statutes, clerks should keep a separate accounting of fine money collected under Title 7, since statutes require cities to budget this money for certain uses. This type of information needs to be reported to the city accounting department and the person responsible for preparing the budget.

B. Excess Highway Fines

The excess fines law is found Subtitle C, Section 542.402(b) of the Transportation Code. For cities with a population of fewer than 5,000, the Legislature restricts the amount of revenue that may be retained from offenses under Title 7 (Chs. 501-750) of the Transportation Code. The law basically keeps small cities from collecting too large a portion of their budget from traffic fines.

The law reads, “In each year, a municipality having a population of less than 5,000 may retain, from fines collected from violations of this title and from special expenses collected under Article 45.051, Code of Criminal Procedure, in cases in which a violation of this title is alleged, an amount equal to 30 percent of the municipality’s revenue for the preceding fiscal year from all sources other than federal funds and bond proceeds.” The restriction applies to not only the
fines collected for offenses charged under Title 7, but also to the special expenses collected under Article 45.051 of the Code of Criminal Procedure when deferred is granted for Title 7 violations. Sec. 542.402, T.C.

To determine if a city falls within this restriction, the city must look to the most recent federal decennial census. If the city population is now 5,000 or more, but was under 5,000 when the census was taken, the law would apply. However, if the city’s population is now under 5,000 but the census shows the population 5,000 or more, the law would not apply.

Then the city’s previous year’s revenues are totaled, and federal funds and bond proceeds are subtracted. When the fines and special expenses for offenses charged under Title 7 reach 20 percent, the court must file a report with the CPA. Failure to report may cause the city to pay for an audit conducted by the CPA. The report must be submitted to the CPA within 120 days after a city’s fiscal year ends. The report must include a copy of the city’s financial statement that is prepared for that fiscal year and filed as required by the Local Government Code, Chapter 103, and show the total amount collected from Title 7 offense fines and special expenses.

The city may keep all the traffic fines and special expenses under Article 45.051 collected for offenses under Title 7 up to 30 percent of its total revenue in the preceding fiscal year. Federal funds and bond sale proceeds do not count in figuring total revenue.

When fines and special expenses for offenses charged under Title 7 equal 30 percent of the budget, all but $1 of each fine or special expense collected for Title 7 offenses must be remitted to the State. The city keeps the $1 as a service fee and remits the revenue with the other quarterly reports.

C. Fines for Parent Contributing to Nonattendance

If a parent is convicted of the offense of parent contributing to nonattendance, one half of the fine must be paid to the school district in which the child attends school, the open enrollment charter school the child attends, or the juvenile justice alternative education program that the child has been ordered to attend. The other half of the fine goes into the city’s general fund. Sec. 25.093, E.C.

D. Collection Improvement Programs

Cities with a population of 100,000 or greater are required to develop and maintain a program to improve the collection of court costs, fees, and fines imposed in criminal cases. Art. 103.0033, C.C.P.

The program must consist of the following:

- a component that conforms with a model developed by OCA that is designed to improve in-house collections; and
- a component designed to improve collection balances more than 60 days past due, which may be implemented by entering into a contract with a private attorney or public or private vendor in accordance with Article 103.0031 of the Code of Criminal Procedure.

The Office of Court Administration may use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs. Each city
shall at least annually submit to OCA a written report that includes updated information regarding the program. The report must be in a form approved by OCA. The OCA is required to periodically audit cities to verify the information reported and confirm that the city is conforming with the requirements of the program. Art. 103.0033, C.C.P.

Section 133.058(e) of the Local Government Code provides that a city may not retain court cost handling fees if the city is not conforming with its collection improvement program.

True or False
128. The Transportation Code requires all cities to allocate fine money collected for traffic convictions in a certain manner in the city’s budget. _____
129. Cities with a population under 5,000 must pay the State all but $1 of the fines and special expenses under Article 45.0511 of the Code of Criminal Procedure collected for offenses under Title 7 of the Transportation Code after fines and special expenses reach 30 percent of their budget. _____
130. When a parent is convicted of contributing to nonattendance, the city must pay the fine to the school district. _____
131. Cities with a population of 100,000 or greater are required to develop and maintain a program to improve the collection of court costs, fees, and fines. _____
132. The city is required to submit annually a written report about its collection program to the Attorney General’s Office. _____
133. If a city does not conform with its collection program, the city cannot retain its 10 percent handling fee or 50 percent of the time payment fee. _____

PART 9
CITY CONTRACTS

A. With the Department of Public Safety

Cities may contract with the DPS to deny driver’s license renewal to a person who fails to appear, fails to pay, or fails to satisfy the judgment in a manner ordered by the court. Ch. 706, T.C. If a city enters into such an agreement with DPS, the court is required to collect an additional $30 fee from defendants. Twenty dollars of the fee is remitted to the State; $6 is paid to OmniBase, the vendor that DPS has contracted with; and the city keeps $4.

The court must assess an administrative fee of $30 for each violation for which the person failed to appear for a complaint or citation unless the defendant is acquitted of the charges for which the person failed to appear or failed to pay.

In Rule 15.119 of Title 37 of the Texas Administrative Code, DPS defines acquittal to mean “an official fact-finding made in the context of the adversary proceeding by an individual or group of individuals with the legal authority to decide the question of guilt or innocence… [A]cquittal also includes a discharge by the court upon proof of actual innocence.” This would include the offense of failure to maintain financial responsibility or failure to display driver’s license and other defenses to prosecution. Upon dismissal of these two charges, the court would not collect the $30 fee and would report these dismissals as acquittals to OmniBase.
The $30 fee is accounted for in the following manner:

- the fee shall be deposited into the city treasury;
- the account may be interest-bearing (city may keep interest);
- the city must report the amount of funds received and disbursed annually to the Comptroller and DPS;
- the city must remit $20 to Comptroller on the quarterly report; and
- the city retains $10 ($6 is paid to the vendor) and deposits it in the city’s general fund.

B. With the Department of Motor Vehicles

Cities may contract with the DMV and their county tax assessor-collector to deny vehicle registration renewal to persons who fail to appear or pay on certain traffic warrants. Ch. 702, T.C. Since 2011, cities can assess a $20 fee on each person who is reported to the “Scoff Law” program. The city must send the entire $20 to the county tax assessor-collector and may not retain any of the fee.

C. Private Collection Contracts

Article 103.0031 of the Code of Criminal Procedure provides authority for a city to contract for collection services. The vendor’s fee is based on the amount of fine and costs owed for a failure to pay or the fine eventually assessed by the court or jury for a failure to appear.

Contracts with a public or private vendor or attorney must specify a 30 percent collection fee or it is not authorized by Article 103.0031. Consequently, if the fee is for an amount other than 30 percent, it cannot be assessed against a defendant and must be paid by the city. The fee does not apply if a case is dismissed, the defendant is acquitted, or to any part of the fine or costs if a defendant is discharged by jail credit or community service. If a defendant makes a partial payment, the vendor is paid its 30 percent, then the money is allocated on a pro-rata basis to the State and local costs, and any remaining money is applied toward the fine. Tex. Atty. Gen. Op. 0147, (2004).

If the defendant has been given notice of a time and place to appear and failed to appear, the court must wait 60 days before reporting the case to the vendor. Courts can refer cases with fine or costs still owed on the 61st day after they are to be paid.

Subsection 103.0031(i) allows cities to enter into a contract to collect a debt incurred on an offense that was committed before June 18, 2003, but no collection fee applies.

True or False

134. If cities want to deny the renewal of driver’s licenses to defendants who fail to appear or fail to pay, they must contract with DPS. _____

135. When a defendant returns to court after being denied renewal of his or her driver’s license, the defendant must pay the court an additional $30 court cost unless the defendant is acquitted. _____

136. When a city contracts with the Texas Department of Motor Vehicle to deny vehicle
registration to defendants who fail to pay or appear, the court must collect upon conviction a $30 fee. ______

137. If the defendant failed to appear, a vendor’s fee is based on the amount of fine eventually assessed by the court or jury. _____

138. Vendor contracts can specify any amount of collection fee. _____

139. If a defendant makes a partial payment, the vendor is paid after local and state court costs are paid. ______
### APPENDIX A: COURT COSTS CHART

**COURT COSTS**

For conviction of offenses committed on or after January 1, 2014

<table>
<thead>
<tr>
<th>OFFENSE/DESCRIPTION</th>
<th>State CF</th>
<th>State JSF</th>
<th>State IDF</th>
<th>State JRF</th>
<th>State TPDF</th>
<th>State STF</th>
<th>Local TFC</th>
<th>Local CS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Municipal Ordinance</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Parking (authorized by Section 542.202 or Chapter 682, Transportation Code)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>*1</td>
<td>*1</td>
</tr>
<tr>
<td>• Pedestrian</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>• Other city ordinances not categorized above</td>
<td>40.00</td>
<td>6.00</td>
<td>2.00</td>
<td>4.00</td>
<td>2.00</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>54.00</td>
</tr>
<tr>
<td><strong>State Law</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>✗ Transportation Code, Rules of the Road (Chapters 541-600)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Parking and Pedestrian (in school crossing zone)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>30.00</td>
<td>3.00</td>
<td>25.00</td>
<td>58.00</td>
</tr>
<tr>
<td>• Parking and Pedestrian (outside school crossing zone)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>30.00</td>
<td>3.00</td>
<td>N/A</td>
<td>33.00</td>
</tr>
<tr>
<td>• Passing a School Bus (Section 545.066)</td>
<td>40.00</td>
<td>6.00</td>
<td>2.00</td>
<td>4.00</td>
<td>2.00</td>
<td>30.00</td>
<td>3.00</td>
<td>25.00</td>
<td>112.10*2</td>
</tr>
<tr>
<td>• Other Rules of the Road offense in a school crossing zone</td>
<td>40.00</td>
<td>6.00</td>
<td>2.00</td>
<td>4.00</td>
<td>2.00</td>
<td>30.00</td>
<td>3.00</td>
<td>25.00</td>
<td>112.00*2</td>
</tr>
<tr>
<td>• Other Rules of the Road offense outside a school crossing zone</td>
<td>40.00</td>
<td>6.00</td>
<td>2.00</td>
<td>4.00</td>
<td>2.00</td>
<td>30.00</td>
<td>3.00</td>
<td>N/A</td>
<td>87.00*2</td>
</tr>
<tr>
<td>✗ Parking and Pedestrian Offense (not under the Rules of the Road)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>✗ Education Code</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Parent Contributing to Nonattendance (Section 25.093)</td>
<td>40.00</td>
<td>6.00</td>
<td>2.00</td>
<td>4.00</td>
<td>2.00</td>
<td>N/A</td>
<td>N/A</td>
<td>20.00</td>
<td>74.00</td>
</tr>
<tr>
<td>• Failure to Attend School (Section 25.094)</td>
<td>40.00</td>
<td>6.00</td>
<td>2.00</td>
<td>4.00</td>
<td>2.00</td>
<td>N/A</td>
<td>N/A</td>
<td>20.00</td>
<td>74.00</td>
</tr>
<tr>
<td>✗ All other fine-only misdemeanors not mentioned above</td>
<td>40.00</td>
<td>6.00</td>
<td>2.00</td>
<td>4.00</td>
<td>2.00</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>54.00*2</td>
</tr>
</tbody>
</table>

For the purpose of assessing, imposing, and collecting most court costs and fees, a person is considered to have been convicted if, pursuant to Section 133.101 of the Local Government Code or the specific statute authorizing the court cost, either: a judgment, sentence or both are imposed on the person; or the person receives a DSC, deferred disposition, or some other deferral (see Articles 45.051-45.053 of the Code of Criminal Procedure). In contrast, this expanded definition of conviction does not appear in the statute establishing the Juror Reimbursement Fee.

*1 **Additional Child Safety Fund costs:**
- $2-$5 court cost for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).
- Up to $5 court cost for cities with population less than 850,000 that have adopted appropriate ordinance, regulation, or order (optional).

*2 **MVF:** Add 10¢ court cost on all moving violations. Moving violations are found in Title 37, Section 15.89(b) of the Texas Administrative Code. Note that some moving violations are in codes other than the Transportation Code. Because passing a school bus is a moving violation, the 10¢ has already been calculated into the total.
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Name of Cost/Fee</th>
<th>Legal Reference</th>
<th>Applies To</th>
<th>Portion Remitted, Retained</th>
</tr>
</thead>
<tbody>
<tr>
<td>CF</td>
<td>Consolidated Fee</td>
<td>Section 133.102, Local Government Code</td>
<td>All but parking and pedestrian offenses</td>
<td>90% State, 10% City If timely remitted on quarterly report</td>
</tr>
</tbody>
</table>
| JSF          | Judicial Support Fee | Section 133.105, Local Government Code | All but parking and pedestrian offenses | 90% State, 10% City If timely remitted on quarterly report  
  - Portion retained by city must be used to promote the efficient operation of the court and the investigation, prosecution, and enforcement of offenses within the court’s jurisdiction. |
| IDF          | Indigent Defense Fund | Section 133.107, Local Government Code | All but parking and pedestrian offenses | 90% State, 10% City If timely remitted on quarterly report |
| JRF          | Juror Reimbursement Fee | Article 102.0045, Code of Criminal Procedure | All but parking and pedestrian offenses | 90% State, 10% City If timely remitted on quarterly report |
| TPDF         | Truancy Prevention and Diversion Fund | Article 102.015, Code of Criminal Procedure | All but parking and pedestrian offenses | 50% State, 50% City  
  - If city is operating, establishing, or attempting to establish a JCM program; otherwise 100% to State  
  - Remitted on quarterly report  
  - Must be used to operate or establish a JCM program |
| STF          | State Traffic Fine | Section 542.4031, Transportation Code | Rules of the Road offenses (Chapters 541-600, Transportation Code) | 95% State, 5% City If timely remitted on quarterly report |
| TFC          | Local Traffic Fee | Section 542.403, Transportation Code | Rules of the Road offenses (Chapters 541-600, Transportation Code) | 100% City |
| CS           | Child Safety Fund | Article 102.014, Code of Criminal Procedure | Rules of the Road offenses occurring in a school crossing zone; passing a school bus; failure to attend school; parent contributing to nonattendance; some city ordinance parking violations | 100% City  
  - Must be deposited in municipal child safety trust fund in municipalities with population greater than 850,000  
  - For others, shall first fund school crossing guard program with excess expended for programs designed to enhance public safety and security |
| MVF          | Moving Violation Fee | Article 102.022, Code of Criminal Procedure | Moving violations (Title 37, Section 15.89(b) of the Texas Administrative Code) | 90% State, 10% City If timely remitted on quarterly report |
FEES (add the following whenever they apply):

- The following fees are collected upon conviction for services performed by a peace officer (Article 102.011 of the Code of Criminal Procedure and Section 133.104 of the Local Government Code):
  - $5 arrest fee for issuing a written notice to appear in court following the defendant’s violation of a traffic law, municipal ordinance, penal law, or for making an arrest without a warrant; when service is performed by a peace officer employed by the State, 20% is sent to the State on the quarterly report.
  - $50 warrant fee for executing or processing an issued arrest warrant, capias, or capias pro fine; when service is performed by a peace officer employed by the State, 20% is sent to the State on the quarterly report; when service is performed by another agency, that agency can request the amount of the fee.
  - $5 for serving a subpoena.
  - $5 for summoning a jury.
  - $35 for serving any other writ (includes summons for a defendant or a child’s parent).
  - Other costs: costs for peace officer’s time testifying off duty or mileage for certain transports.

- Fees created by city ordinance
  - Juvenile Case Manager Fee: up to $5 on every conviction if governing body has passed required ordinance establishing a juvenile case manager fund and has hired a juvenile case manager; to be used only to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses of the juvenile case manager (Article 102.0174 of the Code of Criminal Procedure).
  - Municipal Court Building Security Fund: $3 on every conviction if governing body has passed required ordinance establishing building security fund; to be used only for security personnel, services, and items related to buildings that house the operation of the municipal court (Article 102.017 of the Code of Criminal Procedure).
  - Municipal Court Technology Fund: up to $4 on every conviction if governing body has passed required ordinance establishing the municipal court technology fund; to be used only to finance the purchase of or to maintain technological enhancements for the municipal court (Article 102.0172 of the Code of Criminal Procedure).
  - Special Expense Fee: up to $25 for execution of a warrant for failure to appear or violation of promise to appear if governing body has passed required ordinance (Article 45.203 of the Code of Criminal Procedure).

- Jury Fees
  - $3.00 fee collected upon conviction when a case is tried before a jury or when the defendant requested a jury trial and then withdrew the request within 24 hours of the trial setting (Article 102.004 of the Code of Criminal Procedure).
  - Actual costs incurred for impanelling a jury when the defendant fails to appear for a jury trial (Article 45.026 of the Code of Criminal Procedure).

- Time Payment Fee: $25 fee on conviction if defendant pays any part of the fine, court costs, fees, or restitution on or after the 31st day after the date judgment is entered; 50% is remitted to the State on the quarterly report; 50% stays with the city; $2.50 of that shall be used for the purpose of improving the efficiency of the administration of justice and the city shall prioritize the needs of the judicial officer who collected the fee (Section 133.103 of the Local Government Code).

- Restitution Fee: $12 optional fee if defendant pays restitution in installments; 50% remitted to the State for the crime victims’ compensation fund (Article 42.037 of the Code of Criminal Procedure).

- Contractual enforcement options:
  - OmniBase Fee: $30 for failure to appear or failure to satisfy a judgment for any fine-only offense if city has contracted with the Department of Public Safety to deny renewal of driver’s licenses; 66% is sent to the State on the quarterly report; 33% is retained by the city out of which OmniBase is paid (Sections 706.006 and 706.007 of the Transportation Code).
  - Scofflaw Fee: $20 optional fee for failure to appear or satisfy a judgment on an outstanding warrant for violation of a traffic law if the city has contracted with the Department of Motor Vehicles to deny renewal of vehicle registration; entire fee goes to the county tax-assessor (Section 702.003 of the Transportation Code).
  - Third Party Collection Fee: 30% of the unpaid fines, fees, costs, restitution, or forfeited bonds if the city has a contract with a third party collections agency and the amount is more than 60 days past due or more than 60 days have elapsed since the defendant’s failure to appear (Article 103.0031 of the Code of Criminal Procedure).
ANSWERS TO QUESTIONS

PART 1
Q. 1. True (the court is required to submit traffic conviction reports to DPS).
Q. 2. True.
Q. 3. True.
Q. 4. False (courts do report when a defendant completes a driving safety course, not a deferred disposition).
Q. 5. True.
Q. 6. True.
Q. 7. The court is required to report the:
   a. conviction:
      • orders of the driver’s license suspension; and
      • failure to complete the alcohol awareness program or community service;
        and failure to pay a violation of a court order;
   b. failure to appear;
   c. orders of deferred; and
   d. acquittals of driving under the influence of an alcoholic beverage.
Q. 8. It is effective 11 days after the judgment is entered.
Q. 10. Not to exceed six months.
Q. 12. The court can order DPS to suspend or deny issuance of the driver’s license when a person fails to pay or violates a court order after conducting a contempt hearing under Article 45.050 of the Code of Criminal Procedure, retaining jurisdiction, and ordering the suspension as a sanction.
Q. 13. The court must report that deferred disposition was granted and the date granted.
Q. 14. The court is required to report the acquittal to DPS.
Q. 15. Courts must report a conviction of this offense in the same manner as traffic offenses.
Q. 16. The court is required to report convictions to DPS. When a judgment is entered for this offense, the court is required to note an affirmative finding in the judgment. If the offense is a subsequent offense, the court is required to enter a special affirmative finding. When DPS receives the second conviction report, DPS will suspend the driver’s license.
Q. 17. The court must order DPS to suspend the minor’s driver’s license or deny issuance of a driver’s license if the minor does not have one for a period of time not to exceed 180 days. The order must specify the period of the suspension or denial. The court uses the DL-115 (formerly DIC-15) form to report the failure to complete the tobacco awareness program.
Q. 18. Each magistrate, judge of a court of non-record, and clerk of a court of record is required to keep records of persons charged with traffic offenses.

Q. 19. Since keeping records is a ministerial duty, usually the clerk of the court maintains all the records including those cases where a traffic offense is charged.

Q. 20. True.


Q. 22. True.

Q. 23. False (the court must submit the report within seven days of the judgment).

Q. 24. False (the defendant remains convicted of the traffic offense, even if the fine was discharged through community service).

Q. 25. Section 543.202 of the Transportation Code requires that the DR-18 report of traffic convictions of commercial drivers operating a commercial motor vehicle contain the following additional information:

- commercial driver’s license number and social security number, if available;
- the fact that the vehicle was a commercial motor vehicle;
- whether the vehicle was involved in the transporting of hazardous materials; and
- date and nature of offense, including whether the offense was a serious traffic offense as defined in Section 522.003(25) of the Transportation Code (Serious traffic offenses arise from excessive speeding 15 mph over the posted limit or more; reckless driving; violations of state and local traffic laws other than parking, weight, or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely.)

Q. 26. The court may require the defendant to surrender all of his or her driver’s licenses. If the court takes a license, the clerk must not later than the 10th day after the license is surrendered forward the license together with a record of the conviction to DPS.

Q. 27. Not less than 90 days or more than one year.

Q. 28. Courts are required to report on DPS form DIC-21.

Q. 29. The date that the defendant completed the driving safety course.

Q. 30. The date the defendant completed the teen court program.

Q. 31. The municipal court conducts a contempt hearing. If the court retains jurisdiction of the juvenile and finds the juvenile in contempt, the court may order DPS to suspend or deny issuance of the driver’s license as a sanction of the contempt. Art. 45.050(c)(2), C.C.P. This is on the DIC-81 form.

Q. 32. The court must first send the defendant notice reminding the defendant to take care of their business with the court. The court waits 15 days for a response from the defendant. The court should use the Nonresident Violator Compact form.

Q. 33. The court must mail the 4th copy (defendant’s receipt) to the defendant and mail the 5th copy of the notice, which is the notice of withdrawal of suspension to DPS.

Q. 34. No action will be taken under the terms of the Nonresident Violator Compact for the following violations:

- offenses which mandate personal appearance;
• moving traffic violations that alone carry a suspension;
• equipment violations;
• inspection violations;
• parking or standing violations;
• size and weight limit violations;
• violations of law governing the transportation of hazardous material;
• lease law violations; and
• registration law violations.

Q. 35. Because DPS may not transmit a report on any violation if the date of the transmission is more than six months after the date on which the traffic citation was issued.

Q. 36. Nothing. The court only reports a traffic conviction to DPS if the defendant fails to complete the terms of the deferred disposition. The report is submitted after the judge enters a final adjudication in the case (signs the final judgment of guilty).

Q. 37. The suspension or denial cannot exceed 365 days.

Q. 38. The municipal court does not report the conviction to DPS until it is final.

Q. 39. The court only reports a conviction if the defendant is convicted in the new trial.

PART 4

Q. 40. The OCA is a state agency and operates under the supervision of the Supreme Court.

Q. 41. The mission of OCA is to provide administrative assistance and technical support to all of the courts in the State.

Q. 42. The Council studies methods to simplify judicial procedures, expedite court business, and better administer justice. It examines the work accomplished by the courts and submits recommendations to the Legislature, the Governor, and the Supreme Court.

Q. 43. The city secretary must notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge, and clerk of the municipal court.

Q. 44. Within 30 days after the date of the person’s election or appointment.

Q. 45. If an official does not supply the information requested by OCA after a reasonable amount of time, he or she is presumed to have willfully refused the request.

Q. 46. The duty to supply information to OCA may be enforced with a writ of mandamus, an order from a court of superior jurisdiction compelling the municipal judge or clerk to perform a particular act that he or she has a duty to do.

Q. 47. The Supreme Court and the Court of Criminal Appeals are not required to submit monthly reports.

Q. 48. Court activity for each month must be reported to OCA by the 20th day following the end of the month being reported.

Q. 49. The court must identify the name of the municipality, the presiding judge, the court clerk, the mailing address of the court, the name of the person actually preparing the report, and the office telephone number of that person.
Q. 50. If a court does not have activity in a section of the monthly report, the court should not leave the space blank, but should show “zero” activity.

PART 5
Q. 51. No.
Q. 52. For the purpose of collecting court costs, Section 133.101 of the Local Government Code defines conviction as:

- a judgment, a sentence, or both a judgment and a sentence imposed on the person;
- the person receives community supervision, deferred adjudication, or deferred disposition; or
- the court defers final disposition of the case or imposition of the judgment and sentence.

Q. 53. Court cost reports must be filed with the State by the last day of the month following each calendar quarter.
Q. 54. The city may keep the interest if it reports timely.
Q. 55. Cities may not keep the handling fee but must remit it to the State.
Q. 56. Courts are required to keep separate records of the funds.
Q. 57. Some cities are required to remit court costs and fees electronically. If $250,000 or more in court costs and fees are remitted to the Comptroller in a state fiscal year (September through August), payments of $10,000 or more must be made by electronic funds transfer in the following fiscal year. If a city is affected by this rule, the Comptroller must notify the city no less than 60 days before the first payment is required to be made. Sec. 404.095, G.C., and Section 3.9, Part I, Title 34, T.A.C. A city may not be required to remit electronically, but may voluntarily remit in this manner. The reporting is always manual.

Q. 58. False (collected money goes first to costs).
Q. 59. False.
Q. 60. False (collected money is prorated among all costs).
Q. 61. False.
Q. 63. True.
Q. 64. True.
Q. 65. All municipal court proceedings cease.
Q. 66. No, because the conviction is not final—it is appealed.
Q. 67. A judge may waive the fine and costs when a defendant defaults in payment of fine, is indigent or was a child at the time of the offense, and performing community service would be a hardship, or when the defendant receives a deferral and completes a teen court program.

Q. 68. If the new legislation imposes a new or changes an existing court or fee, the cost or fee does not take effect until January 1st of the year following the legislative session.
Q. 69. The treasurer must still file a report with the Comptroller and report that no fees were collected.
Q. 70. False (on all fine-only offenses other than parking and pedestrian).
Q. 71. True.
Q. 72. False (on all Rules of the Road offenses).
Q. 73. False (the city keeps five percent).
Q. 74. False (on all fine-only offenses other than parking and pedestrian).
Q. 75. True.
Q. 76. False (every municipal court must collect the $2 cost; having a juvenile case manager program only affects whether the city gets to retain any of the cost).

PART 6
Q. 77. False.
Q. 78. False.
Q. 79. True.
Q. 80. True.
Q. 81. False.
Q. 82. False.
Q. 83. False.
Q. 84. True.
Q. 85. True.
Q. 86. False (on all Rules of the Road offenses).
Q. 87. True.
Q. 88. True.
Q. 89. True.
Q. 90. False (the offense of failure to appear is initiated by complaint, not a citation).
Q. 91. False.
Q. 92. False (the court must send $1 to the State).
Q. 93. True.
Q. 94. True.
Q. 95. True.
Q. 96. True.
Q. 97. False (the fee should go into the city’s general revenue fund).
Q. 98. True.
Q. 100. False.
Q. 101. True.
Q. 102. True.
Q. 103. Thirty-five dollars.
Q. 104. Five dollars.
Q. 105. Five dollars.
Q. 106. Thirty-five dollars.
Q. 107. Three dollars.
Q. 108. False.
Q. 110. False.
Q. 111. For good cause at a show cause hearing.
Q. 112. Some items that a clerk may want to consider when preparing the analysis are costs of jury summons (paper and printing costs); costs of envelopes and stamps; and clerks’ salaries.
Q. 113. Thirty dollars.
Q. 114. The judge may assess all necessary and reasonable expenses for meals and lodging incurred by peace officer and 29 cents a mile for travel.
Q. 115. False (only a juvenile case manager).
Q. 116. True.
Q. 117. False.
Q. 118. True.
Q. 119. True.
Q. 120. False (it is an amount not to exceed $4).
Q. 121. True.

**PART 7**

Q. 122. Twelve dollars.
Q. 123. The court must deposit $6 in the city’s general revenue account and remit $6 to State for the Crime Victim’s Compensation Fund.
Q. 124. The time payment fee is due from a defendant who pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered.
Q. 125. Each quarter, the city must send 50 percent of the time payment fee to the State Comptroller. The other 50 percent is retained by the city. The city is required to use 10 percent of the fee ($2.50) for improving the efficiency of the administration of justice. The other 40 percent ($10) may be used by the city for any lawful purpose.
Q. 126. True.
Q. 127. True.

**PART 8**

Q. 128. True.
Q. 129. True.
Q. 130. False (the city must pay one half of the fine to the school district).
Q. 131. True.
Q. 132. False (the report goes to the Office of Court Administration).
Q. 133. True.

**PART 9**

Q. 134. True.
Q. 135. True.
Q. 136. False (the court may assess a $20 fee).
Q. 137. True.
Q. 138. False.
Q. 139. False.
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INTRODUCTION

The purpose of this study guide is to familiarize clerks with the different traffic laws found in the Texas Transportation Code. This guide is an overview—not a comprehensive study of the entire Transportation Code—that examines the issues of arrest and appearance, culpability, common penalties and fines, and quotas.

PART 1
TRANSPORTATION CODE

To facilitate its use, the Transportation Code is organized into titles. Each title is divided into subtitles, which in turn are further broken down into chapters, subchapters, and sections. Within the Transportation Code, three primary titles—General Provisions, Roadways, and Vehicles and Traffic—contain the bulk of information on traffic offenses seen most often by municipal courts. The first part of this guide provides a brief description of these titles and subtitles.

A. Title 1 – General Provisions

Title 1, General Provisions, contains general information on the Transportation Code’s purpose and construction. Section 1.002 provides that Chapter 311 of the Government Code (the Code Construction Act) applies to the construction of the Transportation Code except where expressly stated.

B. Title 6 – Roadways

Title 6, Roadways, contains information on toll roads, bridges, ferries, turnpikes, and state highways. More specifically for municipal courts, Subtitle Z, Miscellaneous Roadway Provisions, contains the definition for a construction or maintenance work zone. Sec. 472.022(e)(2), T.C.

C. Title 7 – Vehicles and Traffic

The bulk of Texas traffic laws are contained in Title 7, Vehicles and Traffic. It is divided into the following 11 subtitles.

1. Subtitle A

Subtitle A, Certificates of Title and Registration of Vehicles, contains rules on how vehicles are registered, sold, and tagged. Most of this subtitle is dedicated to special registration rules, but the offenses regarding driving an unregistered or improperly registered vehicle and driving a vehicle without or with improper license plates are contained in Chapters 502, Registration of Vehicles, and 504, License Plates, respectively.

2. Subtitle B

Subtitle B, Driver’s Licenses and Personal Identification Cards, regulates driver’s license requirements, records, applications, examinations, restrictions, expirations, suspensions, and fees. Most of the provisions are administrative and do not affect the daily operation of municipal courts, but courts receive many questions about the effect a conviction may have on a driver’s license. This subtitle does contain common offenses such as failure to carry a driver’s license,
driving without a license, or driving while license invalid. The laws pertaining to driver’s licenses are found in Chapter 521, while laws for commercial driver’s licenses are found in Chapter 522.

3. **Subtitle C**

Subtitle C, *Rules of the Road*, is by far the portion of the code most often used by municipal courts. Subtitle C is divided into chapters, from Chapter 541 through 600. (Note: Chapters 554 to 599 are reserved and do not contain any laws or rules at this time.)

- **Chapter 541, Definitions**, contains the meaning of some of the more commonly used terms in the Transportation Code.

- **Chapter 542, General Provisions**, provides rules for when traffic laws apply and for the authority of local governments to regulate traffic. Sec. 542.202, T.C. This chapter also contains a general offense provision providing that a person commits an offense if the person performs an act prohibited or fails to perform an act required by Subtitle C. Sec. 542.301, T.C. Section 542.401 contains a general penalty, providing that a misdemeanor for which no other penalty is provided in Subtitle C is punishable by a fine of $1 to $200. In addition, this chapter includes information on the traffic fund court costs (Secs. 542.403 and 542.4031); for what purposes traffic fines must be used by the city (Sec. 542.402(a)); and the excess fines law (Sec. 542.402(b)). Sections 542.405 and 542.406 regulate a municipality’s authority regarding civil enforcement of red light cameras. See also, Chapter 707, T.C.

- **Chapter 543, Arrest and Prosecution of Violators**, contains laws regarding when arrests may be made on traffic offenses, written notices to appear, the violation of promise to appear offense, and traffic conviction reporting requirements. The chapter provides that each judge and clerk of a municipal court shall maintain records in all traffic cases and report to the Department of Public Safety (DPS) all traffic convictions and bond forfeitures on traffic violations (Secs. 543.201 and 543.203).

- **Chapter 544, Traffic Signs, Signals, and Markings**, includes signal and light definitions, authority for placing traffic control devices upon the public thoroughfares, and familiar offenses, such as disobeying a red light, a stop, or a yield sign.

- **Chapter 545, Operation and Movement of Vehicles**, contains the bulk of traffic offenses, including speed restrictions, turning movements, lane usage, right of way rules, and special stops. Parking regulations (Secs. 545.301 - 545.350) are also found in Chapter 545, as well as many miscellaneous traffic laws, including passing a school bus (Sec. 545.066); safety belt offenses (Sec. 545.413); child safety seat laws (Sec. 545.412); children riding in the back of an open vehicle bed (Sec. 545.414); novice driver restrictions (Sec. 545.424); and use of cell phones on school property or in a school zone (Secs. 545.425 and 545.4252).

- **Chapter 546, Operation of Authorized Emergency Vehicles and Certain Other Vehicles**, sets out guidelines about when emergency vehicles may speed or disregard traffic regulations.
Chapter 547, Vehicle Equipment, contains numerous regulations regarding necessary equipment on vehicles. It outlines safety, lighting, and other vehicle equipment, and includes laws on window tinting; mufflers; brakes; stop lamps; headlamps; and taillights. If an offense or a question arises about equipment found on a vehicle, it will most likely be found in Chapter 547. It is an offense in Texas to operate or, as an owner, to knowingly permit someone to operate a vehicle that is unsafe or fails to comply with the vehicle regulations of Chapter 547. Sec. 547.004, T.C.

Chapter 548, Compulsory Inspection of Vehicles, provides the rules for inspection of vehicles. Although most of the chapter contains rules and restrictions on inspection stations, fees, and equipment, it does contain offenses that may be filed in municipal court. The most common offense is failure to display an inspection sticker. Sec. 548.602, T.C.

Chapter 550, Accidents and Accident Reports, explains how accident reports should be made, recorded, and distributed. There are a few offenses that may be filed in municipal court involving the duty of a motor vehicle operator to notify the owner or to provide information upon striking an unattended vehicle, striking a fixture or highway landscaping, or causing a collision that results in damage in an amount less than $200.

Chapter 551, Operation of Bicycles, Mopeds, and Play Vehicles, provides that bicycle riders must obey all traffic laws applicable to a vehicle operator. In addition, there are provisions about the way a bicycle should be ridden and safety equipment that must be on a bicycle. This chapter also contains laws regulating mopeds, play vehicles, electric personal assistive mobility devices, neighborhood electric vehicles, motor assisted scooters, golf carts, and utility vehicles.

Chapter 552, Pedestrians, includes restrictions about when and where pedestrians may walk, including the use of sidewalks; crossing at signal lights; “jay walking;” and solicitation by pedestrians.

Chapter 553, Enactment and Enforcement of Certain Traffic Laws in Certain Municipalities, deals with the authority of cities to erect traffic signs.

Chapter 600, Miscellaneous Provisions, provides requirements for dropping material on a highway; the authority for peace officers to require a driver to produce identification anytime within 250 feet of a Mexican border checkpoint; and the authority for school-crossing guards to direct traffic if they complete certain training requirements.

All of the offenses and provisions in Subtitle C are considered Rules of the Road. There is much confusion about the term “Rules of the Road” and the term “moving violations.” Remember that Rules of the Road refers to anything contained in Subtitle C, Chapters 541 to 600 of the Transportation Code, and is important for purposes of specific court costs and an adult’s right to take a driving safety course. (A list of Rules of the Road offenses is included in Appendix A). The term moving violation is defined in Section 15.89 of Title 37 of the Texas Administrative Code as an act committed in connection with the operation of a motor vehicle on a public street or highway, which constitutes a hazard to traffic and is prohibited by state law or city ordinance. Violations are identified as moving violations by the DPS in Table B of Section 15.89, said list of moving violations included in Appendix B. It is important to identify moving violations for
purposes of other court costs and a minor’s (under 25 years of age) right to take a driving safety course.

Although most Rules of the Road offenses are considered moving violations, the two are not the same. Not every Rules of the Road offense is a moving violation and not every moving violation is in Subtitle C. For example, the offense of driving while intoxicated, located in the Penal Code, is a moving violation, as is the offense of driving while license invalid, which is located in Chapter 521 of the Transportation Code—both outside of Subtitle C. It is important for clerks to keep these two terms separate and know the import of each term.

4. **Subtitle D**

Subtitle D, *Motor Vehicle Safety Responsibility*, contains only Chapter 601, which provides that motor vehicle operators must maintain insurance or have some other type of financial responsibility in the event that they cause a collision. This requirement is aimed at protecting other drivers from bearing the cost of injuries or damages when a collision is not their fault. Section 601.191 provides for the offense of failure to maintain financial responsibility.

5. **Subtitle E**

Subtitle E, *Vehicle Size and Weight*, regulates the size and weight of vehicles; provides special provisions for oversize and overweight vehicles; transit permits; and the size of a transport vehicle (including vehicles transporting concrete, milk, timber, power poles, or pipe). These laws are quite technical and complicated, providing tiered fines, requiring a percentage of fines collected to be remitted to the State, and limitations on what fine-only offenses can be heard in municipal courts.

6. **Subtitle F**

Subtitle F, *Commercial Motor Vehicles*, pertains to commercial motor vehicles and motor carriers. This subtitle contains commercial motor vehicle safety standards in Chapter 644, which regulate the trucking industry and ensure that federal highway safety regulations are followed by commercial drivers. When cases are filed under this subtitle, the authority to do so comes from Chapter 644 and such cases can only be filed by certified officers under Section 644.101.

7. **Subtitle G**

Subtitle G, *Motorcycles and Off-Highway Vehicles*, regulates motorcycles, all-terrain vehicles, and recreational off-highway vehicles. The most common offense from this subtitle is not wearing protective headgear while operating a motorcycle (Sec. 661.003). Other portions of this subtitle include motorcycle operating training and safety, off-highway vehicle operation and education, and sale of motorcycles without serial numbers.

8. **Subtitle H**

Subtitle H, *Parking, Towing, and Storage of Vehicles*, provides authority for cities to regulate parking and storage of vehicles. It contains laws regarding disabled parking placards (Sec. 681.002); space designation (Sec. 681.009); privileged (handicapped) parking violations (Sec. 681.011); and exemptions from parking meter fees for vehicles sporting certain specialty plates or disabled veteran plates. Also found in Subtitle H is authority for certain cities to
administratively adjudicate parking citations and allows them to be heard by a hearing officer (Ch. 682). Subtitle H also regulates the handling of junked or abandoned vehicles (Ch. 683).

9. **Subtitle I**

Subtitle I, *Enforcement of Traffic Laws*, contains several provisions important to municipal courts.

Chapter 702 permits a city to contract with the county or Texas Department of Motor Vehicles to deny renewal of vehicle registration to persons with warrants for certain traffic laws. This program is known as the “Scofflaw” program. Sec. 702.003. Chapter 703, *Nonresident Violator Compact*, allows cities to report out-of-state residents who fail to take care of traffic citations, again with a different definition of a traffic law. Chapter 705 contains the offense of allowing a dangerous driver to borrow a motor vehicle. This rule authorizes the prosecution of a person who lends his or her car to a person whose license is suspended under the driving while intoxicated laws (Sec. 705.001). Chapter 706 permits a city to contract with DPS to deny renewal of a driver’s license of defendants who fail to appear or fail to pay or satisfy a judgment in a manner ordered by the court for a fine-only offense. This program is known as the OmniBase program for the vendor used by DPS to administer the program (Sec. 706.004).

Chapter 707 provides the laws for photographic traffic signal enforcement system (red light cameras). Enforcement of red light cameras is civil, but the appeal is to the municipal court.

Chapter 708 contains the provisions for driver’s license points and surcharges. The Driver’s Responsibility Program in Chapter 708 is based on a system of points related to traffic convictions that apply surcharges a license holder must pay to maintain a driver’s license. DPS promulgates a list of “moving violations” that receive two points each conviction, three if a collision resulted. Upon reaching six or more points over 36 months, the driver is assessed a surcharge of $100 plus $25 for each point over six. DPS uses automatic license suspension to collect past due surcharges. For DWI convictions, surcharges vary: $1,000 for the first DWI, $1,500 for a subsequent, and $2,000 for DWI with BAC over 0.16. Failure to maintain financial responsibility and driving while license invalid trigger automatic surcharges of $250 per year. Operating a motor vehicle without a proper license results in an automatic surcharge of $100. Surcharges continue for three years. Chapter 708 also contains provisions for the waiver of surcharges.

Ticket quotas for peace officers are prohibited under Subtitle I in Section 720.002. Cities are prohibited from requiring or suggesting that judges collect a predetermined amount of money from persons convicted of a traffic offense within a specified period and may not evaluate or discipline a judge based on the amount of money the judge collects in traffic fines. A violation of this section by an official is misconduct and grounds for removal from office.

10. **Subtitle J**

Subtitle J, *Miscellaneous Provisions*, is the second-to-last subtitle of Title 7. It regulates the operations of automobile clubs (Ch. 722); provides requirements for cities and counties to have their name on city or county vehicles (Ch. 721); contains the implied consent law, requiring motorists under certain circumstances to consent to a blood alcohol test or face driver’s license suspension (Ch. 724); and other provisions dealing with master keys and the regulation of loose materials.
11. **Subtitle M**

Subtitle M, *Department of Motor Vehicles*, is the last subtitle of Title 7, and the newest. Under a law passed in 2009, this subtitle creates the Department of Motor Vehicles (DMV) as an entity separate from the Department of Transportation (TxDOT) and lays out the rules for its overall structure and governance. The DMV now oversees the registration of vehicles, issues oversize and overweight permits, regulates vehicle dealers, and credentials buses and big trucks for intrastate and interstate commerce.

<table>
<thead>
<tr>
<th>Q. 1. How is the Transportation Code organized?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 2. Most traffic law matters handled by municipal court are located in which title of the Transportation Code?</td>
</tr>
<tr>
<td>Q. 3. In which subtitle do you find rules on license plates?</td>
</tr>
<tr>
<td>Q. 4. In which subtitle do you find rules on driver’s licenses?</td>
</tr>
<tr>
<td>Q. 5. In which chapter of Subtitle C do you find rules on arrest and prosecution of traffic violators?</td>
</tr>
<tr>
<td>Q. 6. In which chapter of Subtitle C do you find the requirements of reporting traffic convictions?</td>
</tr>
<tr>
<td>Q. 7. Which chapter in Subtitle C regulates bicycles?</td>
</tr>
<tr>
<td>Q. 8. What are the Rules of the Road?</td>
</tr>
<tr>
<td>Q. 9. Where are the moving violations defined?</td>
</tr>
<tr>
<td>Q. 10. In which subtitle do you find rules on maintaining financial responsibility?</td>
</tr>
<tr>
<td>Q. 11. In which subtitle do you find rules about privileged (handicap) parking?</td>
</tr>
<tr>
<td>Q. 12. In which subtitle do you find rules on the <em>Nonresident Violator Compact</em>?</td>
</tr>
<tr>
<td>Q. 13. In which chapter do you find rules on contracting with DPS to deny renewal of a driver’s license to defendants who fail to appear or fail to pay or satisfy a judgment in a manner ordered by the court?</td>
</tr>
<tr>
<td>Q. 14. In which chapter do you find rules regarding surcharges added to driver records for convictions of traffic offenses?</td>
</tr>
<tr>
<td>Q. 15. In which section do you find information about quotas being prohibited?</td>
</tr>
</tbody>
</table>
PART 2
ISSUANCE OF CITATIONS

A. Peace Officer’s Authority to Issue Citations

Peace officers may arrest persons who commit traffic violations. Specific authority for arresting persons who commit Rules of the Road violations is found in Section 543.001 of the Transportation Code, but there is also authority for a peace officer to release a person arrested for a Title 7, Subtitle C violation by issuing a citation (a.k.a. a written promise to appear) instead. Sections 543.003 and 543.007 provide additional rules for citations issued to the operator of a commercial motor vehicle or holder of a commercial driver’s license or learner’s permit. Those citations must contain certain information required by DPS to comply with Chapter 522 and the Federal Commercial Motor Vehicle Safety Act of 1986. The DPS rules are in Section 16.100, Chapter 16, Title 37 of the Texas Administrative Code.

Under Chapter 543 of the Transportation Code, in order for the violator to secure release from custody, he or she must sign a promise to appear. Later, if the person fails to appear in court as promised, he or she can be charged with the criminal offense of violation of promise to appear. Sec. 543.009. This is a separate crime from the underlying traffic offense and is charged by complaint.

If a person violates traffic laws outside of Subtitle C, such as failure to maintain financial responsibility (Subtitle D), no driver’s license (Subtitle B), expired registration (Subtitle A), or not wearing protective headgear while riding a motorcycle (Subtitle G), the peace officer has general authority to arrest without a warrant under Article 14.01(b) of the Code of Criminal Procedure for any offense committed in his or her presence or within his or her view. After a peace officer makes an arrest under Chapter 14, the officer must take the person before a magistrate. The exception to this rule is for Class C misdemeanors.

Subsection (b) of Article 14.06 of the Code of Criminal Procedure provides authority for a peace officer to release a person arrested for a Class C misdemeanor by issuing a citation in lieu of a full custodial arrest. The one exception is for the offense of public intoxication where the peace officer may take the person to jail, release him or her to someone who will assume responsibility, or the offender consents to attend a chemical dependency program. Art. 14.031, C.C.P.

If a person fails to appear after having been released by a citation issued under the authority of Article 14.06(b), the person can be charged with the offense of failure to appear. The offense of failure to appear is a Class C misdemeanor if the underlying offense charged in court is a Class C misdemeanor. Sec. 38.10, P.C. The elements of failure to appear require that the person be taken into custody and released with or without bail and then fail to appear according to the terms of the release. When a peace officer stops a person for committing a traffic violation, the person is under arrest and in custody until the officer decides whether to take the person to jail or to release the person by issuing a citation. For offenses outside of Subtitle C, when a person fails to appear, the proper charge is the Penal Code offense of failure to appear.

Article 14.06(c) 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 $50 or more, but less than $500 (Sec. 28.03(b)(2), P.C.);
• Graffiti, where the amount of pecuniary loss is less than $500 (Sec. 28.08(b)(1), P.C.);
• Theft, where the value of the property stolen was $50 or more, but less than $500 or the value of property obtained by a hot check was $20 or more, but less than $500 (Sec. 31.03(e)(2)(A), P.C.);
• Theft of service, where the value of the service stolen was $20 or more, but less than $500 (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 while license invalid (Sec. 521.457, T.C.).

<table>
<thead>
<tr>
<th>General Authority to Issue Citations</th>
<th>Specific Authority for Class A and B Offenses</th>
<th>Specific Authority for Subtitle C, “Rules of the Road” Offenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>A peace officer’s general authority to issue a citation for any Class C misdemeanor, except for the offense of public intoxication, is found in Article 14.06(b), C.C.P.</td>
<td>Specific authority for a peace officer to issue citations for certain Class A and B misdemeanor offenses found in Article 14.06(c), C.C.P.</td>
<td>Specific authority for a peace officer to issue a notice to appear for offenses in Subtitle C, T.C., is found in Section 543.003, T.C.</td>
</tr>
</tbody>
</table>

B. Speeding and Open Container: Issuance of Citation Required

Peace officers who stop a person for speeding generally may not take the person into custody. Officers must issue a citation for the speeding offense and release the person if the person signs the citation. If the person refuses to sign the citation, the officer may then take the person before a magistrate. Sec. 543.004, T.C.

Additionally, a peace officer charging a person with open container of alcohol in a vehicle under Section 49.031 of the Penal Code, shall instead of taking the person before a magistrate issue a written citation. See also, Sec. 543.004, T.C.

C. Information on Citations

1. Racial Profiling Information

Although the two statutes authorizing the issuance of a citation do not require information to be gathered for racial profiling data, Article 2.133 of the Code of Criminal Procedure requires law enforcement agencies to adopt a detailed written policy on racial profiling, including the collection of information relating to traffic stops in which a citation is issued or an arrest results, including:

- a physical description of person;
- the person’s gender;
- the person’s race or ethnicity;
- whether the officer knew the race or ethnicity of the individual detained before detaining the person;
the initial reason for the stop;
• whether the officer conducted a search as a result of the stop and, if so, whether the person consented to the search;
• the reason for the search;
• whether any contraband was discovered and the type of contraband;
• whether any probable cause or reasonable suspicion existed to perform the search;
• whether the officers made an arrest as a result of the stop, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
• the street address or approximate location of the stop; and
• whether the officer issued a written warning or citation as a result of the stop.

Law enforcement agencies must require the collection and reporting of certain information related to motor vehicle stops in which a citation is issued or arrest made. Art. 2.132, C.C.P. These reports have to be submitted to the Texas Commission on Law Enforcement each March. Section 543.202 of the Transportation Code requires the court to report much of this same information to DPS. For most cities, the best way for both the law enforcement agency and the court to collect this information is using the citation.

2. Driving Safety Course Information

Article 45.0511(q) of the Code of Criminal Procedure requires that a notice to appear issued for a Subtitle C, Rules of the Road violation include the following statement:

You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course.

In its absence, the person may continue to exercise the right to the course until he or she is informed or the case is disposed. Art. 45.0511(r), C.C.P.

3. Failure to Maintain Financial Responsibility Warning

Section 601.233 of the Transportation Code requires that a citation for failure to maintain financial responsibility contain the following statement in type larger than other type on the citation except for the type of the statement required by Section 708.105 of the Transportation Code (regarding surcharges):

A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver’s license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the Department of Public Safety for two years from the date of conviction. The department may waive the requirement to file evidence of financial responsibility if you file satisfactory evidence with the department showing that at the time this citation was issued, the vehicle was covered by a motor vehicle liability insurance policy or that you were otherwise exempt from the requirements to provide evidence of financial responsibility.
4. **Notice of Surcharges**

Section 708.105 of the Transportation Code requires that a citation issued for a traffic offense (under state law or city ordinance) must include in type larger than any other type on the citation the following statement:

A conviction of an offense under a traffic law of this state or a political subdivision of this state may result in the assessment on your driver’s license of a surcharge under the Driver’s Responsibility Program.

5. **Address Obligation for Juveniles and Their Parents**

Article 45.057(h) of the Code of Criminal Procedure provides that a child and parent required to appear before the court have an obligation to notify the court in writing of any change of address. Failure to do so is a Class C misdemeanor. For the obligation to become effective, notice must be provided to the child, parent, or both. This notice may be given on the citation. Art. 45.057(j), C.C.P.

6. **Notice of Contract with DPS or DMV**

When a city contracts with DPS under the OmniBase program to deny driver’s license renewal to a person who fails to appear or fails to pay a judgment in a manner ordered by the court, the citation must provide a written warning that if the violator fails to appear in court as provided by law for the prosecution of the offense or fails to pay or satisfy a judgment ordering the payment of a fine and costs in the manner ordered by the court, he or she may be denied renewal of their driver’s license. The warning is in addition to any other warning required by law. Sec. 706.003, T.C.

For a city contracting with the DMV in the Scofflaw program, the citation must include a warning that states that if the person fails to appear in court as provided by law for the prosecution of the offense or fails to pay a fine for the violation, the person might not be permitted to register a motor vehicle in Texas. Sec. 702.004, T.C.

7. **Commercial Operators and Driver Licenses**

Section 543.202 of the Transportation Code requires courts to report the social security number on citations issued to holders of a commercial driver’s license or permit.


DPS, in Title 37, Rule 16.100 of the Texas Administrative Code requires the following information to be noted on a citation issued to a person holding a commercial driver’s license or permit:

- the person’s name, address, physical description, and date of birth;
- the person’s driver’s license number;
- the registration number of the vehicle involved;
- whether the vehicle was a commercial motor vehicle as defined in Chapter 522 of the Transportation Code;
- whether the vehicle was involved in the transporting of hazardous materials; and
the date and nature of the offense, including whether the offense was a serious traffic violation as defined in Chapter 522 of the Transportation Code (i.e., excessive speeding 15 mph or more over; reckless driving; violation of state and local traffic laws other than parking; weight or vehicle defect violations arising in connection with a fatal collision; improper or erratic lane change; or following too closely). Sec. 522.003(25), T.C.

Since CDL holders are not required to make an appearance in open court, and because such information is reported to DPS via the citation, the only way this information is guaranteed to be obtained is if it is collected by a peace officer at the time the citation is issued.

8. Domestic Violence Admonishments on Citations

Article 14.06 of the Code of Criminal Procedure requires that a peace officer who issues a citation to a person, including a child, for a Class C misdemeanor other than an offense under Section 49.02 of the Penal Code (public intoxication), must issue a citation that contains the following admonishment, in boldfaced or underlined type or in all capital letters:

If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

9. General Information to Include on Citations

The following information must be included on the notice for Class C misdemeanors:

- the time and place to appear before a magistrate;
- the name and address of the person charged;
- the offense charged; and
- the domestic violence admonishment.

The following information must be included on the notice for Rules of the Road offenses:

- the time and place the person is to appear;
- the name and address of the person charged;
- the offense charged; and
- the license number of the person’s vehicle if applicable.

Note: The complaint and the summons or notice to appear for speeding must specify the maximum or minimum speed limits and the speed the defendant is alleged to have driven. Sec. 543.010, T.C.

D. When Signature Required

Whether a signature is required on a citation depends on the type of offense for which the citation is being issued and the authority used to issue the citation. See the chart below.

<table>
<thead>
<tr>
<th>Article 14.06, C.C.P.</th>
<th>Section 543.003, T.C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>No signature is required, although a peace officer commonly asks for a signature on these citations.</td>
<td>Section 543.005, T.C. requires a signature on a citation issued for Rules of the Road offenses. The signature may be obtained on a duplicate form or an electronic device capable of creating a copy of the signed notice. The officer gives a copy of the notice to the person charged and releases him.</td>
</tr>
</tbody>
</table>
E. Appearance Date

Citations issued to persons violating offenses under Subtitle C, must contain a specific time and place in the citation that the person is to appear before a judge having jurisdiction over the case. This date must be at least 10 days after the date the citation was issued by the peace officer, unless the person arrested demands an earlier hearing. Sec. 543.006, T.C.

Article 14.06(b) of the Code of Criminal Procedure does not require that the defendant be given a certain number of days before requiring an appearance. It does require the officer to note the magistrate before whom the person is to appear and the citation must note the time and place for appearance.

Q. 16. Where do peace officers get authority to issue citations to persons violating Subtitle C, Rules of the Road offenses? ________________________________

Q. 17. Under what authority may a peace officer issue a traffic citation for offenses outside of Subtitle C, Rules of the Road? ________________________________

Q. 18. What are the two offenses that require a peace officer to issue a citation if the person signs it? (circle one)
   a. no valid inspection sticker and no valid registration
   b. speeding and possession of an open container of alcohol in a motor vehicle
   c. no driver’s license and failure to maintain financial responsibility
   d. jaywalking and failure to yield the right of way

Q. 19. What is the consequence if a citation does not notify the defendant of his or her right to take a driving safety course? ________________________________

Q. 20. What must a citation contain regarding the offense of failure to maintain financial responsibility? ________________________________

Q. 21. What must a notice regarding surcharges on driver’s licenses contains? ________________________________

Q. 22. What should a citation tell a juvenile regarding his or her address? ________________________________

Q. 23. If a city contracts with DPS to deny renewal of driver’s licenses, what information should be on the citation issued to traffic violators? ________________________________

Q. 24. What additional information is required to be on a citation issued to a person who is a holder of a commercial driver’s license? ________________________________

Q. 25. What general information is required to be on a citation? ________________________________

Q. 26. In what form may a signature on a citation be obtained? ________________________________

Q. 27. When does a peace officer not have to obtain a signature on a citation? ________________________________
Q. 28. When a peace officer issues a citation for an offense in Subtitle C, Rules of the Road, how long must the officer give the person to appear in court? (circle one)
   a. 10 days
   b. 15 days
   c. 20 days
   d. 25 days

PART 3
CULPABILITY

There is often confusion about whether traffic violations are considered criminal. Put simply, in Texas, traffic cases are criminal matters that are prosecuted by the State. Nevertheless, there are differences between what is normally considered to be criminal conduct and conduct that constitutes a traffic offense. The major difference is the culpable mental state necessary to commit a crime. Criminal activity generally requires that the defendant meant to, intended to, or recklessly committed an offense. For example, the offense of simple assault requires that the actor “intentionally or knowingly” caused physical contact when he or she knew or should have had reason to believe that the victim would regard the contact as offensive or provocative. Sec. 22.01(a)(3), P.C. Recall the discussion about culpable mental states in the Procedures Before Trial chapter of this Study Guide.

Most traffic offenses, despite the fact that they are criminal offenses, do not require a culpable mental state. They are “strict liability” offenses. In other words, when a person operates a vehicle, the person must adhere to a strict standard of care that holds people accountable when they break the law in spite of their intent. This eliminates instances where a person is not held responsible for reckless or negligent actions because they were not familiar with the law or did not intend to violate the law. Additionally, it would be impractical to criminally prosecute traffic violations if the State had to prove a culpable mental state on each offense.

Some traffic-related cases do require culpable mental states, and those are clearly outlined in the law. For example, the offense of knowingly permitting an unauthorized person to drive has a mental state of “knowingly.” Sec. 521.458, T.C.

True or False
Q. 29. In Texas, traffic cases are criminal. ______
Q. 30. All traffic offenses require that a culpable mental state be alleged when charging a person with a traffic offense. ______
Q. 31. In Texas, prosecutors must prove that traffic offenders intended to commit the traffic offense. ______
Q. 32. In Texas, drivers must adhere to a strict standard of care when driving. ______
PART 4
PENALTIES

When a defendant is convicted of a fine-only offense, the court orders the defendant to pay a monetary penalty. The Transportation Code does not treat persons under the age of 17 differently from adults regarding the penalties for traffic violations. Sec. 724.001(c), T.C. Traffic violations are not subject to optional or mandatory waiver requirements to juvenile court. Sec. 51.08, F.C.

A. General Penalties

If an offense in the Transportation Code does not specify a penalty, courts must use a general penalty provision, where applicable. The following chart contains examples of common general penalties.

<table>
<thead>
<tr>
<th>Subtitle</th>
<th>General Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 502 (Registration of Vehicles)</td>
<td>Maximum fine of $200 (Section 502.471)</td>
</tr>
<tr>
<td>Chapter 504 (License Plates)</td>
<td>Minimum fine of $5, maximum fine of $200 (Section 504.948)</td>
</tr>
<tr>
<td>Chapter 521 (Driver’s Licenses and Personal Identification Cards)</td>
<td>Maximum fine of $200 (Section 521.461)</td>
</tr>
<tr>
<td>Subtitle C (Rules of the Road)</td>
<td>Minimum fine of $1, maximum fine of $200 (Section 542.401)</td>
</tr>
<tr>
<td>Subtitle E (Vehicle Size and Weight)</td>
<td>Maximum fine of $200; penalty escalates for subsequent convictions (Section 621.507)</td>
</tr>
</tbody>
</table>

B. Specific Penalties

General penalty provisions only govern fine ranges when a more specific fine is not included in the statute. Some offenses in the Transportation Code fall outside the municipal court jurisdiction. For example, racing on a highway is punishable by a jail term not to exceed 180 days and a maximum fine of $2,000. Sec. 545.420, T.C. As the punishment includes jail time, this is an instant indication that municipal courts lack jurisdiction over this Class B misdemeanor.

C. Prior Convictions

In some cases, the penalty can increase each time a defendant is convicted of the same offense. The charges, however, must be filed as second or subsequent offenses in order for the higher penalties to apply. For example, on defendants convicted of failure to maintain financial responsibility, judges are bound by a $175 to $350 fine for the first offense (Sec. 601.191, T.C.), but a $350 to $1,000 fine for subsequent offenses (also includes ordering the sheriff to impound the vehicle). Secs. 601.191 and 601.261, T.C. Note, however, that a court can lower the fine below $175 under Section 601.191(d).

D. Construction or Maintenance Work Zones

For violations that occurred in a construction or maintenance work zone when workers were present, the penalty may double. For example, for disobeying instructions, signals, warnings, or markings of a warning sign in a construction zone when workers are present, the penalty range is
doubled to not less than $2 or more than $400. Sec. 472.022(d), T.C. The higher penalty may not be considered by the judge unless the construction zone is marked by signs that state, “Fines double when workers present.” TxDOT requires the removal or covering of signs that restrict speed limits in construction or maintenance work zones when no hazard exists.

For violations under Subtitle C committed in a construction or maintenance work zone when workers are present, the fine is twice the minimum or maximum fine that is applicable to an offense committed outside a zone. Sec. 542.404, T.C. There are exceptions to this provision for: offenses in Chapter 548 involving inspection of vehicles; offenses in Chapter involving pedestrians; and offenses in Sections 545.412 and 545.413 involving safety belts and securing children in child passenger safety seat systems. For speeding violations, the fine range can only be doubled if the maintenance or construction work zone is marked by a sign indicating the applicable maximum lawful speed.

When citations are written for offenses that occur in a construction or maintenance work zone when workers are present, the citation must contain on its face the fact that workers were present when the offense was committed before the judge can assess the higher fine. Secs. 472.022(d) and 542.404(a), T.C.

Violations that occur in a construction or maintenance work zone when workers are present are not eligible for a driving safety course or for deferred disposition. Sec. 472.022(f), T.C. and Arts. 45.051(f)(1) and 45.0511(p)(3), C.C.P.

E. Crash Resulting from Failure to Yield Right-of-Way

If it is shown at the trial of a Rules of the Road offense, in which an element is a vehicle operator’s failure to yield the right of way to another vehicle, that a crash resulted from that failure to yield, and a person other than the defendant suffered bodily injury as a result, the offense is punishable by a fine of $500 to $2,000. If a person other than the defendant suffered serious bodily injury, the offense is punishable by a fine of $1,000 to $4,000. Sec. 542.4045, T.C.

True or False

Q. 33. If an offense has a specific penalty, the general penalty does not apply. ______
Q. 34. All traffic fines have a maximum fine of $200. ______
Q. 35. Municipal court does not have jurisdiction over the offense of passing a school bus loading or unloading children. ______
Q. 36. Municipal court has jurisdiction of racing on the highway. ______
Q. 37. The court can apply enhanced penalties to offenses charged as first time offenses as long as there are prior convictions. ______
Q. 38. If a Subtitle C, Rules of the Road offense is committed in a construction or maintenance work zone when workers are present and that fact is alleged and proven, the minimum and maximum fine amounts are doubled. ______
PART 5
COMMONLY COMMITTED TRAFFIC OFFENSES

A. Certificates of Title and Registration of Vehicles (Subtitle A)

1. Operation of Vehicle Without Registration

One of the common offenses that municipal courts see involves a person operating an unregistered vehicle. Sec. 502.472, T.C.

2. Operation of Vehicle Without Registration Insignia

Another offense that courts frequently adjudicate involves a person who operates a motor vehicle, motorcycle, road tractor, or trailer that does not properly display the registration insignia issued by the DMV that establishes that the vehicle has been validated for the period. Sec. 502.473, T.C.

   a. Compliance Dismissal

   A court may waive a charge of failing to display a registration insignia if the defendant pays an administrative fee not to exceed $10 and either (1) remedies the defect before the defendant’s first court appearance, or (2) shows that the motor vehicle was issued a registration insignia by the department that was attached to the motor vehicle, establishing that the vehicle was registered for the period during which the offense was committed. Sec. 502.473, T.C. The court does not need a motion from the prosecutor to dismiss a charge if there is a statutory compliance dismissal, and the court would not assess court costs to the dismissed case.

   b. Penalty

   If a defendant is convicted of either of the above offenses, the fine is not to exceed $200. Sec. 502.471(c), T.C.

3. Expired Registration Insignia

Perhaps the most common registration-related offense that courts see involves a person who, after the fifth working day after the date the registration for the vehicle expires, operates the vehicle with the expired sticker. Sec. 502.407, T.C.

   a. Compliance Dismissal

   The judge may dismiss the charge of driving with an expired vehicle registration if the defendant (1) remedies the defect not later than the later of the 20th working day after the date of the offense or the defendant’s first court appearance and (2) establishes that the late registration fee was paid to the county tax-assessor collector. The court may also assess an administrative fee not to exceed $20 when charge is dismissed. Sec. 502.407(b), T.C.

   b. Penalty

   If a defendant is convicted, the fine is not more than $200. Sec. 502.471(c), T.C.
4. **Wrong, Fictitious, Altered, or Obscured Insignia**

A less often filed registration charge involves driving with a wrong, fictitious, altered, or obscured insignia. Sec. 502.475, T.C. This includes attaching or displaying on a motor vehicle a registration insignia that is assigned to a different motor vehicle, is assigned by any department other than the DMV, is assigned for a registration period other than the one in effect, or is fictitious.

**a. Compliance Dismissal**

The judge may dismiss the charge of attaching or displaying a registration insignia that is assigned for a different period if the defendant remedies the defect before his or her first court appearance and pays an administrative fee not to exceed $10. Sec. 502.475(c), T.C.

**b. Penalty**

If a defendant is convicted, the fine is not more than $200, unless it is shown at the trial of the offense that the owner knowingly altered or made illegible the letters, numbers, and other identification marks, in which case the offense is a Class B misdemeanor. Displaying a fictitious registration insignia is also a Class B misdemeanor. Sec. 502.475. T.C.

5. **Operation of Vehicle Without License Plates**

A common offense involving license plates is the operation of a vehicle without license plates. Section 504.943 of the Transportation Code provides that a person commits an offense if he or she operates on a public highway, during a registration period, a motor vehicle that does not display two license plates that have been assigned by the DMV for the period and comply with DMV rules regarding the placement of license plates. DMV rule states that the vehicle must display two license plates, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in a horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Section 621.2061 of the Transportation Code may place the rear plate so that it is clearly visible. Sec. 217.22(c)(2)(A), Title 43, T.A.C.

**a. Compliance Dismissal**

The judge may dismiss a charge for driving without license plates if the defendant remedies the defect before the first court appearance and pays an administrative fee not to exceed $10. Sec. 504.943(d), T.C.

**b. Penalty**

In 2011, the Legislature mistakenly removed the penalty for operating a vehicle without license plates. In 2013, the Legislature remedied this oversight by amending Section 504.943 to provide a fine not to exceed $200, the former penalty. This amendment does not take effect until September 1, 2013, and only applies to offenses committed on or after the effective date. In another piece of legislation, the general penalty for Chapter 504—providing a minimum fine of $5 and a maximum fine of $200—took effect on June 14, 2013. Therefore, for license plate offenses committed between June 14, 2013 and August 31, 2013, inclusive, the maximum fine is $200, but there is a minimum $5 fine. For offenses committed September 1, 2013 and after, there is no minimum fine.
6. **Wrong, Fictitious, Altered, or Obscured License Plate**

Section 504.945 of the Transportation Code provides that a person commits an offense if the person attaches to or displays on a motor vehicle a license plate that:

- is issued for a different motor vehicle;
- is issued for the vehicle under any other motor vehicle law other than by the DMV;
- is assigned for a registration period other than the registration period in effect;
- is fictitious;
- has blurring or reflective matter that significantly impairs the readability of the name of the state in which the vehicle is registered or the letters or numbers of the license plate number at any time;
- has attached an illuminated device or a sticker, decal, or other insignia that is not authorized by law and that interferes with the readability of the letters or numbers on the plate or the readability of the name of the state in which the vehicle is registered; or
- has a coating, covering, protective substance, or other material that distorts angular visibility or detectability, alters or obscures one-half or more of the name of the state in which the vehicle is registered, or alters or obscures the letters or numbers on the plate or the color of the plate.

a. **Compliance Dismissal**

Effective September 1, 2013, the compliance dismissal for having a license plate that is obscured or assigned for the wrong period is changed to provide that a judge may dismiss if the defendant:

1. remedies the defect before the defendant’s first court appearance;
2. pays an administrative fee not to exceed $10; and
3. shows that the vehicle was issued a plate by the DMV that was attached to the vehicle, establishing that the vehicle was registered for the period during which the offense was committed. Sec. 504.945(d), T.C.

b. **Penalty**

If a defendant is convicted, the fine is not more than $200, unless it is shown at the trial of the offense that the owner knowingly altered or made illegible the letters, numbers, and other identification marks, in which case the offense is a Class B misdemeanor. Displaying a fictitious license plate is also a Class B misdemeanor. Sec. 504.945(b), T.C.

7. **Deceptively Similar Registration Insignia and License Plate**

Effective September 1, 2013, it is an offense for a person to manufacture, sell, or possess a registration insignia deceptively similar to the registration insignia of the DMV, or make a copy or likeness of an insignia deceptively similar to the registration insignia of the DMV with intent to sell the copy or likeness. An insignia is deceptively similar if it is not prescribed by the DMV, but a reasonable person would presume that it was. Sec. 502.4755, T.C.

An offense under this section is:

1. a felony of the third degree if the person manufactures or sells a deceptively similar registration insignia;
2. a Class C misdemeanor if the person possesses a deceptively similar registration insignia; or
3. a Class B misdemeanor if the person...
possesses a deceptively similar registration insignia and has previously been convicted of the same offense. This Class C misdemeanor carries a maximum fine of $500. Section 504.946 of the Transportation Code creates a similar offense, with similar penalty, for the manufacture, sale, or possession of a deceptively similar license plate.

B. Driver’s Licenses (Subtitle B)

1. Failure to Carry and Exhibit

A person operating a motor vehicle on a highway must hold a valid driver’s license that is appropriate for the type of vehicle operated. Motor vehicle operators must display the license on the demand of a magistrate, court officer, or peace officer. Secs. 521.025 and 522.011, T.C.

a. Defense to Prosecution

If a person is charged with failing to carry and exhibit a driver’s license, it is a defense to the prosecution if the person produces in court a driver’s license appropriate for the type of vehicle operated that was valid at the time the citation was issued. A defense to prosecution must be raised by the defendant and requires a prosecutor’s motion to dismiss for the court to dismiss the charge. However, if the court does grant a dismissal, the court may charge a $10 administrative fee. Sec. 521.025(d), T.C. If the person is charged with failure to display a commercial driver’s license, but brings in proof of such a license that was valid on the day of the offense, it is a defense to prosecution. If the charge is dismissed, there is no authority to assess any fee.

b. Penalty

If the person did not actually have a valid driver’s license at the time he or she committed the offense or if the defendant does not bring in proof of a valid driver’s license, the penalty for a:

- first time offense is a fine not to exceed $200;
- second conviction within one year after the date of the first conviction is a fine of not less than $25 or more than $200; and
- third or subsequent conviction within one year after the date of the second conviction is a fine of not less than $25 or more than $500, or confinement in the county jail for not less than 72 hours or more than six months, or both the fine and confinement (a Class B misdemeanor).

If it is shown on the trial of the offense that at the time of the offense the person was (1) operating the motor vehicle without maintaining financial responsibility and (2) caused or was at fault in a motor vehicle collision that resulted in serious bodily injury to or the death of another person, the offense is a Class A misdemeanor. Sec. 521.025(c), T.C.

2. Expired Driver’s License

A person who operates a vehicle on a highway in Texas is required to hold a valid driver’s license. Sec. 521.021, T.C. A driver’s license generally expires on the first birthday of the license holder occurring after the sixth anniversary of the date of the application. Sec. 521.271, T.C. There are exceptions for new licensees under the age of 21.
a. **Compliance Dismissal**

An expired driver’s license charge may be dismissed by the judge if the defendant renews the license within 20 working days from the date of the offense or by the defendant’s first court appearance, whichever is later. Sec. 521.026, T.C. If the judge dismisses the charge, the judge may assess an administrative fee of up to $20.

b. **Penalty**

If a person is convicted of the offense of operating a vehicle with an expired driver’s license, the penalty is a fine not to exceed $200. Sec. 521.461, T.C.

3. **Driving While License Invalid**

The maximum penalty for driving while license invalid (DWLI) is $500. This traffic offense is a Class C Misdemeanor unless it is shown at trial that the person has been previously convicted of DWLI, the license was previously suspended for driving while intoxicated, or the person is also driving without maintaining financial responsibility, in which case the offense is a Class B misdemeanor. If, at the time of the offense, the person was operating the motor vehicle without maintaining financial responsibility and caused or was at fault in a motor vehicle crash that resulted in seriously bodily injury or death to another person, the offense is a Class A misdemeanor. Sec. 521.457, T.C.

C. **Speeding (Subtitle C)**

Speeding is another common offense that municipal courts will see. Texas law provides for a “maximum speed requirement,” which states that a person commits an offense if that person operates a motor vehicle on a public street or highway at a speed greater than is reasonable or prudent under the conditions then in existence. Sec. 545.351, T.C. In addition, any speed in excess of a posted speed limit is prima facie evidence that the speed is unreasonable or imprudent and therefore unlawful. Sec. 545.352, T.C. Speeding is punishable by a fine of not less than $1 and not more than $200. Municipalities may raise or lower a prima facie speed limit. Sec. 545.356, T.C. Even if this is done through a municipal ordinance, speeding remains a state law violation.

D. **Safety Belts and Child Safety Seats (Subtitle C)**

The purpose of being required to secure children in child safety seat systems or safety belts along with adults while in motor vehicles is to reduce harm to children and other passengers being transported. To this end, the Legislature created the safety belt and child safety seat system laws.

Adults and children age eight and older, both in the front and back seats, are required to be secured by a safety belt, and children under age eight, unless taller than 4’9” must be secured in child safety seats while being transported in a passenger vehicle. “Passenger vehicle” is defined as a passenger car, light truck, sport utility vehicle, passenger van designed to transport 15 or fewer passengers, including the driver, truck, or truck tractor. Sec. 545.412(f)(2), T.C. Section 541.201 of the Transportation Code provides definitions for the above list of vehicles.

Sections 545.412(f)(3) and (4) define the terms “safety belt” and “secured.” Both definitions apply also to Section 545.413. “Safety belt” means a lap belt and any shoulder straps included as original equipment on or added to a vehicle. “Secured” means using the lap belt and any
shoulder straps according to the instruction of the manufacturer of the vehicle if the belt is original equipment or the manufacturer of the safety belt if the belt was added to the vehicle. Because the definition of secured requires the use of the shoulder harness along with the lap belt, if a person is not properly secured, he or she could be charged with not wearing a safety belt.

“Child passenger safety seat system” means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration. Under Section 545.412 of the Transportation Code, a person commits an offense if the person operates a passenger vehicle, transports a child who is younger than eight years of age, unless the child is taller than 4’9”, and does not keep the child secured during the operation of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer.

The operator of a passenger vehicle must secure himself or herself with a safety belt. If a child passenger is younger than eight, unless the child is taller than 4’9”, the child must be secured in a child passenger safety seat system. All other children under 17 must be secured with a safety belt. All occupants, adults and children, must be secured with a safety belt or child passenger safety seat regardless of their position in the vehicle. For more information, refer to Appendix C.

1. **Defenses to Prosecution**

There are several defenses to prosecution for safety belt violations. They include a person who:

- possesses and presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- is employed by the U.S. Postal Service and is performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;
- is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;
- is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle;
- is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.433 that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more; or
- is the operator of or a passenger in a vehicle used exclusively to transport solid waste and performing duties that require frequent entry into and exit from the vehicle.

Effective September 1, 2013, the defense to prosecution for not securing a child in a proper child passenger safety seat system is changed. The former language provided that it was a defense that the defendant provided satisfactory evidence to the court that the defendant possessed an appropriate child passenger safety seat system for each child required to be secured in such a system. The new law instead establishes as a defense to prosecution that the defendant provides satisfactory evidence to the court that, at the time of the offense, (1) the defendant was not arrested or issued a citation for violation of any other offense, (2) the vehicle the defendant was
driving was not involved in a collision, (3) the defendant did not possess a child passenger safety
seat system in the vehicle, and, subsequent to the time of the offense, (4) the defendant obtained
an appropriate child passenger safety seat system for each child required to be secured in such a
system. Sec. 545.4121, T.C.

2. **Penalty**

The penalty for a driver or passenger, age 15 or older, not secured by a safety belt is a fine of not
less than $25 or more than $50. If a driver is charged with not securing a passenger younger than
17 years of age, who is not required to be in a child safety seat, the fine is not less than $100 or
more than $200. Sec. 545.413(b), T.C. Effective September 1, 2013, if a driver is charged with
not securing a child who is under eight years of age, and not over 4’9” tall, in a child passenger
safety seat system, the fine is not less than $25 and not more than $250. Sec. 545.412(b), T.C.

3. **Fines Remitted to State**

The city is required to remit to the State half of the fines collected for allowing a child to ride and
not be secured by a child passenger safety seat system or a safety belt. The city must remit the
fines at the end of the city’s fiscal year on a form prescribed by the Comptroller.

E. **Passing a School Bus (Subtitle C)**

An operator of a vehicle on a highway must, when approaching from either direction a school
bus stopped on the highway to receive or discharge a student, stop before reaching the school bus
and not proceed until the school bus resumes motion. Sec. 545.066, T.C. An operator on a
highway having separate roadways is not required to stop for a school bus that is on a different
roadway; or if on a controlled-access highway for a school bus that is stopped in a loading zone
that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the
roadway. A highway is considered to have separate roadways only if the highway has roadways
separated by an intervening space on which operation of vehicles is not permitted, a physical
barrier, or a clearly indicated dividing section constructed to impede vehicle traffic. A highway is
not considered to have separate roadways if the highway has roadways separated only by a left
turn lane.

1. **Alternative Sentencing Eligibility**

A person convicted of passing a school bus is not eligible to take a driving safety course to have
the charge dismissed. Art. 45.0511(p), C.C.P.

The court may, however, grant deferred disposition and have the case dismissed upon
completion of all the terms. In this instance, the court does not report the dismissal to DPS.

2. **Penalty**

a. **Fine Range**

The offense of passing a school bus has one of the higher fines in the Transportation Code.
Effective September 1, 2013, for a first conviction, the minimum fine is $500 and the maximum
fine is $1,250. For a second or subsequent offense, the penalty is a fine of not less than $1,000 or
more than $2,000 if it is within five years of the proceeding offense. (Note: Although the penalty
for passing a school bus is a maximum of $1,250, the offense is still a Class C misdemeanor.)
Remember that Section 12.41 of the Penal Code provides that any fine-only offense outside of the Penal Code is a Class C misdemeanor.

If a defendant causes serious bodily injury when passing a school bus, the offense becomes a Class A misdemeanor. If the person is convicted a second time for causing serious bodily injury when passing a school bus loading or unloading children, the offense becomes a state jail felony. Sec. 545.066(c), T.C.

b. **Driver’s License Suspension**

When a defendant is convicted of a second or subsequent offense, the court may order the defendant’s driver’s license suspended for a period of time not to exceed six months. If the judge orders the driver’s license suspension, the clerk reports the order to DPS. Sec. 545.066(d), T.C.

**F. Cell Phones in a School Zone (Subtitle C)**

One of the newer common offenses that continues evolving each legislative session is commonly known as “cell phone in a school zone.” Sec. 545.425, T.C. First passed by the Legislature in 2009, this law makes it illegal for an operator to use a wireless communication device while operating a motor vehicle within a school crossing zone, unless the vehicle is stopped or the wireless communication device is used with a hands-free device. Municipalities wanting to enforce this offense must post “warning” signs at the entrance to each school crossing zone. Some cities have, however, banned cell phone use throughout the entire municipality, and are not required to post separate signs at the entrance to the school crossing zone so long as the municipality posts notice of the ban at all entrances to the city.

Effective September 1, 2013, the ban on the use of cell phones in school zones was expanded to other areas on school property, such as pick-up and drop-off lanes and parking lots. The ban covers the property of a public elementary, middle, junior high, or high school for which a local authority has designated a school crossing zone. Sec. 545.4252, T.C. Cell phone use will only be restricted during the time a reduced speed limit is in effect for the school crossing zone. The law governing cell phone use on school property is nearly identical to the cell phone in a school zone law; the only difference being there are no signs required to be posted under Section 545.4252, as are required to be posted at each entrance to the school crossing zone. The new law preempts any local ordinances, rules, or regulations relating to the use of a wireless communication device by the operator of a motor vehicle, unless the city has prohibited the use throughout the entire jurisdiction.

1. **Defenses**

There are several affirmative defenses to prosecution for use of a cell phone in a school zone, specifically:

- the wireless communication device was used to make an emergency call to:
  - an emergency response service, including a rescue, emergency medical, or hazardous material response service;
  - a hospital;
  - a fire department;
- a health clinic;
- a medical doctor’s office;
- an individual to administer first aid treatment; or
- a police department; or
- a sign required by the law was not posted at the entrance to the school crossing zone at the time of an offense committed in the school crossing zone.

2. Exceptions
The ban on cell phones in school zones does not apply to: (1) an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity or (2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

3. Penalty
The offense of using a cell phone in a school crossing zone is punishable by a fine of not less than $1 and not more than $200. The same penalty applies to the offense of using a cell phone on school property when the school zone is in effect. Sec. 542.401, T.C.

G. Inspection Certificate (Subtitle C)
Motor vehicles registered in Texas must display a current and appropriate inspection certificate. After the fifth day after the date of expiration of the period designated for inspection, a person may not legally operate a motor vehicle registered in Texas. Sec. 548.602, T.C.

1. Defense to Prosecution
It is a defense to prosecution that an inspection certificate for the vehicle is in effect at the time of the arrest. Sec. 548.602, T.C. A prosecutor would need to make a motion to dismiss for the court to grant. If the motion is granted, the defendant is not liable for any costs of court.

2. Compliance Dismissal
If the inspection certificate is expired for less than 60 days and the defendant obtains a valid inspection certificate within 20 working days and pays an administrative fee of up to $20, the court must dismiss the charge. If an inspection certificate is expired for more than 60 days, the court may dismiss the charge. The statute defines working day to mean any day other than a Saturday, a Sunday, or a holiday when county offices are closed. Sec. 548.605, T.C.

3. Penalty
The penalty for the offense of failure to display a current and appropriate inspection certificate is a fine not to exceed $200. Sec. 548.604, T.C.

4. Changes Coming
Effective March 1, 2015, Texas will replace the current dual inspection/registration sticker system with a combined vehicle inspection and vehicle registration sticker. The DPS and the DMV must replace the current dual inspection/registration sticker system with a single system.
registration sticker. Under the new system, a vehicle may not be registered without first providing proof of a safety and/or emission vehicle inspection report, either electronically or via a printed report. The new system will require vehicle owners to complete vehicle safety inspections prior to their registration renewal, not earlier than 90 days before the expiration of the vehicle’s registration. Vehicle inspection reports will be valid until the end of the 12th month following the month it was issued. The DMV and DPS must begin adopting rules necessary to implement these changes and create a database for the submission of the new reports on the effective date of September 1, 2013, but not later than March 1, 2014.

Of most significance to municipal courts will be the repeal of Section 548.605 of the Transportation Code, which provides the compliance dismissal for driving with an expired inspection sticker. As inspection stickers will no longer exist once the new single sticker system is implemented, there will be no separate offense for driving with an expired inspection sticker. Thus, Section 548.602, which contains the offense for failure to display an inspection certificate, will also be repealed. However, these changes do not take effect until March 1, 2015 and will only apply to an offense committed on or after that date. Offenses committed until that date are governed by the laws regarding the separate inspection and registration stickers.

H. **Financial Responsibility (Subtitle D)**

It is an offense to operate a motor vehicle in Texas without some type of financial responsibility. Sec. 601.051, T.C. This means that a person who is driving and causes a collision must be able to pay for damages or injuries to another person in the collision. When a person is involved in a collision or is stopped by a peace officer, the person is required to present proof of financial responsibility. Sec. 601.053, T.C. Peace officers may issue citations to persons who fail to present proof of financial responsibility. Most commonly this offense is called “no insurance” because liability insurance is the most common way to fulfill the requirement of financial responsibility. Sec. 601.071, T.C.

Section 601.051 of the Transportation Code generally provides the requirements for persons to maintain financial responsibility for the motor vehicles that they operate. The following methods will establish financial responsibility.

- A motor vehicle liability insurance policy.
- A surety bond filed with DPS. The bond is a lien in favor of the State on the real property described in the bond. The lien exists in favor of a person who holds a final judgment against the person.
- A deposit in the amount of $55,000 made with the State Comptroller. It can be in cash or securities.
- A deposit in the amount of $55,000 made with the county judge of the county in which the motor vehicle is registered. It must be made in cash or cashier’s check.
- Self-insurance. A person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by DPS. The person must have the ability to pay judgments obtained against him or her.

Section 601.007 of the Transportation Code provides that Chapter 601 does not apply to:
• government vehicles, provided the vehicle is owned by the United States, state, or political subdivision, operated by an officer, agent, or employee of the government, and used in the course of employment;
• tow trucks;
• motor carriers; and
• vehicles transporting persons or cargo.

The above-listed vehicles must maintain liability insurance in an amount set by DPS that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. Section 13906(a)(1). Sec. 643.101, T.C.

1. Exceptions

There are exceptions to the financial responsibility law under Section 601.052 of the Transportation Code. Vehicles that do not have to be covered with some type of financial responsibility include:

• antique collectables including vehicles that are:
  o at least 25 years old or a former military vehicle;
  o used only for exhibitions, club activities, parades, and other functions of public interest and not used for regular transportation; and
  o on file with DPS stating that the vehicle is a collector’s item and used only for exhibition purposes;
• golf carts; and
• volunteer fire department vehicles (but the vehicle must be registered in the name of the volunteer fire department).

2. Defense

There are legal defenses to the financial responsibility law. The first and most obvious is that the person has insurance or other proof of coverage. Sec. 601.193, T.C. The offense is for not maintaining a current form of financial responsibility, not for failure to present proof to a peace officer. Therefore, having the proper coverage at the time of the alleged violation is a defense. Purchasing insurance after the citation is issued is not a legal defense.

Another defense is if a motor vehicle is in the possession of a person for the sole purpose to effect repairs on the vehicle. Sec. 601.194, T.C. This is only valid if the mechanic is working on someone else’s car. Sec. 601.194(b), T.C. A person cannot use this defense when repairing his or her own car.

3. Dismissal

If a person charged with failure to maintain financial responsibility produces a motor vehicle insurance policy or certificate of self-insurance to the court that was valid at the time of the citation, the court is required to dismiss the charge after it verifies the document. Sec. 601.193, T.C. The court may not assess any fee upon this dismissal. Usually, the defendant brings the proof to the court facility and the clerk makes a copy to present to the judge. Sometimes the evidence is clearly acceptable, but other proof may raise a suspicion of authenticity. The statute
does not provide procedures for how the court verifies the document or who is to do the verification. Some courts have the clerk call the insurance company to verify the coverage. Others have the prosecutor verify the document since the evidence is a defense to the prosecution. The judge, however, should never do the substantiation, because the judge should not become involved until it is time to hear evidence regarding the case. This would be a violation of the Code of Judicial Conduct. Clerks should work with their judge and prosecutor to establish a procedure for handling these types of cases. In a situation where a document cannot be verified, the defendant should be set for trial.

4. **Penalty**

The fine for a financial responsibility charge is higher than for most other traffic violations. A first offense carries a fine of $175 to $350. Sec. 601.191(c), T.C. On the first offense, the judge has the authority to lower the fine below the $175 minimum if the judge finds the person convicted is economically unable to pay the fine. Sec. 601.191(d), T.C. This authority to lower the fine below the minimum does not apply to subsequent offenses.

A second offense carries a minimum fine of $350 with a possible fine up to $1,000. Sec. 601.191(c), T.C. On the second offense, courts must also order the sheriff to impound the defendant’s vehicle, if the defendant owns the vehicle. To charge a defendant with a second or subsequent offense, it must be filed as such. It is the prosecutor’s responsibility to review the case and file it as a subsequent offense if he or she wishes.

I. **Motorcycle Protective Headgear (Subtitle G)**

Persons who operate or ride on a motorcycle generally must wear protective headgear or a helmet. Sec. 661.003, T.C.

1. **Exceptions**

There are, however, exceptions to this requirement if the person is at least 21 years of age and:

- has successfully completed a motorcycle operator training and safety course; or
- the person is covered by health insurance for injuries that may be incurred as a result of operating or riding on a motorcycle. Sec. 661.003, T.C.

If motorcycle operator or his or her passenger can produce evidence to an officer who has lawfully stopped them that they are at least 21 years of age and either have successfully completed the training and safety course or that they have the required medical insurance, peace officers are prohibited from issuing a citation for not wearing a helmet. Sec. 661.003(c), T.C.

2. **Penalty**

Persons convicted of not wearing motorcycle protective headgear may be fined in an amount of $10 to $50. Sec. 661.003(h), T.C.

J. **Privileged (Handicapped) Parking (Subtitle H)**

To be eligible for privileged parking, a person must be legally blind or have substantial mobility problems, including someone who cannot walk over 200 feet without stopping; must use a brace, crutch, cane, prosthetic device, or wheelchair; has severe lung disease; or uses portable oxygen.
A person who has a severe cardiac condition, has an arthritic, neurological, or orthopedic condition which limits his or her ability to walk, or has a debilitating condition which, in the opinion of a doctor, limits his or her ability to walk is also considered to have severe mobility problems. Sec. 681.001, T.C.

A person who is disabled must apply to the tax assessor-collector for a disabled parking permit. When approved, the person is given either two window placards or a license tag and one window placard. Sec. 681.003, T.C. These tags or placards allow parking in privileged parking spaces for an unlimited amount of time. Sec. 681.006(a), T.C. Persons with privileged parking tags or placards may also park at parking meters free of charge. Sec. 681.006(b), T.C. There is an exception to parking free of charge; persons lawfully parked in a parking garage or lot within the boundaries of a municipal airport must still pay the parking fee. Sec. 681.006(c), T.C. A governmental unit may provide by ordinance that persons parking in specially designated privileged parking spaces in a parking garage, a lot, or a space may be exempt from paying a fee or penalty imposed by the governmental unit for parking in those spaces. Sec. 681.006(e), T.C.

Each governmental building is required to have privileged parking spaces. In addition, local, state, and federal laws require many private businesses to designate privileged parking. Sec. 681.009(c), T.C.

Three groups have authority to enforce privileged parking: peace officers, security guards of private businesses, and persons appointed by the city. Sec. 681.010(b), T.C. The person must take an oath of office and complete a training program. Sec. 681.0101, T.C. Many cities are designating persons with disabilities or other citizens to assist in enforcement.

It is an offense to park a vehicle not bearing either the placard or tag in a space designated as privileged parking. Sec. 681.011(b), T.C. Furthermore, it is an offense to park a vehicle with a tag or placard in a disabled space if, at the time of parking, it is not being used to transport a person with a disability. Sec. 681.011(a), T.C. Parking violations may also be charged against persons who block ramps for the disabled. Sec. 681.011(c), T.C. In addition, persons who have a placard and lend it to someone who is not mobility impaired may also be charged. Sec. 681.011(d), T.C. A peace officer may seize and destroy a disabled placard from a person upon determination that the person’s driver license does not match the placard of the person operating the vehicle or the person being transported. Sec. 681.012(a-1), T.C.

1. **Dismissal**

Someone convicted of a privileged parking offense does not have the right to take a driving safety course to have the offense dismissed, as the offense is not a Rules of the Road offense or a moving violation. The judge may, however, grant deferred disposition under Article 45.051 of the Code of Criminal Procedure.

A person charged with parking in a space designated for privileged parking who has an expired handicap parking placard is entitled to a compliance dismissal if (1) the placard has been expired 60 days or less; (2) the defendant gets the placard renewed within 20 working days of the date of the offense or before the defendant’s first court appearance, whichever is later; (3) and the defendant pays an administrative fee not to exceed $20. If the placard has been expired more than 60 days, the court may dismiss the charge. Sec. 681.013, T.C.
2. **Penalty**

Privileged parking is taken very seriously by the Texas Legislature and the penalties are severe. A person convicted of a privileged parking offense faces high fines, which escalate with subsequent offenses.

<table>
<thead>
<tr>
<th>Sec. 681.011: Offense</th>
<th>Minimum Fine</th>
<th>Maximum Fine</th>
<th>Additional Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>$500</td>
<td>$750</td>
<td>N/A</td>
</tr>
<tr>
<td>One prior conviction</td>
<td>$500 or $550 (there are two statutes prescribing different minimum fines)</td>
<td>$800</td>
<td>10 hours of community service</td>
</tr>
<tr>
<td>Two prior convictions</td>
<td>$550</td>
<td>$800</td>
<td>not less than 20 or more than 30 hours of community service or 20 hours of community service (there are competing statutes)</td>
</tr>
<tr>
<td>Three prior convictions</td>
<td>$800</td>
<td>$1,100</td>
<td>50 hours of community service or 30 hours of community service (there are competing statutes)</td>
</tr>
<tr>
<td>Four prior convictions</td>
<td>$1,250</td>
<td>$1,250</td>
<td>50 hours of community service</td>
</tr>
</tbody>
</table>

**True or False**

Q. 39. A judge does not need a motion to dismiss from the prosecutor to dismiss a charge for which there is a compliance dismissal. _____

Q. 40. The court does not assess court costs when a case is dismissed pursuant to a compliance dismissal. _____

Q. 41. Judges may dismiss the charge of operating a vehicle with expired registration, if the defendant purchased valid registration and paid the late fee within 10 working days and presents the evidence to the court. _____

Q. 42. The maximum fine for driving without two license plates is $500. _____

Q. 43. Peace officers may issue citations to a person driving a vehicle if a license plate holder obscures the name of the state on the license plate. _____

Q. 44. The court may charge a dismissal fee for dismissing a charge of failure to display a driver’s license if the defendant had a valid driver’s license on the day of the arrest. _____

Q. 45. The offense of no driver’s license is always a Class C misdemeanor. _____

Q. 46. If a person charged with an expired driver’s license obtains a valid driver’s license within 20 working days, the court may dismiss the charge and assess a $20 fee. _____

Q. 47. It is a defense to the prosecution if a person produces in court a valid commercial driver’s license that was valid when the offense occurred even though the license is not valid for the class of vehicle being driven. _____
Q. 48. The maximum fine for driving while license invalid is $500. _____
Q. 49. Speeding can be filed as a city ordinance violation. _____
Q. 50. Under the safety belt law, “passenger vehicle” is defined to mean only a passenger car. _____
Q. 51. The penalty for failure to secure a child under eight in a child passenger safety seat is a minimum fine of $25 and maximum fine of $250. _____
Q. 52. Cities must remit one-half of all safety belt fines and fines for not securing a child in a passenger safety seat system to the State at the end of the city’s fiscal year. _____
Q. 53. A 15-year-old can be cited for failure to wear a safety belt and be fined not less than $25 or not more than $50. _____
Q. 54. Persons charged with passing a school bus are not eligible to take a driving safety course. _____
Q. 55. Passing a school bus carries a maximum penalty of $200. _____
Q. 56. Improperly using a cell phone in a school crossing zone is a Class C misdemeanor with a maximum fine of $500. _____
Q. 57. Judges are required to dismiss the charge of expired inspection certificate and charge up to a $20 fee if the inspection certificate is expired less than 60 days and the defendant obtains a valid inspection certificate within 20 working days, or before the first court appearance, whichever is later. _____
Q. 58. Only a vehicle liability insurance policy is acceptable proof of financial responsibility. _____
Q. 59. There are no exceptions to the financial responsibility law. _____
Q. 60. Courts are required to dismiss a charge of failure to maintain financial responsibility if a defendant obtains insurance before appearing in court. _____
Q. 61. When a defendant presents proof of financial responsibility to the court, the court must verify it before dismissing the case. _____
Q. 62. The court may assess a dismissal fee of up to $20 for dismissing a charge upon proof of financial responsibility. _____
Q. 63. The fine for a first conviction for failure to maintain financial responsibility is a minimum fine of $175 and a maximum of $350. _____
Q. 64. On a conviction for a second or subsequent offense of failure to maintain financial responsibility, the court is required to order the impoundment of the vehicle. _____
Q. 65. If a motorcycle operator can produce evidence to an officer who has lawfully stopped them that they are under the exceptions to wearing protective headgear, the officer cannot issue a citation. _____
Q. 66. The penalty for not wearing a helmet is a maximum fine of $200. _____
Q. 67. Only peace officers can enforce privileged parking. _____
Q. 68. Persons who are disabled and have the proper documentation may park at parking meters free. _____
Q. 69. Persons convicted of a parking offense under the privileged parking law face escalating penalties depending on the number of prior convictions. _____
PART 6
QUOTAS

Section 720.002, Prohibition on Traffic-Offense Quotas, prohibits cities from establishing or maintaining a plan to evaluate, promote, compensate, or discipline peace officers according to a predetermined or specified number of any type or combination of types of traffic citations (quotas). Sec. 702.002(a)(1), T.C. This same prohibition also applies to judges; cities may not evaluate, promote, compensate, or discipline a judge according to the amount of money the judge collects from persons convicted of a traffic offense. Sec. 702.002(a)(2), T.C.

Further, cities may not consider the source and amount of money collected from a municipal court when evaluating the performance of the judge. Section 702.002(c) was repealed in 2009. Cities may obtain budgetary information from the municipal court including an estimate of the amount of money the court anticipates will be collected in a budget year. Sections 702.002, T.C.

A violation of Chapter 702, T.C., by an elected official is misconduct and grounds for removal from office. Sec. 702.002(e), T.C.

True or False
Q. 70. Although peace officers may not be evaluated on the number of tickets that they issue, they may be evaluated on the type of tickets that they issue. _____
Q. 71. City officials are prohibited from evaluating or disciplining a judge on the amount of money they collect from persons convicted of traffic offenses and may be removed from office for doing so. _____
Q. 72. Cities may not obtain budgetary information from a municipal judge because that would require the judge to estimate the amount of money he or she anticipates will be collected in the coming budget year. ______

CONCLUSION

Traffic laws are a mixture of various laws and regulations with a common purpose: to protect citizens who travel on the streets and highways. The courts are responsible for knowing and understanding these laws, educating the public on them, and promoting safer driving through punitive or remedial action.
APPENDIX A: RULES OF THE ROAD OFFENSES
Subtitle C, Title 7, Transportation Code
Rules of the Road Offenses

*Note: Though this chart seeks to list all “Rules of the Road” offenses – those offenses contained in Chapters 541-600 of the Transportation Code – but may not be exclusive

Traffic Code Section
(unless otherwise noted)

Operation of Bicycles, Mopeds, and Play Vehicles
Carried Articles so as to Interfere with Handling of Bicycle, Moped, Motor Scooter or Electric Personal/Assistive Mobility Device ...................................................................................................................551.102; 551.002; 551.352; 551.202
Improper Operation of Golf Cart on Highway ..............................................................................................................551.403
Failure to Keep Bicycle on Right Side of Roadway (Moped, Motor Scooter, or Electric Personal/Assistive Mobility Device) ...................................................................................................................551.103; 551.002; 551.352; 551.202
No Brake of Defective Brake on Bicycle, Moped, Motor Scooter, or Electric Personal/Assistive Mobility Device ...................................................................................................................551.104; 551.002; 551.352; 551.202
No Red Reflector or Red Light or Defective Reflector or Red Light on Rear of Bicycle, Moped, Motor Scooter or Electric Personal/Assistive Mobility Device—Nighttime ...................................................................................................................551.104(b); 551.002; 551.352; 551.202
No White Light or Defective Light on Front of Bicycle, Moped, Motor Scooter or Electric Personal/Assistive Mobility Device—Nighttime ...................................................................................................................551.104(b); 551.002; 551.352; 551.202
Rider Committed Hazardous Traffic Violation (specify) ..............................................................................................................551.101
Rode Improperly (Bicycle, Moped, Motor Scooter, or Electric Personal/Assistive Mobility Device) ...................................................................................................................551.102; 551.002; 551.352; 551.202
Towed by Vehicle while on Bicycle, Coaster, Roller Skates, Sled or Toy Vehicle ...................................................................................................................551.102(d)

Drivers — Miscellaneous Violations
Backed on Shoulder/Roadway-Controlled Access Highway ..............................................................................................................545.415(b)
Backed so as to Interfere or without Safety ..............................................................................................................545.415(a)
Bus Failed to Stop at RR Crossing, or Proceeded Unsafely ..............................................................................................................545.253(a)
Bus Shifted Gears while Crossing RR Track ..............................................................................................................545.253(b)
Coasting (truck, tractor, or bus) with Clutch Disengaged ..............................................................................................................545.406(b)
Coasting in Neutral (any vehicle) ..............................................................................................................545.406(a)
Crossed RR with Heavy Equipment without Stop or Crossed When Not Safe ..............................................................................................................545.255(c)
Disobeyed Police Officer ..............................................................................................................................................545.501(1)
Disobeyed School Crossing Guard ..............................................................................................................................................545.501(2)
Drove around, under, or through RR Crossing Gate ..............................................................................................................545.251(d)
Drove on Controlled Access Highway where Prohibited ..............................................................................................................545.064
Drove on Improved Shoulder when Unauthorized ..............................................................................................................545.068
Drove on or across Streetcar Tracks where Prohibited ..............................................................................................................545.203
Drove on Sidewalk or Hike and Bike Trail ..............................................................................................................545.422
Drove without Being Secured by Safety Belt ..............................................................................................................545.413(a)

Drove without Lights—When Required ........................................................................................................................ 547.302(a)
Failed to Dim Headlights—When Approaching Oncoming Vehicle ......................................................................................547.333(c)(1)
Failed to Dim Headlights—When Following a Vehicle ...................................................................................................................547.333(c)(2)
Failed to Display Warning Devices (flags, flares, fuses, reflectors) ......................................................................................547.503; 547.504; 547.505; 547.506; 547.507
Failed to Give Way or Accelerated When Overtaken ..............................................................................................................547.053(b)
Failed to Keep Right on Mountain Road ..............................................................................................................................................545.405
Failed to Light Parking Lamp when Parked ..............................................................................................................547.383(b)
Failed to Move Vehicle off Streetcar Tracks upon Signal from Streetcar Operator ..............................................................................................................................................545.203(a)
Failed to Stop for Approaching Train at Hazardous Proximity ..............................................................................................................545.251(a)(4)
Failed to Stop for Approaching Train Emitting Audible Signal ..............................................................................................................545.251(a)(3)
Failed to Stop or Reduce Speed at RR Crossing while Operating Vehicle Hauling Explosives ..............................................................................................................................................545.254
Failed to Stop when Emerging from Alley, Driveway, or Building ..............................................................................................................545.256
Failed to Use Designated Lane (Slow or Direction) ..............................................................................................................545.060(c)
Failed to Use Proper Headlight Beam ..............................................................................................................................................547.333(c)
Failure to Display White Flag on Tow Chain or Cable ...................................................................................................................545.409(b)
Improper Use of or Excessive Auxiliary Driving Lamps ..............................................................................................................547.330
Improper Use of or Excessive Auxiliary Passing Lamps ..............................................................................................................547.329
Improper Use of or Excessive Fog Lamps ..............................................................................................................................................547.328
Improper Use of or Excessive Spot Lamps ..............................................................................................................................................547.327
More Than Four Driving Lamps Lighted on Front of Vehicle ..............................................................................................................547.302(d)
Open or Kept Open Door on Vehicle Side Available to Moving Traffic ..............................................................................................................545.418
Operated Motor Vehicle by Person Under 18 Years of Age: Provisional Restrictions ..............................................................................................................................................545.424
Operated Truck or Tractor while Persons Riding in Trailer or Semitrailer ..............................................................................................................................................545.4191
Operated Vehicle so Loaded or with Too Many Passengers, Obstructing Driver’s View or Interfering with Driver’s Control ..............................................................................................................................................545.417
Operated Vehicle with Child Under 18 in Open Bed ..............................................................................................................545.414
Operated Vehicle with Child under 18 Riding in Open Bed ..............................................................................................................545.414
Operated Vehicle with Unsecured Child Passenger ..............................................................................................................545.412(a)
Parted with Head Lamps Not Dimmed ..............................................................................................................................................545.383(d)
Safety Belt Violations ..............................................................................................................................................545.501
School Bus Failed to Stop at RR Crossing or Proceeded Unsafely ..............................................................................................................545.253(a)
School Bus Shifted Gears while Crossing RR Tracks ..............................................................................................................545.253(b)
Slower Vehicle Failed to Keep Right ..............................................................................................................................................545.051(b)
Turned so as to Impede or Interfere with Streetcar ..............................................................................................................545.203(c)
Unauthorized Use of Siren, Whistle, or Bell ..............................................................................................................................................547.501(b)
Used Highway Where Prohibited ..............................................................................................................................................545.065
Used Improper Drawbar over 15 Feet ..............................................................................................................................................545.409(a)(2)
Used Wireless Communication Device while in School Crossing Zone ..............................................................................................................................................545.425(b)
Used Wireless Communication Device while Operating School Bus with Minor Passenger ........................................ 545.425(c)
Used Wireless Communication Device while Operating Vehicle on Property of Public School with School Crossing Zone—When Reduced Speed Limit in Effect .................................................. 545.425(2)

Following Too Closely.................................................. 545.062(a)
Following Too Closely while in Caravan of Vehicles .......... 545.062(c)
Following Too Closely while Operating Truck Drawing Another Vehicle ...................................................... 545.062(b)

Highway
Placed or Maintained Unauthorized Sign, Signal, or Device .......................................................... 544.006(a)
Placed Unauthorized Display Obstructing or Interfering with Official Traffic Control Device or RRR Sign ............. 544.006(a); 544.005
Placed Unauthorized Flashing Light or Sign within 1,000 Feet of Intersection .................................................. 544.006(c)

Miscellaneous Violations
Displayed Traffic Sign or Signal Bearing Advertising ................................................................. 544.006(b)
Erected Tent, Shelter, Booth or Structure at Rest Area where Prohibited ...................................................... 545.411(a)
Operated Motorcycle with Too Many Riders .......................................................... 545.416

Owner Required or Permitted Another to Operate Vehicle Unlawfully ............................................................. 542.302

Person Failed to Wear Seat Belt Where Required .......................................................... 545.413(a)
Person (other than driver) Opened Door or Kept Door Open on Side of Vehicle Available to Moving Traffic .......... 545.418

Oversize Violations
Towed More than Three Vehicles by Saddle-Mount Method .......................................................... 545.409

Overtaking
Cut in After Passing .......................................................... 545.053
Failed to Pass to Left Safely .................................................. 545.053
Passed Another Vehicle with Insufficient Clearance .......................................................... 545.054
Passed or Failed to Stop/Remain Stopped for School Bus .......................................................... 545.066
Passed Streetcar on Left When Unauthorized .......................................................... 545.201(a)
Passed Streetcar without Reducing Speed or Using Caution .......................................................... 545.201(b)
Passed to Right When Unauthorized or Unlawfully .......................................................... 545.057
Passed Vehicle Stopped for Pedestrian .......................................................... 552.003(c)

Parking Violations
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from a Single- or Two-Lane Roadway .................................................................................................................. 545.151(b)
Passed Stationary Emergency Vehicle or Tow Truck without Vacating Lane or Slowing ........................................... 545.157

Signal Intention
Failed to Signal Intention to Start from Parked Position .......................................................................................... 545.104(a)
Failed to Signal Intention to Stop or Decrease Speed ............................................................................................. 545.105
Failed to Signal Intention to Turn at or for Least 100 Feet Before Turn ................................................................. 545.104(b)
Failed to Signal Lane Change .................................................................................................................................... 545.104(a)
Failed to Sound Horn when Approaching Curve on Mountain Road ................................................................. 545.104(c)
Improper Method of Signaling ............................................................................................................................ 545.105, 545.107
Improper Use of Turn Indicator ........................................................................................................................... 545.104(c)
School Bus Driver Failed to Activate All Flashing Warning Signal Lights (or other equipment) .................. 547.701

Traffic Violations—Miscellaneous

Drove at Unsafe Speed ................................................................................................................................................ 545.351
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Disregarded Green Arrow Turn Signal .................................................................................................................. 552.001(b)
Disregarded Pedestrian Control Signal .................................................................................................................. 552.002
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Changed Lane When Unsafe ...................................................................................................................................... 545.060(a)(2)
Disregarded Lane-Direction-Control Signs on Highway ........................................................................................ 544.009
Disregarded No Lane Change Device ................................................................................................................... 545.060(d)
Disregarded RR Signal, Crossing Gate, or Flagger ................................................................................................. 545.251
Drove through Safety Zone ...................................................................................................................................... 545.403
Failed to Drive in Single Lane .................................................................................................................................. 545.060(a)(1)
Failed to Make Necessary Stop at Proper Place at Yield Sign .................................................................................. 544.010
Failed to Stop at Marked RR Crossing ................................................................................................................... 545.252(b)
Failed to Stop at Proper Place at Stop Sign ........................................................................................................... 544.010
Failed to Stop at Proper Place at Traffic Light ...................................................................................................... 544.007(d)
Failed to Stop at Proper Place—Flashing Red Signal ............................................................................................ 544.007(f)
Failed to Stop at Proper Place—Traffic Light Not at Intersection ........................................................................... 544.007(g)
Failure to Obey No Passing Zone Sign .................................................................................................................. 544.055(a)
Failure to Obey Official Traffic Control Device ..................................................................................................... 544.004

Traffic Violations—Miscellaneous

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Drove over Fire Hose without Consent ................................................................................................................ 545.205, 545.407
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Turned When Unsafe .................................................................................................................................................. 545.103

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Unauthorized Use of Red Light in Front Center of Vehicle .................... 547.305
Wrong Color Clearance Lamps, Side Marker Lamps, Identification Lamps, or Side Reflector ................................................. 547.353
Wrong Color Lighting Device, Reflector, or Signaling Device ............... 547.303

Vehicle—Miscellaneous

Emissions System—Does Not Prevent Excess Smoke or Fumes ............... 547.605
Emissions System—Does Not Prevent Excessive Smoke or Fumes .......... 547.605
Emissions System—Removal or Non-Functioning System ..................... 547.605
Horn—Not Equipped with Horn in Good Working Condition .......... 547.501
Horn—Unauthorized Type or Sound ......................................................... 547.501
Improper Mud Flaps .............................................................................. 547.606
Improper Safety Glazing Material .......................................................... 547.608
Improper Use of Emblem ..................................................................... 547.605
Mirror Violation ..................................................................................... 547.602, 547.701
Muffler Violation .................................................................................. 547.604
No Flag on Projecting Load—Daytime ..................................................... 547.382
No Front Seat Belts ................................................................................. 547.601
No Lamp (or reflector on Projecting Load at Night) ................................. 547.382
No Lamp on Projecting Load (to side) at Night ....................................... 547.382
No Proper Mud Flaps on Large Towing Vehicle ..................................... 547.606
No Safety Belts ...................................................................................... 547.601
No Visible Flags/Lights/Flares on Vehicle Towing House Trailer or Explosive Cargo ..................................................... 547.502

No Working Windshield Wipers ............................................................... 547.603
Non-Motorized Vehicle on Prohibited Roadway .................................... 547.005
Obstructed View Through Windshield, Side, or Rear Windows ............... 547.613(a)
Operated or Permitted Another to Operate Vehicle Equipped in Manner Non-Compliant or Prohibited ......................... 547.004(a)
Operated or Permitted Another to Operate Vehicle that is Unsafe .......... 547.004(a)(1)
Operated Vehicle with Equipment in Violation of Compliance Proceeding ................................................................. 547.004(b)
Remove, Damage, or Destroy Warning Device .................................... 547.508
Slow Moving Vehicle—Emblem in Non-Reflective Condition ............... 547.703
Slow Moving Vehicle—No Properly Affixed Reflective Emblem .......... 547.703
Television/Video Receiver Visible to Driver when Vehicle is in Motion .................................................................................. 547.611
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Vehicle with Defective Required Equipment ........................................ 548.004, 548.104, 548.401
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Vehicle—Miscellaneous Equipment

No Fire Extinguisher in Vehicle that Transports Passengers ................. 547.607
Restrictions on Airbags .......................................................................... 547.614(b)
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Tires—Improper Use of Metal Tires ......................................................... 547.612(b)
Tires—Insufficient Rubber on Traction Surface ..................................... 547.612(a)

Violations Against Pedestrians

Failed to Use Due for Blind Pedestrian ................................................... 552.01(b)
Failed to Use Due Care for Pedestrian ................................................... 552.006
Failed to Yield R/OV to Pedestrian in Crosswalk when No Traffic Signal .................................................................................. 552.003(a)
Failed to Yield R/OV to Pedestrian Lawfully in Roadway with Green Traffic Signal .................................................. 544.007(b), (c)
Failed to Yield R/OV to Pedestrian Lawfully in Roadway with Red Signal for Right or Lawful Left Turn ...................................................... (d)
Failed to Yield R/OV to Pedestrian on Sidewalk when Exiting from Driveway ................................................................. 552.006(c)
Failed to Yield R/OV to Pedestrian with “Walk” Control Signal ............ 552.002

Wrong Side or Wrong Way

Drove Left of Center Lane on Four-Lane Roadway with Two-Way Traffic ................................................................. 545.051
Drove on Left Side of Road in No Passing Zone .................................... 545.005(b)
Drove on Wrong Side of Divided Highway .......................................... 545.003(a)
Drove on Wrong Side of Road Approaching Bridge ......................... 545.055, 545.056
Drove on Wrong Side of Road Approaching Intersection .................. 545.055, 545.056
Drove on Wrong Side of Road Approaching RR Grade Crossing ......... 545.105, 545.056
Drove on Wrong Side of Road Awaiting Access to Ferry ..................... 545.055, 545.056
Drove on Wrong Side of Road when Not Passing ................................. 545.051
Drove to Left of Rotary Traffic Island .................................................... 545.059
Drove Wrong Way in Designated Lane ................................................ 546.08(b)
Drove Wrong Way on One-Way Roadway .......................................... 546.059(b)
Failed to Obey No-Passing Zone Sign or Markings ............................... 545.055, 545.056
Failed to Pass Met Vehicle to Right ..................................................... 545.052
Failed to Yield One-Half of Roadway on One-Lane Road .................... 545.052
Failed to Yield R/OV on Left when Avoiding Obstruction ................... 545.055(a)(2)
Improperly Drove in Center Lane of Three-Lane Roadway with Two Directions of Traffic ............................................. 545.005(b)
Slower Vehicle Failed to Keep Right .................................................... 545.051(b)
APPENDIX B: MOVING VIOLATIONS

(a) Moving violations are defined as an act committed in connection with the operation of a motor vehicle on a public street or highway, which constitutes a hazard to traffic and is prohibited by state law or city ordinance.

(b) A list of traffic offenses that constitute a moving violation is available in Table 1.

TABLE 1: 37 TAC §15.89(b)

Note that all offenses listed on this chart are moving violations. The Yes/No column refers to those offenses that receive points under the surcharge program.

<table>
<thead>
<tr>
<th>Arrest Title</th>
<th>Driver Responsibility Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggravated assault with motor vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Allow passenger to stand/sit improperly on a school bus</td>
<td>Yes</td>
</tr>
<tr>
<td>Bus driver failed to activate warning signal/equipment</td>
<td>Yes</td>
</tr>
<tr>
<td>Bus failed to stop at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Bus shifting gears while crossing RR tracks</td>
<td>Yes</td>
</tr>
<tr>
<td>Carry motorcycle passenger under 5; except in side car</td>
<td>Yes</td>
</tr>
<tr>
<td>Changed lane when unsafe</td>
<td>Yes</td>
</tr>
<tr>
<td>Child passenger safety seat offense</td>
<td>Yes</td>
</tr>
<tr>
<td>Coasting</td>
<td>Yes</td>
</tr>
<tr>
<td>Coasting (truck, truck tractor or bus, specify) with clutch disengaged</td>
<td>Yes</td>
</tr>
<tr>
<td>Consume alcohol while driving</td>
<td>Yes</td>
</tr>
<tr>
<td>Criminal negligent homicide with motor vehicle--1st or 2nd degree</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossed RR with heavy equipment without notice</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossed RR with heavy equipment without stop (or safety)</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossing fire hose without permission</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossing physical barrier</td>
<td>Yes</td>
</tr>
<tr>
<td>Cut across driveway to make turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Cut corner left turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Violation</td>
<td>Yes/No</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Cut in after passing</td>
<td>Yes</td>
</tr>
<tr>
<td>Did not use designated lane or direction</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregard solid green turn signal arrow</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregard warning signs or barricades</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded flashing red signal (at stop sign, etc.)</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded flashing yellow signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded lane control signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded no lane change sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded no passing zone</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded police officer</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded RR crossing gate or flagman</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded signal at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded traffic control device</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded turn marks at intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded warning sign at construction</td>
<td>Yes</td>
</tr>
<tr>
<td>Drive into block where fire engine stopped</td>
<td>Yes</td>
</tr>
<tr>
<td>Driving around barricades</td>
<td>Yes</td>
</tr>
<tr>
<td>Driving under influence</td>
<td>No</td>
</tr>
<tr>
<td>Driving under influence (DUI)--minor</td>
<td>Yes</td>
</tr>
<tr>
<td>Driving under influence of drugs</td>
<td>No</td>
</tr>
<tr>
<td>Driving while impaired</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated &gt; 0.16</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated with child younger than 15 yoa</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--felony</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--juvenile</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--misdemeanor</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--on beach</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--probated</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--under 21</td>
<td>No</td>
</tr>
<tr>
<td>Driving while license disqualified--CMV</td>
<td>No</td>
</tr>
<tr>
<td>Driving while license suspended under provisions of DL laws</td>
<td>No</td>
</tr>
<tr>
<td>Driving while license suspended--SR</td>
<td>No</td>
</tr>
<tr>
<td>Violation</td>
<td>Yes/No</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Drove center lane (not passing, not turning left)</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on (or across) streetcar tracks where prohibited</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on sidewalk</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side--RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side of approaching bridge</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side of divided highway</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side of road</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side road approaching intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side road approaching RR grade crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side road awaiting access to ferry</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove onto (or from) controlled access highway where prohibited</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove through safety zone</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove to left of rotary traffic island</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove without lights--when required</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove wrong way in designated lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove wrong way on one-way roadway</td>
<td>Yes</td>
</tr>
<tr>
<td>Endorsement violation CDL</td>
<td>No</td>
</tr>
<tr>
<td>Fail stop proper place-flash red signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to control speed</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to dim headlights--following</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to dim headlights--meeting</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to drive in single lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to give hand signals when required</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to give info/render aid</td>
<td>No</td>
</tr>
<tr>
<td>Fail to give one-half of roadway</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to keep to right on mountain road</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to pass left safely</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to pass met vehicle to right</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to pass to right safely</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal for stop</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal required distance before turning</td>
<td>Yes</td>
</tr>
<tr>
<td>Description</td>
<td>Yes/No</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Fail to signal turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal with turn indicator</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to sound horn--mountain road</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop--designated point--at stop sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop--designated point--at yield sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop and render aid--felony</td>
<td>No</td>
</tr>
<tr>
<td>Fail to stop and render aid--misdemeanor</td>
<td>No</td>
</tr>
<tr>
<td>Fail to stop at marked RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop at proper place (at traffic light)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop at proper place (flashing red signal)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop at proper place (not at intersection)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop for approaching train</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop for school bus (or remain stopped, specify)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop for streetcar--or stop at wrong location</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop--emerging from alley, driveway or bldg.</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to use due care for pedestrian</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to use proper headlight beam</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield at stop intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield at yield intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield for blind or incapacitated person</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield right of way</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield right of way from private road</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row at open intersection (specify type)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row leaving (private drive, alley, building)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row on green arrow signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row on green signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row on left at obstruction</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row to emergency vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row to pedestrian at signal intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row to pedestrian in crosswalk</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row to pedestrian in crosswalk--no signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Traffic Law Event</td>
<td>Yes/No</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Fail to yield row to pedestrian on sidewalk</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row to pedestrian turning right or left at intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row--changing lanes</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row--turning left (at intersection, alley, private road or driveway)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row--turning right on red signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield to vehicle in intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield to vehicle leaving highway</td>
<td>Yes</td>
</tr>
<tr>
<td>Failed to give way when overtaken</td>
<td>Yes</td>
</tr>
<tr>
<td>Failed to signal lane change</td>
<td>Yes</td>
</tr>
<tr>
<td>Fleeing from police officer</td>
<td>Yes</td>
</tr>
<tr>
<td>Following ambulance</td>
<td>Yes</td>
</tr>
<tr>
<td>Following fire apparatus</td>
<td>Yes</td>
</tr>
<tr>
<td>Following too closely</td>
<td>Yes</td>
</tr>
<tr>
<td>Following too closely--caravan</td>
<td>Yes</td>
</tr>
<tr>
<td>Following too closely--truck</td>
<td>Yes</td>
</tr>
<tr>
<td>Head lamps glaring not adjusted</td>
<td>Yes</td>
</tr>
<tr>
<td>Heavy equipment disregarded signal of train</td>
<td>Yes</td>
</tr>
<tr>
<td>Illegal backing</td>
<td>Yes</td>
</tr>
<tr>
<td>Illegal pass on right</td>
<td>Yes</td>
</tr>
<tr>
<td>Illegally passed streetcar</td>
<td>Yes</td>
</tr>
<tr>
<td>Impeding traffic</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper passing</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper turn or stop hand signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of auxiliary driving lamps</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of auxiliary passing lamps</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of lighting--hwy. equip.</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of spot lamps</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of turn indicator</td>
<td>Yes</td>
</tr>
<tr>
<td>Increased speed while being overtaken</td>
<td>Yes</td>
</tr>
<tr>
<td>Interfere with streetcar</td>
<td>Yes</td>
</tr>
<tr>
<td>Intoxication assault</td>
<td>No</td>
</tr>
<tr>
<td>Intoxication assault motor vehicle</td>
<td>No</td>
</tr>
<tr>
<td>Intoxication manslaughter</td>
<td>No</td>
</tr>
<tr>
<td>Intoxication manslaughter motor vehicle</td>
<td>No</td>
</tr>
<tr>
<td>Involuntary manslaughter with motor vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Lack of caution on green arrow signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Leaving scene of accident</td>
<td>Yes</td>
</tr>
<tr>
<td>Made U-turn on curve or hill</td>
<td>Yes</td>
</tr>
<tr>
<td>Negligent collision</td>
<td>Yes</td>
</tr>
<tr>
<td>No commercial driver license (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No double trailer endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No driver license</td>
<td>No</td>
</tr>
<tr>
<td>No hazmat endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No motorcycle endorsement</td>
<td>No</td>
</tr>
<tr>
<td>No passenger vehicle endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No tank vehicle endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No school bus endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>Obstructed view through windshield</td>
<td>Yes</td>
</tr>
<tr>
<td>Obstructing traffic</td>
<td>Yes</td>
</tr>
<tr>
<td>Open Container DRIVER</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate school bus over passenger design capacity</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate school bus with door open</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate vehicle more than one passenger-minor</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate vehicle where prohibited</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate vehicle with child in open bed</td>
<td>Yes</td>
</tr>
<tr>
<td>Passed streetcar on left without reducing speed or without caution</td>
<td>Yes</td>
</tr>
<tr>
<td>Passed vehicle stopped for pedestrian</td>
<td>Yes</td>
</tr>
<tr>
<td>Passed--insufficient clearance</td>
<td>Yes</td>
</tr>
<tr>
<td>Passengers/load obstruct driver's view or control</td>
<td>Yes</td>
</tr>
<tr>
<td>Passing authorized emergency vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Permitted/operated unsafe vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Person(s) riding in trailer or semi-trailer</td>
<td>Yes</td>
</tr>
<tr>
<td>Prohibited motor vehicle on controlled-access highway</td>
<td>Yes</td>
</tr>
<tr>
<td>违规行为</td>
<td>是/否</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>赛车--拖车赛车--加速比赛，等。</td>
<td>是</td>
</tr>
<tr>
<td>跑红灯</td>
<td>是</td>
</tr>
<tr>
<td>跑停车标志</td>
<td>是</td>
</tr>
<tr>
<td>鲁莽驾驶</td>
<td>是</td>
</tr>
<tr>
<td>限制违反--CDL</td>
<td>是</td>
</tr>
<tr>
<td>较慢的车辆未能保持在右侧</td>
<td>是</td>
</tr>
<tr>
<td>速度低于最低限速</td>
<td>是</td>
</tr>
<tr>
<td>超速</td>
<td>否</td>
</tr>
<tr>
<td>超速--10%以上超过限速限速</td>
<td>是</td>
</tr>
<tr>
<td>超速--15英里或以上（CDL）</td>
<td>是</td>
</tr>
<tr>
<td>超速--学校区域</td>
<td>是</td>
</tr>
<tr>
<td>摩托车上的乘客过多</td>
<td>是</td>
</tr>
<tr>
<td>越过分隔带</td>
<td>是</td>
</tr>
<tr>
<td>从错误的车道左转</td>
<td>是</td>
</tr>
<tr>
<td>从错误的车道右转</td>
<td>是</td>
</tr>
<tr>
<td>右转过宽</td>
<td>是</td>
</tr>
<tr>
<td>转弯以阻碍或干扰电车</td>
<td>是</td>
</tr>
<tr>
<td>在不安全时转弯</td>
<td>是</td>
</tr>
<tr>
<td>未授权使用警报，铃或口哨</td>
<td>是</td>
</tr>
<tr>
<td>速度过快（因条件太快）</td>
<td>是</td>
</tr>
<tr>
<td>不安全的启动</td>
<td>是</td>
</tr>
<tr>
<td>不安全的启动从停，停下来或站在位置</td>
<td>是</td>
</tr>
<tr>
<td>阻止学校巴士的信号</td>
<td>是</td>
</tr>
<tr>
<td>驾驶公共汽车使用无线设备</td>
<td>是</td>
</tr>
<tr>
<td>驾驶--未成年人无线设备</td>
<td>是</td>
</tr>
<tr>
<td>车辆运送爆炸物（或易燃物）未能在铁轨穿越处停车</td>
<td>是</td>
</tr>
<tr>
<td>车辆运送爆炸物未能减慢速度在铁轨穿越处</td>
<td>是</td>
</tr>
<tr>
<td>车辆无要求的设备或在不安全的条件</td>
<td>是</td>
</tr>
<tr>
<td>违反DL限制</td>
<td>是</td>
</tr>
</tbody>
</table>

<p>|2013 • Level I| Traffic Law • 8-45|</p>
<table>
<thead>
<tr>
<th>Violation</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violate DL restriction on occupational license</td>
<td></td>
</tr>
<tr>
<td>Violate operating hours-minor</td>
<td></td>
</tr>
<tr>
<td>Violated out of service order</td>
<td></td>
</tr>
<tr>
<td>Violated out-of-service order hazmat and/or passenger</td>
<td></td>
</tr>
<tr>
<td>Wrong side road--not passing</td>
<td></td>
</tr>
<tr>
<td>Wrong side, 4 or more lane, two-way roadway</td>
<td></td>
</tr>
</tbody>
</table>

(c) Table 1 also indicates the moving violations that will be assessed points under the Driver Responsibility Program, Texas Transportation Code (TRC), Chapter 708, Subchapter B.

(1) Not all moving violations are assessed points under the Driver Responsibility Program, however, they may be considered for Habitual Violator action under TRC, §521.292(a)(3).

(2) Moving violation convictions that are assessed specific surcharges pursuant to Texas Transportation Code, §§708.102 (intoxicated driver offenses), 708.103 (driving while license invalid or without financial responsibility), and 708.104 (driving without valid license including no commercial driver license, driving without the proper commercial license endorsement and driving without the proper motorcycle endorsement), will not be assessed points under the Driver Responsibility Program.

Source Note: The provisions of this §15.89 adopted to be effective June 22, 2004, 29 TexReg 5945; amended to be effective November 28, 2005, 30 TexReg 7889; amended to be effective June 8, 2006, 31 TexReg 4659; amended to be effective July 11, 2010, 35 TexReg 5899.
### APPENDIX C: PASSENGER RESTRAINT LAWS

#### Child in safety seats
A child under 8 years old, unless the child is taller than 4 feet 9 inches (4’9”) must be restrained in a child passenger safety seat in accordance with the manufacturer’s instructions.

#### Child in safety belts
A child at least age 8 and younger than age 17 must be restrained in a safety belt regardless of position in the vehicle. A child under 8 years old who is not required to be in a safety seat must be in a safety belt.

#### Adults in safety belts
A person must be restrained in a safety belt regardless of position in the vehicle.

#### Motorcycles
A child under age 5 cannot ride as a passenger on a motorcycle, unless seated in a sidecar.

#### Pick-up trucks and trailers
A child under age 18 cannot ride in the open bed of a pick-up or flatbed truck or open flatbed trailer on a public road.

#### House trailers and towed trailers
A person cannot ride in a house trailer being moved or in a trailer or semitrailer being towed.

#### Towed watercraft
A child under age 18 cannot ride in a boat being towed by a vehicle.

---

*It is strongly recommended that all children less than 13 years old ride properly restrained in the back seat.*

---

**Back Seat**
- ADULTS (17 and over) $25 - $50 fine to offender
- CHILDREN (15-16) $25 - $50 fine to passenger & $100 - $200 fine to driver
- CHILDREN (8-15, and those under 8 but taller than 4’9”) $100 - $200 fine to driver
- CHILDREN (under age 8, unless taller than 4’9”) $25 - $250 fine to driver

**Driver’s Seat**
- DRIVER (over 15) $25 - $50 fine

---

**Funded by a grant from the Texas Court of Criminal Appeals.**
Child under age 8, unless over 4'9" tall

<table>
<thead>
<tr>
<th>Age</th>
<th>Person Responsible</th>
<th>Type of Restraint</th>
<th>Location in vehicle</th>
<th>Cited for</th>
<th>Penalty</th>
<th>Eligible for Special DSC</th>
<th>Eligible for DSC</th>
<th>Eligible for Deferred Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child under age 8, unless over 4'9&quot; tall</td>
<td>driver</td>
<td>child passenger safety seat system</td>
<td>front and back seats</td>
<td>child not in safety seat system</td>
<td>minimum $25 maximum $250</td>
<td>yes</td>
<td>no</td>
<td>yes</td>
</tr>
</tbody>
</table>

Child at least age 8 and under age 17*

<table>
<thead>
<tr>
<th>Age</th>
<th>Person Responsible</th>
<th>Type of Restraint</th>
<th>Location in vehicle</th>
<th>Cited for</th>
<th>Penalty</th>
<th>Eligible for Special DSC</th>
<th>Eligible for DSC</th>
<th>Eligible for Deferred Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child at least age 8 and under age 17*</td>
<td>driver</td>
<td>safety belt</td>
<td>front and back seats</td>
<td>child not in safety belt</td>
<td>minimum $100 maximum $200 if in passenger vehicle</td>
<td>minimum $1 maximum $200 if in passenger van</td>
<td>yes</td>
<td>no</td>
</tr>
</tbody>
</table>

At least age 15

<table>
<thead>
<tr>
<th>Age</th>
<th>Person Responsible</th>
<th>Type of Restraint</th>
<th>Location in vehicle</th>
<th>Cited for</th>
<th>Penalty</th>
<th>Eligible for Special DSC</th>
<th>Eligible for DSC</th>
<th>Eligible for Deferred Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>At least age 15</td>
<td>passenger</td>
<td>safety belt</td>
<td>front and back seats</td>
<td>passenger not wearing safety belt</td>
<td>minimum $25 maximum $50</td>
<td>no</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>At least age 15</td>
<td>driver</td>
<td>safety belt</td>
<td>front and back seats</td>
<td>driver not wearing safety belt</td>
<td>minimum $25 maximum $50</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
</tr>
</tbody>
</table>

*Children under age 8 that are taller than 4'9" must wear a safety belt.

Definitions

- Child passenger safety seat system means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.
- Passenger vehicle means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator. Light truck means a truck, including a pickup truck, panel delivery truck, or carryall truck, that has a manufacturer’s carrying capacity of 2,000 pounds or less. Since sport utility vehicle is not specifically defined, look to the definition of passenger vehicle. Truck means a motor vehicle designed, used, or maintained primarily to transport property. Truck tractor means a motor vehicle designed and used primarily to draw another vehicle but not constructed to carry a load other than a part of the weight of the other vehicle and its load. Motor vehicle means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. Section 541.201, T.C.
- Safety belt means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.
- Secured in connection with use of a safety belt means using the lap belt and any shoulder straps according to the manufacturer of the vehicle, if the safety belt is original equipment, or the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

Section 545.412, T.C., does not apply to:

- A person operating a vehicle transporting passengers for hire, excluding third-party transport service providers when transporting clients pursuant to a contract to provide nonemergency Medicaid transportation; or
- A person transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

Defenses to prosecution under Section 545.412, T.C.:

- The person was operating the vehicle in an emergency;
- The person was operating the vehicle for a law enforcement purpose; or
- The person provides satisfactory evidence to the court that, at the time of the offense:
  - (1) the person was not arrested or issued a citation for violation of any other offense,
  - (2) the vehicle the person was driving was not involved in a crash,
  - (3) the person did not possess a child passenger safety seat system in the vehicle, and
  - (4) subsequent to the time of the offense, the defendant obtained an appropriate child passenger safety seat system for each child required to be secured in such a system. [Section 545.4121, T.C.,]

Defenses to prosecution under Section 545.413, T.C.:

- The person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person is employed by the United States Postal Service and performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;
- The person is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;
- The person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle;
- The person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.433, T.C., that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more; or
- The person is the operator of or a passenger in a vehicle used exclusively to transport solid waste and performing duties that require frequent entry into and exit from the vehicle.

Amount Due to the State

- Fifty percent of the fines for convictions for not securing a child in a child passenger safety seat system (under Section 545.412, T.C.) or a safety belt (under Section 545.413(b), T.C.) must be remitted to the State Comptroller at the end of the city’s fiscal year.

Funded by a grant from the Texas Court of Criminal Appeals.
## APPENDIX D: COMPLIANCE DISMISSALS AND DEFENSES TO PROSECUTION

### Compliance Dismissals

<table>
<thead>
<tr>
<th>Offense</th>
<th>Statute</th>
<th>Mandatory or Discretionary Dismissal</th>
<th>Length of Time to Comply</th>
<th>Required Conditions</th>
<th>Amount of Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expired vehicle registration</td>
<td>Section 502.407(b), Transportation Code</td>
<td>Court may dismiss</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later</td>
<td>Defendant must remedy the defect; and Show proof of payment of late registration fee to county assessor-collector</td>
<td>Fee optional Not to exceed $20</td>
</tr>
<tr>
<td>Operate vehicle without valid registration insignia properly displayed</td>
<td>Section 502.473(a), Transportation Code</td>
<td>Court may dismiss</td>
<td>Before defendant’s first court appearance</td>
<td>Defendant must: Remedy the defect; or Show that vehicle was issued a registration insignia that was attached to the vehicle establishing that the vehicle was registered for the period during which the offense was committed</td>
<td>Fee required Not to exceed $10</td>
</tr>
<tr>
<td>Attaching or displaying on a vehicle a registration insignia that is assigned for a period other than in effect</td>
<td>Section 502.475(c), Transportation Code</td>
<td>Court may dismiss</td>
<td>Before defendant’s first court appearance</td>
<td>Defendant must remedy the defect</td>
<td>Fee required Not to exceed $10</td>
</tr>
<tr>
<td>Operate vehicle without two valid license plates</td>
<td>Section 504.943(d), Transportation Code</td>
<td>Court may dismiss</td>
<td>Before the defendant’s first court appearance</td>
<td>Defendant must remedy the defect</td>
<td>Fee required Not to exceed $10</td>
</tr>
<tr>
<td>Attaching or displaying on a vehicle a license plate that is assigned for a period other than in effect, or has a blurring, reflective coating, covering, or protective matter or attached illuminated device, sticker, decal, or emblem that obscures, impairs, or interferes with the plate’s readability</td>
<td>Section 504.945(d), Transportation Code</td>
<td>Court may dismiss</td>
<td>Before the defendant’s first court appearance</td>
<td>Defendant must: Remedy the defect; and Show that vehicle was issued a plate that was attached to the vehicle establishing that the vehicle was registered for the period during which the offense was committed</td>
<td>Fee required Not to exceed $10</td>
</tr>
<tr>
<td>Expired driver’s license</td>
<td>Section 521.026(a), Transportation Code</td>
<td>Court may dismiss</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later</td>
<td>Defendant must remedy the defect</td>
<td>Fee optional Not to exceed $20</td>
</tr>
<tr>
<td>Violation</td>
<td>Section</td>
<td>Dismissal Decision</td>
<td>Dismissal Requirement</td>
<td>Defect Resolution Requirement</td>
<td>Fee Requirement</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>----------------------------------</td>
<td>-------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Fail to report change of address or name on driver’s license</td>
<td>Section 521.054(d), Transportation Code</td>
<td>Court may dismiss</td>
<td>20 working days after the date of the offense</td>
<td>Defendant must remedy the defect</td>
<td>Fee required</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not to exceed $20</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Court may waive in interest of justice</td>
</tr>
<tr>
<td>Violate driver’s license restriction or endorsement</td>
<td>Section 521.221(d), Transportation Code</td>
<td>Court may dismiss</td>
<td>Before the defendant’s first court appearance</td>
<td>Defendant must show that: Driver’s license restriction or endorsement was imposed because of a physical condition that was surgically or otherwise medically corrected before the date of the offense, or in error and that is established by the defendant; and DPS removes the restriction or endorsement before the defendant’s first court appearance</td>
<td>Fee required</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not to exceed $10</td>
</tr>
<tr>
<td>Operate vehicle with defective required equipment (or in unsafe condition)</td>
<td>Section 547.004(c), Transportation Code</td>
<td>Court may dismiss</td>
<td>Before the defendant’s first court appearance</td>
<td>Defendant must remedy the defect Does not apply if the offense involves a commercial motor vehicle</td>
<td>Fee required</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not to exceed $10</td>
</tr>
<tr>
<td>Expired Inspection</td>
<td>Section 548.605, Transportation Code</td>
<td>Court shall dismiss if expired not more than 60 days Court may dismiss if expired more than 60 days</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later</td>
<td>Defendant must remedy the defect</td>
<td>Fee required</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not to exceed $20</td>
</tr>
<tr>
<td>*Repealed as of 3/1/15</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expired disabled parking placard</td>
<td>Section 681.013, Transportation Code</td>
<td>Court shall dismiss if expired not more than 60 days Court may dismiss if expired more than 60 days</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later</td>
<td>Defendant must remedy the defect</td>
<td>Fee required</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not to exceed $20</td>
</tr>
<tr>
<td>Operate vessel with expired certificate of number</td>
<td>Section 31.127(f), Parks &amp; Wildlife Code</td>
<td>Court may dismiss</td>
<td>10 working days after the date of the offense</td>
<td>Defendant must remedy the defect Certificate cannot be expired more than 60 days</td>
<td>Fee required</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not to exceed $10</td>
</tr>
</tbody>
</table>
## Common Defenses to Prosecution

<table>
<thead>
<tr>
<th>Offense</th>
<th>Statute</th>
<th>Defense</th>
<th>Amount of Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to have driver’s license in possession while operating a motor</td>
<td>Section 521.025, Transportation Code</td>
<td>Defendant must produce in court a driver’s license issued to that person appropriate for the type of vehicle operated and valid at the time of the arrest</td>
<td>Optional $10 fee</td>
</tr>
<tr>
<td>vehicle (Failure to display)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to have commercial driver’s license in possession while operating</td>
<td>Section 522.011, Transportation Code</td>
<td>Defendant must produce in court a commercial driver’s license issued to that person appropriate for the class of vehicle being driven and valid at the time of the offense</td>
<td>None</td>
</tr>
<tr>
<td>a commercial motor vehicle</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to secure child in a child passenger safety seat system</td>
<td>Section 545.412, Transportation Code</td>
<td>Defendant must provide the court with satisfactory evidence that, at the time of the offense:</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Defendant was not arrested or cited for any other offense, the vehicle was not involved in a crash, and the defendant did not possess a child passenger safety seat in the vehicle; and Subsequent to the offense, the defendant obtained an appropriate child passenger safety seat for each child required to be secured in a child passenger safety seat system</td>
<td></td>
</tr>
<tr>
<td>Failure to display valid motor vehicle inspection certificate</td>
<td>Section 548.602, Transportation Code</td>
<td>Defendant must show that an inspection certificate for the vehicle was in effect at the time of the arrest</td>
<td>None</td>
</tr>
<tr>
<td><em>Repealed as of 3/1/15</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to maintain financial responsibility</td>
<td>Section 601.193 or Section 601.194, Transportation Code</td>
<td>Two defenses available:</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Defendant must provide the court satisfactory evidence of valid proof of financial responsibility under Section 601.053(a) that was valid and in effect at the time of the arrest OR - Defendant possessed the vehicle for the sole purpose or maintenance or repair and did not own the vehicle</td>
<td></td>
</tr>
</tbody>
</table>
ANSWERS TO QUESTIONS

PART 1

Q. 1. It is divided into titles, subtitles, chapters, subchapters, and sections.
Q. 2. Title 7.
Q. 5. Chapter 543.
Q. 6. Chapter 543.
Q. 7. Chapter 551.
Q. 8. Offenses in Subtitle C of Title 7 of the Transportation Code, Chapters 541-600.
Q. 9. Title 37, Section 15.89 of the Texas Administrative Code.
Q. 10. Subtitle D, Chapter 601.
Q. 12. Subtitle I, Chapter 703.
Q. 15. Section 720.002.

PART 2

Q. 16. Section 543.003 of the Transportation Code.
Q. 17. Article 14.06(b) of the Code of Criminal Procedure.
Q. 18. b. Speeding and possession of an open container of alcohol in a motor vehicle.
Q. 19. The defendant can continue to exercise his or her right to take the course until the person is informed of the right or until the case is disposed.
Q. 20. The citation must contain notice in type larger than other type on the citation (except for the type of the statement required about the surcharges) about a second or subsequent conviction resulting in suspension of the defendant’s driver’s license and motor vehicle registration. Section 601.233 of the Transportation Code provides specific text to include for this notice.
Q. 21. The notice regarding surcharges must be in type larger than any other type on the citation and notify the defendant that a conviction of a traffic law may result in an assessment of a surcharge on the defendant’s driver’s license. Section 708.105 of the Transportation Code provides specific text to include for this notice.
Q. 22. The requirement to notify the court of any change of address and that the failure to do so is a Class C misdemeanor.
Q. 23. The notice should inform the violator that if he or she fails to appear or pay the fine or satisfy the judgment, he or she may be denied renewal of their driver’s license.
Q. 24. The additional information required to be on a citation issued to a person who holds a commercial driver’s license includes the following: (1) whether the vehicle is a
commercial motor vehicle as defined in Chapter 522 of the Transportation Code; (2) whether the vehicle was transporting hazardous materials; and (3) whether the offense was a serious traffic violation as defined in Chapter 522.

Q. 25. Written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

Q. 26. Duplicate form or on an electronic device capable of creating a copy of the signed notice, such as an electronic ticket writer.

Q. 27. No signature is required on a citation issued by a peace officer for offenses outside of Subtitle C, Rules of the Road offenses under the authority of Article 14.06(b) of the Code of Criminal Procedure.

Q. 28. a. 10 days.

PART 3

Q. 29. True.
Q. 30. False.
Q. 31. False.
Q. 32. True.

PART 4

Q. 33. True.
Q. 34. False.
Q. 35. False.
Q. 36. False (it is a Class B misdemeanor).
Q. 37. False (they must be alleged as such or enhanced by the officer or prosecutor).
Q. 38. True.

PART 5

Q. 40. True.
Q. 41. False (the defendant has 20 working days or before first court appearance date).
Q. 42. False (the maximum fine is $200).
Q. 43. True.
Q. 44. True.
Q. 45. False (the offense can be enhanced on a third or subsequent conviction or if the defendant did not have financial responsibility and caused serious bodily injury or death to another in a crash).
Q. 46. True.
Q. 47. False (the commercial driver’s license must also be valid for the class of commercial motor vehicle that was driven on the day of the offense).
Q. 48. True.
Q. 49. False (it is a state law violation, but the speed limit is set by city ordinance if it differs from that provided for under state law).

Q. 50. False (passenger vehicle means passenger car, light truck, sport utility vehicle, passenger van designed to transport 15 or fewer passengers, including the driver, truck, or truck tractor).

Q. 51. True.

Q. 52. False (cities must remit one-half of the fines collected upon conviction for a child not being secured in a passenger safety seat system or a safety belt, not of all safety belt fines).

Q. 53. True.

Q. 54. True.

Q. 55. False (minimum fine of $500 and a maximum fine of $1,250 for a first offense).

Q. 56. False (the maximum fine is $200).

Q. 57. True (only until March 1, 2015).

Q. 58. False.

Q. 59. False.

Q. 60. False (the judge does not have authority to dismiss the case unless the defendant had valid insurance on the date of the arrest).

Q. 61. True.


Q. 63. True.

Q. 64. True.

Q. 65. True.

Q. 66. False (the penalty is a minimum of $10 and a maximum of $50).

Q. 67. False.

Q. 68. True.

Q. 69. True.

PART 6

Q. 70. False.

Q. 71. True.

Q. 72. False.
Insert Tab 9
9
Communications and Stress Management

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INTRODUCTION

More citizens come in contact with the Texas municipal courts than with all other Texas courts combined. From that experience, citizens form lasting impressions of the justice system. Confidence in and respect for our system is essential to ensure compliance with the law and orders of the court. The clerk, as the person who comes into contact with most of these citizens and defendants, has the responsibility of communicating a positive image of the judicial process and court procedures effectively.

If clerks want to increase their communication and stress management skills for personal and professional growth, there are many commercial seminars and books available. Strong verbal and written communications skills and stress and time management skills help clerks to become more effective in their jobs.

PART 1
COMMUNICATIONS

A. Communication Process

The word “communication” evokes imagery of speech or conversation. The dictionary defines “communication” as exchanging information: both sending and receiving. When people communicate orally or in writing, the messages sent and received pass through filters that modify, and sometimes incorrectly skew, the original message’s intent. These filters may include:

- a person’s perception of a situation;
- past experiences; and
- assumptions about what a person might be trying to say.
Any one of these filters can block or affect communication. A person’s ability to communicate effectively is affected by his or her thoughts and feelings about the situation and the other speaker. A frightened or angry person will not be able to understand directions as easily as a calm person. Accordingly, if a defendant does not understand a set of instructions, clerks can try a different communication strategy rather than becoming irritated or defensive. Communication is less effective—and often fails—when one or both of the people exchanging information do not accomplish their part as sender or receiver.

B. Communication Skills

Although this study guide focuses primarily on communications with defendants who come before the court, other work situations require effective communication skills, including:

- managing witnesses, jurors, lawyers, and other court users;
- interacting with co-workers, supervisors, and judge(s).

1. Believable Communication

For a message to be believable, it must be consistent. Consistent communication includes not only the verbal message, but also a vocal and visual component. Trainers often say that believability depends on three factors:

Verbal: What words you say, 7%.

Vocal: How you sound when you say them, 38%.

Visual: How you look when you say them, 55%.

One can see that verbal communication is the smallest factor of the communication process. How a person sounds and presents him or herself is the biggest contributing factor to getting people to understand a message. Think for a moment of an unpleasant confrontation with a defendant and how effective he or she was at using body language or tone of voice to convey dissatisfaction! Sometimes the verbal message is overpowered by the vocal and visual message. Rehearsing in front of a mirror, with a tape recorder, or with a co-worker, will help clerks to be aware of how they are perceived by defendants.

2. Steps to Effective Communication

When dealing with citizens who come into the court, remember to:

- listen carefully;
- face the person you are speaking to;
- establish eye contact;
- adopt a concerned body posture, tone of voice, and facial expression;

---

• avoid a condescending or impatient tone;
• have and exhibit empathy;
• eliminate distractions;
• practice patience;
• be consistent; and
• do not take things personally.

**True or False**

Q. 1. Communication involves only the sending of information. ____
Q. 2. People listen through filters that often block communication. ____
Q. 3. Communication is affected only by the sender’s thoughts and feelings, not the receiver’s. ____
Q. 4. The believability of communication depends only on what words are said and not on how a person sounds or looks when speaking. ____
Q. 5. List the steps to effective communication. ______________________________________
_______________________________________________________________________
_______________________________________________________________________

**PART 2**

**WORKPLACE COMMUNICATIONS**

Clerks should learn how to adjust their communication style to each situation and each person with whom they are communicating. Clerks may worry that by developing different coping strategies for dealing with upset citizens that they are not treating all persons equally and fairly. Although communication strategies may vary, if all people that come into contact with the court are treated with dignity and respect and afforded the same due process of law, there should not be a complaint of unfairness.

**A. Adopting Bias-Free Language**

Clerks should avoid using biased language that reflects any predisposition or tendency to think and behave toward people on the basis of race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status. Frequently, biases in these areas are expressed subtly so that the person expressing it does not even realize a biased statement or action has occurred. The court’s challenge is to be alert to ways of thinking, speaking, writing, and acting that reflect biased behavior and to utilize strategies that reflect unbiased behavior. Shown below are some guidelines.

• Use gender-neutral words. Avoid using “he” as the generic pronoun meaning all persons rather than all males. Instead, use plural pronouns (“they”) or use a singular or plural noun that is gender-neutral (example: the “judge” or “judges”).
• Avoid biased occupational terms.
INSTEAD OF : USE:
policeman police officer
fireman fire fighter
work men workers

- Avoid using male references when other words can be more specific.

INSTEAD OF : USE:
a one-man operation a one-person operation
man-made manufactured
to man a post to staff a position

- Avoid stereotyping roles and using words or phrases that imply an evaluation of the gender and ethnicity.

- Use “person first respectful language,” that places the word “person” before the word “disability.” Avoid the following terms:
  disabled
  mentally ill
  mentally retarded
  handicapped

- Canons 3B(4),(5), and (6) of the Code of Judicial Conduct require judges and court support personnel to maintain bias-free courtrooms by exhibiting patience, dignity, and courtesy to litigants, jurors, witnesses, lawyers, and others with whom they deal in an official capacity; and avoiding the manifestation of bias or prejudice by words or conduct based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

B. Handling Difficult Defendants

Almost every day, municipal courts deal with defendants who are angry, impatient, and uncertain about procedures. Court clerks are often the first to encounter the indignation, irritation, and anxiety felt by these people. Handling them effectively and with courtesy is perhaps one of the most burdensome tasks of the court clerk’s job. This task will become easier if clerks recognize why people are being difficult and then adapt certain strategies for deflecting anger and redirecting their energies. The credibility of the court and the clerks will be enhanced if clerks work on how to verbalize instructions to defendants. Follow the steps below to deal with difficult defendants more effectively:

- assess the situation;
- stop wishing that the person would behave differently;
- formulate a strategy or plan;
- implement the plan; and
- monitor the effectiveness and modify where appropriate.

Below is a typical example:

A defendant appearing at the clerk’s office is angry about getting a ticket. He refuses to talk to the clerk and demands to talk with the judge.
Clerk Response #1: “You can’t talk to the judge. She is not available.”

Clerk Response #2: “Court procedures give you two options. The option which allows you to talk to the judge requires you to enter a plea of guilty or no contest before the judge can hear the facts of your case. The judge can then take into account any extenuating circumstances before setting the fine. Unless you enter a plea of guilty or no contest, it is a violation of the Code of Judicial Conduct for the judge to hear facts about a case when just one party is present. The other option is for you to plead not guilty and exercise your right to a trial. If you do that, after the prosecutor presents the evidence, the judge or jury hears both sides of the case and makes a decision from the evidence.”

The second response is more effective because the clerk is giving complete information about court procedures and giving the defendant clearer options. The clerk should follow up statements with questions that verify whether or not the receiver understood the message. When asking follow-up questions, clerks should avoid direct questions that begin with “do,” “did,” “will,” and “can.” These types of questions usually elicit a YES/NO answer, can make people feel defensive, and limit communication. Try questions that begin with words such as “how,” “when,” “what,” “where,” and “please explain for me.” This allows the listener/receiver to give the clerk more information and to verify whether or not the message received was correct.

1. Learning Helpful Communication Techniques

Imagine the following scenarios and think about how the defendant feels.

Example 1:

The defendant believes police are unfair. He is shaking and red-faced. “I wasn’t speeding. The police officer ticketed me because I have a red sports car. Ten people passed me and she stops me! I’ve heard about small town ‘justice.’ I bet your salary is dependent on traffic violations.”

This defendant is displaying anger. When defendants are angry—with themselves, at the arresting officer, or at someone else who has caused a perceived injustice—they may direct their anger at the clerk. This anger may be expressed as verbal aggression, abusive language, or non-verbal, threatening body language.

Example 2:

The defendant is a business executive and talks loudly and firmly. “Look, I’ve waited in line for 20 minutes, and now you tell me that I can’t see the judge! I had an important meeting this morning that I missed. Do you know how much money my time is worth? You are all incompetent!”

The business executive is simply expressing impatience. When defendants are impatient, it is often because they value work and efficiency above many other facets of life. They blame the clerk for keeping them from important activities. As a result, they may attempt to intimidate, insult, or offend.

Example 3:

The defendant has driven 20 years without a ticket. An older woman, she is nervous and distraught—rushing from point to point. “I have never had a ticket before, and I don’t
know what to do. I’ve heard about taking a driving safety course, but I don’t know how it works. I don’t really think the officer should have given me a ticket…I wasn’t going that fast. What do you think I should do? Am I going to lose my insurance? I just don’t know what will happen.”

This defendant may speak quickly due to uncertainty and anxiety. If defendants are uncertain about what will happen to them, they may become incoherent, defensive, and even aggressive. In general, there are three options for handling difficult people: be authoritative, be positive, or be task-oriented. Typically, these options should be used in combination for the greatest impact.

**a. Be Authoritative, But Not Domineering**

Defendants who attempt to be intimidating, whether because of impatience or anger, are less successful when the clerk establishes authority without being overpowering. Clerks can redirect domineering behavior by creating non-verbal barriers and actively asserting their rights. A wide, high counter between clerks and defendants makes it more difficult for someone to non-verbally exert dominance. This physical barrier may also protect clerks from potential physical contact. In addition, if clerks perch on stools or use bumper steps to make themselves higher than a defendant or provide a seat for the defendant to sit in at the counter, they exhibit non-verbal control.

A sensible system of lines is another method for averting domineering behavior. Lines make people aware of those around them, decreasing the opportunity for a disgruntled defendant to confront clerks without cause.

Clerks can assert themselves verbally by making people aware of the clerk’s position and the correct manner for interacting with the court. For example, if a defendant starts cursing, clerks may warn the defendant, firmly but politely: “Sir, I cannot help you if you swear at me. I find it offensive and will call security. Now, please let us continue in a civil manner. How may I help you?” Threats and other attempts to intimidate should be handled similarly.

**b. Be Positive, But Not Submissive**

Negative behavior can be very trying; however, the negative behavior can be greatly diminished when matched with a positive attitude. There is a natural tendency to match a negative comment or behavior with negative actions, but such a reaction tends to aggravate and reinforce the negativity.

Here are two ways to be positive without giving the impression of being weak or defenseless.

1. Try using supportive listening responses. Nod your head, smile (if you feel it is appropriate), and use affirming phrases such as “yes,” “right,” and “okay.” These positive behaviors encourage the other person to express themselves and explain the reasons for such behavior.

2. If the defendant is being emotional, let him or her vent their frustrations within reason. Use the supportive listening responses discussed above to keep the defendant talking until he or she calms down.

Clerks might also try to create a positive mood by introducing non-verbal softeners. These might include comfortable seating, soft lighting, and plants. Even a change in color can make a drab
room more cheery. Making the waiting area in front of the counter or window more appealing can encourage positive feelings toward the court and the clerk.

c. Be Task-Oriented, But Not Cold or Impersonal

When a person has calmed down or is willing to listen, a clerk will be able to address the issues in a more effective manner. Clerks should try to be task-oriented, but not cold or impersonal. Appropriately frame the situation for the defendant and act in a problem-solving fashion.

Clerks should feel free to explain their role, the role of the judge, and others in the judicial process and the options available to the defendant. Many defendants do not know why they cannot talk to the judge immediately or why the court cannot correct the officer’s obvious mistake in issuing them a ticket. Also, human nature being what it is, defendants often make incorrect assumptions about what they have to do to contest a ticket. It is the clerk’s job to explain court options and procedures, record pertinent information, dispense necessary forms, and indicate the appropriate people to contact, all without crossing the line into giving legal advice.

Clerks are often pulled in many different directions, and it is not uncommon to be dealing with a defendant at the window and have several interruptions. Clerks should be mindful of their attention and not ignore defendants. Talking to a defendant without looking at them could be considered rude by the defendant. Answering a phone call or interrupting while engaged in a conversation with the defendant could be considered rude as well. Eye contact and simple manners go a long way.

2. Applying the Techniques

In the first example, the defendant was angry and acting negatively and emotionally. In response, clerks should be positive, but not submissive.

“I know that you are upset, and I want to assure you that the procedures exercised by this court are firmly established by law. However, I need us to be on civil terms so that I can help you. Please let me explain court procedures and give you this pamphlet so that you may better understand the options available to you.”

The first sentence acknowledges the defendant’s emotional state, hopefully making the defendant self-aware. The statement ignores the defendant’s insults and addresses the misconception that the court is not fair. The second and third sentences signal that the clerk is there to help the defendant. The clerk is focusing on the problem, not the person.

Once the defendant has become more calm and willing to listen, the clerk can be task-oriented.

“I see your concern. Let me explain your options concerning your ticket. First, if you believe you are not guilty, you can request a trial. Pleading not guilty will result in a trial by jury unless you waive that right, in which case the judge will decide your innocence or guilt. Second, if you do not want to go to trial, you can request a driving safety course. Here is a pamphlet that explains that option in more detail. If you have additional questions after reading it, please ask me, and I will be happy to try to answer them.”

The first sentence acknowledges the defendant’s concerns. Then the clerk immediately frames the situation by explaining specific options and procedures. Next the clerk provides written information to the defendant and states that he or she will be glad to answer questions about the
informational pamphlet. By providing information to the defendant that he or she needs to make a decision, the defendant is enabled to have more control over the situation. The control helps the defendant calm down and behave in a more appropriate manner.

In the second example, the defendant was acting domineering and emotional. An appropriate response might be both authoritative and task-oriented.

“I know you’ve been waiting, and I understand you wish to see the judge immediately. It is unethical for the judge to talk to you before trial, and I believe you would not want the judge’s impartiality to be questioned. The judge must follow certain procedures so that everyone is treated fairly. My role is to help you decide how to proceed. I can help you set your case on the trial docket, provide information about taking a driving safety course, or set you for a hearing to talk to the judge if you want to plead guilty or no contest. Here is a pamphlet that explains the court’s procedures. Please take a minute to examine it so I can help you as quickly as possible.”

The first sentence acknowledges the defendant’s frustration and underlying emotion. The remainder of the response clarifies the judge’s role and the clerk’s role. This approach combines the authoritative approach with a task-oriented strategy.

In the third example, the woman is unsure of what to do. This response merits a task-oriented approach.

“I know you probably feel unsure about what will happen in your case. Let me explain several options you have for taking care of your ticket. First, if you believe you are not guilty, you can request a trial. This will be a trial by jury unless you waive that right, in which case the judge will decide your innocence or guilt. Second, if you do not want to go to trial, you can request a driving safety course; if you complete it, your ticket will be dismissed. Third, if you want to plead guilty or no contest, I can set a hearing for you to talk to the judge about any circumstances you believe should be taken into account when setting the fine. Here is a pamphlet that explains these options in more detail. If you have additional questions after reading it, please see me, and I will be glad to try to answer your questions.”

Showing empathy initially may establish trust and a willingness to listen. This will make the defendant more receptive to the information being given, and more likely to understand how to make an appropriate decision.

Not all defendants will calm down or become reasonable, even when utilizing these techniques. Sovereign citizens—those who refuse to submit to the jurisdiction of the court—especially pose a problem for clerks when trying to maintain composure. The important thing when dealing with an agitated, unruly, disruptive, or argumentative defendant is to maintain one’s composure and not “take the bait.”

C. Dealing with Violence

Municipal courts are often at greater risk than other workplaces for threats and physical violence. The following nonverbal communication signals are signs for potential violent behavior:

• clenched fists;
• tight lips;
agitated tone of voice;
tense body posture;
flared nostrils;
red face; and
wide eyes.

In addition to the above signals, look for evidence of drug or alcohol use, or signs that the person may be concealing a weapon (e.g., fidgeting, bulging clothes, too many layers of clothing).

Work with the judge, court administrator, and bailiff to develop a safety plan for the court. If the court does not have a bailiff on site at all times, establish a distress or panic signal known to law enforcement. Schedule periodic inspections to identify and evaluate security hazards.

There are many detailed resources on court security available to court staff, some of which are listed below:

- *Best Practices in Court Security (2013)*: publication available for purchase from TMCEC.

The above are available for download or purchase from on the TMCEC website at: [www.tmcec.com/Programs/BailiffsandWarrantOfficers/Court_Security_Resources](http://www.tmcec.com/Programs/BailiffsandWarrantOfficers/Court_Security_Resources).


D. **Using the Telephone or Email**

When responding to questions on the telephone, communication is inhibited by the absence of visual clues that are important to understanding the context of the conversation. Therefore, tone of voice, pitch, and volume become even more important in making inferences and responding appropriately. Loud, harsh tones may signify anger, while loud, high-pitched laughter usually means nervousness. Clerks should remember the *Code of Judicial Conduct* and always project the dignity and impartiality of the court. Patience and consistency is essential to effective communication on the telephone.

The court should establish a policy on answering telephones and giving out information over the telephone. Avoid forwarding the court’s calls to the police department as this practice gives the
public the impression that the court is not independent from law enforcement. Even if the court clerk works for the police department, avoid answering the court’s telephone with a greeting such as “PD,” “police department,” or “dispatch.”

Modern technology provides low cost voice mail, answering machines, and telecommunications systems that can give the public access to unbiased court information.

When communicating through email, communication is limited to just the words on a screen. The receiver misses out on the vocal and visual clues. Think back on a time you received an email message from a coworker, boss, or even a family member that you interpreted in a negative way, even though the sender was just being matter of fact or in a hurry. Pay attention to how the message might be interpreted by the receiver before sending it.

E. Providing Court Interpreters

The court must establish a clear policy for using court interpreters for defendants or witnesses who do not understand or speak the English language or persons who are deaf or hard of hearing. Translated forms and signage can also help assist non-English speakers.

Because non-English speaking or deaf or hard of hearing defendants may face difficulty in understanding court procedures, clerks who are bilingual or know sign language and interpret for defendants must be cautious in making sure these defendants truly understand the procedures. The laws requiring the appointment of licensed or certified court interpreters are found in Articles 38.30 and 38.31 of the Code of Criminal Procedure, and in Chapter 57 of the Government Code. Courts should be cautious when allowing a clerk to translate so as not to violate these laws. Defendants who are unsure of what to do should be set for a hearing before the judge. The clerk should make the judge aware that the defendant needs an interpreter so that the judge may appoint someone to be available.

F. Giving Legal Information, Not Legal Advice

When assisting the public, court clerks must learn to distinguish between legal advice and legal information. Clerks who give legal advice could be charged with the unauthorized practice of law and subject their city to liability.

For more on the distinction between giving legal advice or legal information, see the Ethics chapter of this Study Guide.

G. Displaying Court Procedure Pamphlets and Other Information

It helps to provide defendants with a pamphlet that explains court procedures to reinforce the information provided at the window. The pamphlet can clearly outline court procedures on appearances, pleas, driving safety courses, trials, continuances, fines, court costs, and appeals. Make sure that the pamphlet is understandable, grammatically correct, and legally accurate.

Courts should also consider setting up displays of legal information on victims’ rights, domestic violence, juvenile issues, traffic laws, and parental rights. Juror handbooks might explain practical information, such as parking locations and costs, nearby restaurants, emergency telephone numbers, and juror rights and responsibilities. These resources can be obtained through TMCEC at www.tmcec.com/Resources/Pamphlets, or from agencies such as the
Department of Public Safety, Department of Transportation, State Bar of Texas, or Office of Court Administration.

H. Talking with the Judge, Supervisors, and Co-Workers

People have different personality styles, work habits, approaches to learning, and time and stress management skills. Whether working with the judge, a supervisor, or a co-worker, try to carve out solutions to allow for those differences.

It helps a judge and clerk’s working relationship if they approach conflicts collaboratively from a problem-solving perspective. This can be done by establishing regularly-scheduled meetings for continuous improvement of the court. The basis of collaboration is finding an agreement that reflects the needs of the parties involved. Try using the following steps:

- gather information;
- identify the issue or problem;
- generate several options;
- evaluate each option;
- choose a course of action and plan it out;
- implement the plan;
- evaluate the result; and
- modify and try again.

There are many different ways to achieve a collaborative agreement to solve problems. The more creative and flexible the process, the better chance clerks have to work as a team with the judge.

For example: Don’t confront the judge with “Do you always have to grant time payments to everyone that asks? Can’t you do indigent hearings on them? I know some of these people really do have the money to pay and it’s frustrating to deal with the accounting for these payments.”

Instead, try saying: “Judge, I would like to work with you to develop an easier way for handling defendants’ time payment requests. It is difficult to manage the current procedures. How do you think that we could improve the process?”
**True or False**

Q. 6. The *Code of Judicial Conduct* prohibits conduct that manifests bias or prejudice in the behavior of both judges and clerks. ______

Q. 7. Bias is acceptable as long as it does not surface in the form of words in the court. ______

Q. 8. Judges and clerks may treat persons with preference based on their religion and sexual orientation. ______

Q. 9. Three options for handling difficult people are to be authoritative, positive, and/or task oriented. ______

Q. 10. Court clerks may give legal advice to citizens if so directed by the judge. ______

Q. 11. A deaf defendant appears at the window. He has the right to have court procedures explained to him in sign language even though you have offered him the court brochure that explains the procedures. ______

Q. 12. Short Answer: write a memo to the judge explaining why it is not in the best interest of the court to forward the telephone to the police station while you and the judge are in trial. _________________________________________________________________
                                                                 __________________________________________________________________
                                                                 __________________________________________________________________
                                                                 __________________________________________________________________
                                                                 __________________________________________________________________
                                                                 __________________________________________________________________

Q. 13. List the steps to a problem-solving approach. _________________________________________________________________
                                                                 __________________________________________________________________
                                                                 __________________________________________________________________

---

**PART 3**

**GRAMMAR AND WRITING SKILLS**

Written communications from the court are as important as visual and verbal ones. Clerks should be familiar with generally accepted rules of grammar, such as the proper use of language and punctuation (comma, period, semi-colon, question mark, exclamation mark, dash, hyphen, parentheses, brackets, apostrophe, and quotation marks). Two excellent resource materials that clerks can keep at their desks to reference when writing communications are: Strunk and White’s *The Elements of Style* and the *AP Stylebook*. Many dictionaries also have a handy grammar reference section in the back. Stylebook publications have variations in certain rules, such as the use of commas in a series:

The mayor, city manager, and judge arrived.\(^2\)

The mayor, city manager and judge arrived.\(^3\)

---

Although both examples are correct, when putting communication in writing, clerks should be consistent in selecting one style within a document.

Remember the example about the importance of commas:

I ate, Grandma vs. I ate Grandma

A. Basic Rules

1. Incorrect Usage

- Avoid double negatives: “You haven’t got no money?” Instead, say: “Do you have any money?”
- Do not make double comparisons: “The defendant is more angrier than the code enforcement officer.” Instead say: “The defendant is angrier than the code enforcement officer.”
- Avoid extra words: “Where did you get that there copy of your speeding ticket?” Instead say: “Where did you get that copy of your speeding ticket?”
- Do not confuse adverbs and adjectives: “I feel badly that your case was postponed.” Instead say: “I feel bad that your case was postponed.”
- Do not use inappropriate pronouns: “Bring the driving safety course form to the judge or I.” Instead say: “Bring the driving safety course form to the judge or me.”
- Make the subject(s) and verb(s) agree: “The defendant have pled no contest.” Instead say: “The defendant has pled no contest.”

2. Capitalization

Capitalize:

- the first word of sentences, quotations, listed items in sentence form, salutations, and complimentary closings;
- races, nationalities, languages, and religions;
- the name of an organization, association, or team;
- abbreviations of titles and organizations;
- the letters used to indicate form or shape: U-turn;
- all main words of headings, subheadings, and titles;
- the names of directions when they indicate specific geographic areas; and
- all proper nouns, such as people, places, things, days, months, holidays, streets, and titles. (Example: Austin Municipal Court, Travis County, Texas. When clerks are generally referring to the municipal courts throughout the state, there is no need to capitalize.)

Refer to a dictionary or style guide when there is a question, but most importantly, be consistent.

3. **Abbreviations and Acronyms**
   - Make sure the reader understands the abbreviation or acronym by spelling it out the first time and then using the acronym for any further reference.
   - Consult a dictionary or style guide for the proper form.
   - Be consistent within a document.
   - When in doubt, spell it out.

4. **Numbers**
   - Spell out numbers from one to nine.
   - Use numerals for 10 and above.
   - Spell out numbers at the beginning of a sentence.
   - Be consistent within a sentence. Example of inconsistency: Forty-five of the cows were blue. Of those, 29 had spots. Only fifteen were less than three years old. We sold 3 of the 45 to the King Ranch.

5. **Writing and Style**
   - Keep it simple and straightforward (KISS) – use everyday language concisely.
   - Use active voice. “The court issued a warrant.” Not: “A warrant was issued.”
   - Be gender-neutral.
   - Avoid legalese: “We are returning the same herewith.”
   - Proofread to catch errors.

B. **Guidelines**

1. **Proofing a Business Letter**

   a. **Form and Appearance**
      - The letter is typed or neatly written in ink with no smears or obvious corrections.
      - The letter has all of the necessary parts: return address, date, inside address, salutation, body, complimentary closing, signature, initials, and notations.
      - The letter is centered on the page, with equal spacing for the top and bottom margins as well as for the left and right margins.
      - All left-hand margins are even.
      - The right-hand margin of the body of the letter is fairly even.
      - The signature is legible and written in blue or black ink.
      - Special notations (enclosures, copies) are shown.

   b. **Punctuation**
      - A comma always separates the city and state. There is no comma between the state and the zip code.
• A comma separates the day of the month from the year.
• A colon is used after the salutation.
• A comma is used after the closing.

c. Capitalization
• The names of the streets, cities, and people in the heading are capitalized.
• The month is capitalized.
• The title of the person the letter is being written to and the name of the department
and company listed in the inside address are capitalized.
• The first letter of the word Dear and all nouns in the salutation are capitalized.
• Only the first word of the closing is capitalized.

d. Abbreviations
• The names of cities, streets, and months in the heading and inside address are spelled
out.
• The state may be abbreviated correctly.

2. Writing In-Court Memos, Bulletins, and Short Reports
Use the following tips:
• State the purpose in the first sentence.
• Include the time and date.
• Be specific.
• Write neatly and clearly.
• Avoid abbreviations, unless commonly understood.
• Avoid acronyms, until they are explained and understood.
• Arrange the information in the order most useful for the reader.

Q. 14. Mark the business letter below to correct the capitalization and punctuation.

municipal court of mabry
123 oak street
mabry, texas 78621

september 1 2013

Hope fairfield
P. o. box 12487
Austin, texas 78711

dear ms fairfield

on june 16, 2013 you were issued a citation for speeding you were scheduled to appear on july
5, 2013 at 9:00 a.m. in this court. You failed to appear. if you do not contact the court within
10 days a charge of violation of promise to appear will be filed in addition to the speeding charge. Warrants will be issued for your arrest and you will have to pay an additional $50 for each warrant if you are convicted.

If you wish to waive your right to a jury trial and plead guilty or nolo contendere, meaning no contest you may do so by paying the fine and costs of $75 if you wish to plead not guilty you must post a bond with the court in the amount of $75.

The office hours of the court are 8:00 a.m. to 5:00 p.m. Monday through Friday. The court telephone number is .512.328-7809.

Your failure to respond to this letter will result in warrants being issued and your arrest.

Sincerely,

Mark Itup, Court Clerk

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**PART 4**

**STRESS**

**A. The Physical Environment**

The typical American will spend more hours working than sleeping during the work week. It is, therefore, not surprising that the details of our job can have a profound impact on our health. Stress is the body’s response to environmental situations or events that place excessive psychological or physical demands on people. Each person has a different reaction to stressors, depending upon his or her personality, outlook on life, and overall health. Continuously high levels of workplace stress can have significant, long-term, health-related effects such as psychological disorders, cardiovascular disorders, cancer, or suicide.

The physical environment may cause stress through low levels of lighting, smoke-filled air, loud noises, or high or low temperatures. Office furniture, computer terminals, and keyboards should all be adjusted to meet each person’s body type and size. Some clerks modify their office environment by adding soft lighting, plants, or music. Other courts may make defendants communicate through a speaker imbedded in glass, forming a partition between the clerk and the public and reducing stress caused by threatening verbal confrontations.

**B. The Work Itself**

Work in municipal courts tends to fall into one of three categories: demand overload, demand underload, and competing demands, all of which can be a source of stress.

Demand overload occurs when a clerk is expected to accomplish too many activities in a set period of time. In smaller courts, clerks may continually feel behind on paperwork due to constant interruptions by other city employees or citizens seeking information. In larger cities, the sheer volume of cases filed creates an overload. Updating new computer systems and filing systems can temporarily make the situation worse. Clerks should discuss their workload with their supervisor, to discuss options for restructuring to avoid interruptions, or delegating responsibilities to others. Reserve time each day to work without interruption. Use time management skills to help plan, organize, and prioritize work more effectively.
Demand underload occurs when a person is not sufficiently challenged, usually due to repetitive tasks. This may occur in a larger court where tasks are broken down and delegated to various divisions. A clerk’s only job might be to sit at a computer and enter citations all day. Clerks might request to rotate job duties occasionally or be given variation in responsibilities.

Conflicting demands involve meeting deadlines and expectations for multiple projects from multiple sources. This may happen in a small court, when the court supervisor may not understand the legalities of operating within the judicial branch. The monthly report to the Office of Court Administration and the quarterly reports to the State Comptroller’s Office may be due on the same day that the city manager asks for the court’s budget or revenue projections. Careful planning and time management are essential.

Recent studies have shown that the factor most closely linked to health was the support of co-workers. While this may not be surprising to anyone who has worked closely with others, the magnitude of this data can be unsettling. However, there are some ways, that research has shown, to make the workplace less stressful.

C. Avoid Conflict

Gossip can quickly divide any workplace and cause hurt and distrust. Set four simple rules at the office place:

- commit to no negative gossip;
- practice changing the subject;
- learn to walk away from situations where others are gossiping; and
- don’t spread the gossip.

Remember that each person comes from varying social backgrounds and has diverse life stories. Experiences change our perception of how we view everything. When dealing with others, ask yourself, “Do I have all the information here?” and “What could be adding tension to this situation that I am unaware of?”

D. Working with Different Office Personalities

In any career, you will undoubtedly work with people with different types of personalities, not all of which are exactly like yours. The varying personalities can cause frustration; however, identifying your own personality type, as well as those with whom you work most closely, can help to make everyone more productive.

Your personality type also contributes to how you deal with stress. There are three types of common responses to stress:

- Foot on the gas: An angry or agitated person. They’re heated, keyed up, overly emotional, and unable to sit still. Their reaction to stress is to take immediate action, sometimes without thinking through all the consequences. The most important thing to keep in mind when dealing with this personality type is to not take what they say and do to heart. Speak quickly, use short sentences, and get out of the way.

- Foot on the brake: They appear withdrawn or depressed. They shut down, space out, and show very little energy or emotion. This person needs to be assured the crisis will end and everything will be okay. Give them tasks you know they can handle and
provide them with positive reinforcement while giving constructive criticism. Encouragement here is key.

- **Foot on both:** A tense and frozen stress response. They “freeze” under pressure and cannot do anything. They look paralyzed, but under the surface they’re extremely agitated. Make yourself available without being overbearing. Make suggestions on ways you are willing to help without insisting. This person needs help without knowing how to ask for it.

The stress you experience at the office does not stay at the office. It affects your personal life in the ways you communicate with your friends and family, how you manage stress outside of work, and how you take care of yourself. While it is not always possible to have a smaller workload, you have the power to manage stress in a healthy manner. If you often find yourself with headaches, the inability to concentrate, poor memory, emotional outbursts, missed deadlines, stomach pains, weight gain, and/or low morale, you are very likely a sufferer of work-related stress.

### E. Stress Management Techniques

A major challenge in today’s stress-filled world is to make stress work in an employee’s favor instead of against them. Stress is with people all of the time. It comes from mental, emotional, and physical sources, and it feels different for each person. If a person likes to keep busy all the time, “taking it easy” at the beach on a beautiful day may be extremely frustrating, nonproductive, and upsetting. This could cause emotional distress from “doing nothing.” Although it is not possible to eliminate stress completely, it can be managed.

There are five primary ways to relieve stress: diet/nutrition, relaxation, exercise, support groups, and time management. These five methods can be used together or separately to increase longevity of lifespan and create a continuous feeling of well-being.

#### 1. Diet/Nutrition

Eat a variety of fruits, vegetables, and grains; maintain a healthy weight; and keep a diet low in fat and cholesterol. Use sugar, alcohol, salt, and caffeine in moderation.

- Eat breakfast regularly, and take time for lunch.
- Eat healthy snacks between meals.
- Select restaurants that offer a variety of foods and healthy alternatives.
- Limit desserts, second helpings, and fried foods.
- Control portion sizes.
- Drink water instead of soda or other drinks with a high sugar content.
- Bring food from home rather than eat out.
- Reduce the amount of salad dressings, butter, margarine, sauces, and toppings.
- Take charge; ask for substitutions. Adapt food choices to meet your needs.
- Avoid alcohol, smoking, and other nicotine products.
2. **Relaxation**

One great strategy for avoiding stress is to relax outside of the workplace. Make it a point to tune out worries about time, court procedures, productivity, and “doing right.”

- Find satisfaction in just being, instead of striving.
- Find activities that give you pleasure, and focus on relaxation, enjoyment, and health.
- Make time for fun.
- Schedule time for both work and recreation.
- Create breaks in your daily routine to relax, have fun, stretch, or walk.
- Sleep seven to eight hours a night.

Techniques used to teach relaxation include yoga, meditation, biofeedback, progressive deep relaxation, guided imagery, and relaxed breathing. All have one goal: to quiet the mind and body and create a sense of inner peace.

It is very important to have a life outside of work. While work is an important component of your life, like other stressors, you need to escape. The tasks at work will still be there when you return the next day or after the weekend. Take the time to enjoy your life without it. If you don’t, you will regret it once you return.

3. **Exercise**

Physical exercise helps us feel better, have more energy, look better, tone muscles, increase resistance to fatigue, control appetite and weight, and create a positive feeling of wellness. Exercise also assists in coping with anxiety and depression and provides opportunities to interact socially.

Before starting an exercise program, it is wise to first have a medical examination and a physician’s approval. The program should balance **frequency** (how often one exercises) with **intensity** (how hard) and **time** (how long). Aim for a minimum of three times a week for at least 20 minutes at an increased heart rate, and incorporate a warm-up and cool-down period to avoid injury.

A great way to incorporate exercise into your busy routine is to find exercise partners to keep you motivated and to have fun. There are free mobile and web applications that offer training programs (such as couch-to-5k programs) and others that allow you to track calories by logging your meals and exercise routines to guide your endeavor to get healthier. These are all great activities that provide you with a tangible goal that is even more fun to do with friends.

4. **Support**

Clerks should create a support system for themselves, whether it is a formal support group or just a friend. Sharing stress, talking with someone about concerns and worries may help you to see your problems in a different light. If a problem is serious, do not hesitate to seek professional help.

Clerks should know their limits. If a problem is beyond a person’s control and cannot be changed at the moment, don’t fight the situation. Learn to accept what is for now until such time that it can be changed.
5. **Time Management**

Appropriately managing time is another way to reduce stress both in and out of the workplace. Below are some helpful techniques to use to get organized:

- Know your mission and job description;
- Set your goals and prioritize them;
- Create and keep track of projects;
- Plan your year, month, week, and day;
- Prioritize your activities for the week;
- Prioritize your daily list;
- Schedule the most important activities first;
- Reach closure by finishing what you start;
- Allow time for relaxation, planning, and interruptions; and
- No telephone. Set a time every week where you do not accept or answer phone calls or text messages. Allow yourself to not be needed.

**True or False**

Q. 15. It is possible through planning to eliminate all stress in the workplace. _____

Q. 16. Stress is unique and personal to each of us. _____

Q. 17. Give a specific example of demand overload or underload in your court and make suggestions to relieve the problem. ___________________________________________

Q. 18. List one to two changes in your diet and/or nutrition plan that might help you better cope with stress. ____________________________________________
ANSWERS TO QUESTIONS

PART 1

Q. 1. False.
Q. 2. True.
Q. 3. False.
Q. 5. The steps to effective communication are:
   - Listen carefully;
   - Face the person you are speaking to;
   - Establish eye contact;
   - Adopt a concerned body posture, tone of voice, and facial expression;
   - Avoid a condescending or impatient tone;
   - Have and show empathy;
   - Eliminate distractions;
   - Practice patience;
   - Be consistent; and
   - Do not take things personally.

PART 2

Q. 6. True (the judge shall perform his or her duties without bias and require the same of the staff).
Q. 7. False.
Q. 10. False (clerks may only give legal information).
Q. 11. True.
Q. 12. Sample response:
   The city requested that I forward court calls to the police department while court is in session. I am concerned about doing this. As part of my research into the issue, I reviewed the *Code of Judicial Conduct* specifically looking at Canon 1 and Canon 2. Canon 1 requires the court to be independent. Canon 2 requires judges to avoid impropriety in all judicial activities. Having the police department answer the phone will make it more difficult to appear independent and impartial. This may give an appearance of impropriety. I suggest that the court have an answering machine take messages or have the calls forwarded to the city hall receptionist to take messages. Please respond so that I may resolve this issue. Thank you.
Q. 13. The steps to the problem-solving approach are:
   - Gather information;
Identify the issue or problem;
Generate several options;
Evaluate each option;
Choose a course of action and plan it out;
Implement the plan;
Evaluate the result; and
Modify and try again.

PART 3

Q. 14. Mark the business letter shown below for correct capitalization and punctuation.

Municipal Court of Mabry
123 Oak Street
Mabry, Texas 78621

September 1, 2013

Hope Fairfield
P. O. Box 12487
Austin, Texas 78711

Dear Ms. Fairfield,

On June 16, 2013, you were issued a citation for speeding. You were scheduled to appear on July 5, 2013, at 9:00 a.m. in this court. You failed to appear. If you do not contact the court within 10 days, a charge of violation of promise to appear will be filed in addition to the speeding charge. Warrants will be issued for your arrest, and you will have to pay an additional $50 for each warrant if you are convicted.

If you wish to waive your right to a jury trial and plead guilty or nolo contendere, meaning no contest, you may do so by paying the fine and costs of $75. If you wish to plead not guilty, you must post a bond with the court in the amount of $75.

The office hours of the court are 8:00 a.m. to 5:00 p.m. Monday through Friday. The court telephone number is 512.328.8754.

Your failure to respond to this letter will result in warrants being issued and your arrest.

Sincerely,

Mark Itup, Court Clerk

PART 4

Q. 15. False.
Q. 16. True.
Q. 17. Answers will vary.
Q. 18. Answers will vary.
(Note: See Code of Judicial Conduct, Canon 8, Construction and Terminology, for more definitions.)

**Acquittal:** The legal and formal certification of the innocence of a person who has been charged with a crime; a finding of not guilty.

**Actor:** A person whose criminal responsibility is in issue in a criminal action.

**Adjudicative Proceeding:** A proceeding in which a person is entitled to due process of law—notice and an opportunity to be heard.

**Adversary System:** A system in which there are two opposing sides. In municipal court, the opposing sides are the state (prosecution) and the defense. The judge and jury are neutral.

**Affinity:** The relation that one’s spouse has to the other spouse’s blood relatives because of their marriage.

**Afforded:** Given or provided.

**Allocation:** The process of distributing in equal or proportionate parts.

**Appeal:** The process of having a higher court conduct a new trial or review either the facts or questions of law from a proceeding held in a lower court. In municipal courts of record, the appellate court reviews the transcript of the trial. In municipal courts of non-record, there is a new trial in the appellate court. All defendants have a right to appeal their case.

**Appeal Bond:** The bond presented to the court by a defendant who desires to appeal his or her case to a higher court. The bond may be surety or cash, or the court may allow a personal bond.

**Appearance:** The formal proceeding by which a defendant submits to the jurisdiction of the court. Only the defendant or an attorney hired to represent the defendant may make an appearance.

**Appellate Courts:** Courts that have jurisdiction over appeals from lower courts.

**Arbiter:** A person chosen to decide a controversy; a referee.

**Arraignment:** The proceeding in which the court identifies the defendant, explains the charge, and asks for a plea.

**Array:** Jury pool; all persons summoned for possible jury service; also called the *venire*.

**Attest:** To certify as being true or genuine.

**Authority:** The right to exercise power.

**Avocational:** A subordinate occupation pursued in addition to one’s vocation (occupation).
Bail: The security given by the accused that he or she will appear and answer before the proper court the accusation brought against him or her. Bail may be made by a personal or surety bond, or a cash deposit.

Bench Trial: A trial before the judge where there is no jury and the judge makes the decision of guilt or innocence.

Beyond a Reasonable Doubt: The measure of the State’s burden of proof in a criminal trial; the State must exclude reasonable doubt of the defendant’s guilt by the presentation of its case.

Bifurcated System: A system divided into two parts. The Texas court system is bifurcated: the Supreme Court is the highest state appellate court for civil appeals; the Court of Criminal Appeals is the highest court for criminal appeals.

Bill of Rights: That part of the constitution guaranteeing rights and privileges to individuals; the first ten amendments of the U.S. Constitution.

Bond Forfeiture: Triggered by failure to perform a condition of the bond, such as when the defendant fails to appear as promised. The defendant and/or surety become(s) liable for the payment of the bond as a consequence.

Branches of Government: Three divisions of government, each having its own obligations, duties, and powers. The legislative branch, executive branch, and judicial branch. See also separation of powers doctrine.

Canon: Standards of ethical conduct for members of the judiciary.

Capias: A written order from a court directed to a peace officer commanding him or her to arrest a person accused of an offense and bring him or her before that court immediately or on a day or at a term stated in the capias.

Capias Pro Fine: Issued by a judge when a defendant is absent at the time judgment is rendered or when a defendant defaults in payment of fine. It is a written order from a court directed to a peace officer commanding him or her to arrest a person and to bring the person before the court or place him or her in jail until he or she can be brought before the court.

Challenge for Cause: Request that a prospective juror be disqualified or excused from jury service; an objection lodged on legal grounds.

Charging Instrument: A complaint filed with the court charging a criminal offense; the formal accusation that a person has committed a criminal offense.

Citation: In a criminal case, it is a written notice to appear issued by a peace officer that may be used as the charging instrument in municipal court.

Civil Lawsuit: An action brought in court to enforce, redress, or protect private rights.

Civil Liability: Civil relates to private rights and remedies. A civil action can be brought to enforce, redress, or protect private rights. Being liable civilly means that a person may be held responsible for a certain act and required to pay money damages.

Color of Office: Pretense of an official right to do an act made by one who has no such right. An act under color of office is an act of an officer who claims authority to do the
act by reason of his or her office when the office does not confer on him or her any such
authority.

**Commercial Motor Vehicle:** A motor vehicle used to transport passengers or property
that: (1) has a gross combination weight rating of 26,001 or more pounds, including a
towed unit with a gross vehicle weight rating of more than 10,000 pounds; (2) has a
gross vehicle weight rating of 26,001 or more pounds; (3) is designed to transport 16 or
more passengers, including the driver; or (4) is transporting hazardous materials and is
required to be placarded. (Subtitle B, Section 522.003(5), T.C.)

**Common Law:** A body of law developed in England that the U.S. justice system
accepts and upon which it bases its principles, customs, and rules of action.

**Complainant:** In this Chapter, it refers to a person who applies to the Commission on
Judicial Conduct for some type of remedy. A complainant can also be a person who
has a complaint sworn out charging someone with an offense.

**Complaint:** The written affidavit or sworn statement that accuses a person of
committing a crime. It also initiates a file with the Commission on Judicial Conduct. In
municipal court, the complaint is the charging instrument.

**Concurrent Jurisdiction:** Jurisdiction shared between more than one court; cases can
be filed in either court.

**Conflict of Interest:** A relationship that suggests disqualification of a public official from
performing his or her sworn duty; a clash between public interest and the private
pecuniary interest or other interest of the individual concerned.

**Consanguinity:** Blood relationship; the connection of persons descended from the
same stock or common ancestor.

**Constitution:** A document that established the American system of government and its
principles.

**Constitutional Courts:** Courts established by the Texas Constitution, including the
Supreme Court, Court of Criminal Appeals, courts of appeals, district courts, county
courts, and justice of the peace courts.

**Contempt:** Any act calculated to embarrass, hinder, or obstruct a court in the
administration of justice, or to lessen its authority or dignity. There are two kinds of
contempt: direct and indirect. Direct contempt is committed in the immediate presence
of the court; indirect chiefly refers to the failure or refusal to obey a lawful court order.

**Contiguous:** Adjoining; side-by-side.

**Continuance:** The adjournment or postponement of a case pending in court to a later
date and time.

**Conviction:** The final judgment on a verdict or plea of guilty, or a plea of nolo
contendere. The result of a criminal trial that ends in a finding that the accused is guilty
as charged.

**Corporation Court:** An antiquated term for a municipal court.
County Courts: Constitutional courts that have general jurisdiction over probate cases; exclusive original jurisdiction over misdemeanors punishable by fines exceeding $500 and/or a jail sentence not to exceed one year; concurrent jurisdiction with the justice of the peace courts in civil cases where the amount in controversy exceeds $200 but does not exceed $10,000; and appellate jurisdiction over cases from justice of the peace and municipal courts.

Court of Criminal Appeals: A constitutional court of last resort that has jurisdiction over appeals of criminal cases from the courts of appeals as well as trial court cases in which the death penalty has been imposed. The Court of Criminal Appeals is authorized by the state legislature to promulgate rules of evidence and appellate procedure in criminal cases and the rules for judicial education.

Covert: Not openly known; hidden, concealed.

Criminal Action: An action brought by the government against a person charged with committing a crime.

Culpable Mental State: The state of mind of the defendant indicating some degree of guilt or responsibility at the time the crime was committed.

Custodian of the Records: Anyone who has charge or custody of property or records. Municipal court clerks are responsible for the care, control, maintenance, and archival of municipal court records and, as such, are custodians of the court records.

Deferred Disposition: A process in which a judge defers imposition of the fine and grants probation requiring the defendant to adhere to certain terms. If a defendant successfully completes the terms of probation, the judge is required to dismiss the case.

Delineate: Described or represented accurately.

De Novo: A new trial as if the case had not been previously heard and no decision had been rendered. Appeals from municipal courts of non-record are heard de novo in the county court.

Denunciation: To condemn something as being evil or morally wrong.

DIC-15 Form: The DPS form that is required to report orders for license suspension for: (1) conviction of most Alcoholic Beverage Code offenses and public intoxication of persons under age 21; (2) failure to complete alcohol awareness program; (3) failure to complete community service; and (4) failure to complete tobacco awareness course. It is also used to report acquittals of Driving Under the Influence and orders of deferred disposition of Alcoholic Beverage Code offenses.

DIC-21 Form: The DPS form that is required to report convictions of offenses that carry an automatic suspension of driver’s license.

DIC-81 Form: The DPS form used to report a juvenile’s failure to appear in court or failure to pay a judgment.

Diligence: Characterized by persevering the attention and care legally expected or required of a person.

Diminution: The act, process, or instance of diminishing (decreasing).
**Discovery:** A pre-trial device that can be used to obtain facts and information about the case.

**Discretion:** Sound, professional judgment that encompasses and reflects both equity (fairness) and experience under the law; A latitude of choice within certain legal bounds.

**District Courts:** Constitutional courts of general jurisdiction having original jurisdiction in all criminal felonies, as well as misdemeanors involving official misconduct; cases of divorce; suits for title to land or enforcement of liens on land; contested elections; suits for slander or defamation; suits on behalf of the State for escheat (a right of the State to an estate left vacant); and all civil matters where the amount in the controversy is $200 or more.

**Docket:** A formal record with brief entries required to be kept on all complaints filed in the court. Maintaining the docket is a ministerial duty that the judge may delegate to the clerk.

**Double Jeopardy:** A second prosecution after a first trial for the same offense; prohibited by the Fifth Amendment to the U.S. Constitution and the Texas Constitution, Article I, Section 14. It is the only special plea allowed in municipal court.

**DR-18 Form:** The DPS form used by the courts to report traffic convictions.

**Emolument:** The profit arising from office or employment; includes salary and fees.

**Empowered:** Authority to perform certain actions.

**Entrapment:** An act of law enforcement officers to induce a person to commit a crime not contemplated by the person for the sole purpose of instituting a criminal prosecution against the person.

**Escheat:** The preferable right of the State to an estate left vacant and without anyone in existence able to claim the estate.

**Ethics:** Relates to moral action, conduct, motive, or character; conforming to professional standards of conduct; the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles or values.

**Evidence:** Any type of proof legally admitted at a trial through witnesses, records, documents, objects, etc., for the purpose of instituting a criminal prosecution or proving or disproving elements of a criminal case.

**Excess Fines Law:** Found in Transportation Code, Subtitle C, Section 542.402(b). Applies to cities with a population of less than 5,000, and enacted to prevent “speed traps,” or small cities that collect a large portion of their budget from traffic enforcement.

**Execution (Writ of):** 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.

**Exclusive Original Jurisdiction:** A court having sole jurisdiction over a case because no other court has jurisdiction to hear and determine the case.

**Ex Officio:** Powers resulting from the holding of a particular office. Powers that may be exercised by an officer that are not specifically conferred upon him or her, but are necessarily implied in his or her office.
**Ex parte:** Hearing from one side only outside of the presence of the other side.

**Expunction:** The process by which the record of a criminal conviction is destroyed or sealed.

**Federal Court System:** The judicial system that hears criminal and civil cases involving federal law, and states’ appeals.

**Felony:** A classification of criminal offense; felonies are more serious than misdemeanors; classified according to the relative seriousness of the offense into five categories: (1) capital felonies; (2) felonies of the first degree; (3) felonies of the second degree; (4) felonies of the third degree; and (5) state jail felonies.

**Fidelity:** A quality or state of faithfulness to something to which one is bound by duty or by a sense of what is right or appropriate.

**Financial Responsibility:** The ability to respond in damages for liability in an accident.

**Fine:** The penalty assessed by a judge or a jury when convicting a defendant.

**Forfeiture of Bail:** A process that occurs when a defendant posts bond and then fails to appear. When a defendant posts bond, he or she agrees to appear in court as a condition of being released. Failure to perform a condition of the bond causes the forfeiture of the bail to be declared.

**General-Law City:** A city that looks to the state legislature for its authority, a statutory court.

**Guilty:** A plea by which a defendant confesses to the crime with which the defendant is charged, or the verdict by which a defendant is convicted.

**Habeas Corpus (Writ of):** A written order issued by a court or judge of competent jurisdiction directed to anyone having a person in his or her custody or under restraint, commanding him or her to produce the person at a time and place named in the order and show why the person is held in custody or under restraint.

**Highway or Street:** The width between the boundary lines of a publicly maintained way, any part of which is open to the public for vehicular travel. (Subtitle C, Section 541.302(5), T.C.)

**Home-Rule City:** A city that is governed by a charter, which gives the city a measure of self-government. A home-rule city looks to its charter for limitation in power.

**Impartial:** Not biased; treating all equally.

**Impinge:** Encroach or infringe.

**Impropriety:** The state of being improper (not in accord with fact, truth, or right procedure).

**Indictment:** A sworn affidavit accusing a person of a crime made by a grand jury.

**Indigent:** Poor; unable to pay; one who does not have sufficient financial ability to hire legal counsel or pay a fine and court costs.

**Integrity:** An adherence to one’s moral values or practicing what one claims to believe in.
**Inviolate:** Free from substantial impairment. Secure, holy, sacrosanct, invulnerable.

**Jail Time Credit:** Credit on a defendant’s fine required to be given when a defendant has been confined in jail before being convicted of a crime by the court or jury, or after a conviction.

**Judgment:** The written declaration of the court signed by the judge and entered on record showing the conviction or acquittal of the defendant.

**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.

**Judicial Duties:** Duties that require the exercise of judgment or the determination of a question of law or fact. Only judges may perform judicial duties.

**Jurisdiction:** The legal power or authority courts have over certain types of offenses and geographical locations; the power to hear and decide cases.

**Jury Charge:** An instrument that contains the law that applies to the case and is read to jurors before argument commences in the trial.

**Jury Shuffle:** When juror names are mixed to create a new order on a jury list.

**Justice of the Peace Courts:** Constitutional courts that have original jurisdiction over fine-only offenses; concurrent jurisdiction with municipal courts over fine-only state law violations; concurrent jurisdiction over a city ordinance violation involving signs in the city’s extraterritorial jurisdiction; exclusive jurisdiction over civil matters when the amount in controversy does not exceed $200; and concurrent jurisdiction with the county courts when the amount in controversy is over $200 and up to $10,000.

**Juvenile:** Although there is no legal definition of juvenile, the Family Code defines a child as a person who is at least 10 years of age and under the age of 17.

**Legal Authority:** The right and power of judges to require obedience to their orders.

**Liaison:** A person who establishes and maintains communication and understanding between groups of people.

**Litigant:** A party to a lawsuit.

**Magistrate:** A judicial officer whose duty it is to preserve the peace within a certain territorial jurisdiction by use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; and to cause the arrest of all offenders by lawful means in order that they may be brought to trial or, after trial, to punishment.

**Manifest:** To make evident or certain by showing or displaying a certain conduct.

**May:** Denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

**Ministerial Duties:** Duties in which there is nothing left to discretion; generally administrative in nature.

**Minor:** In traffic law, a minor is a person who is younger than 17 years of age; in the Alcoholic Beverage Code, a minor is a person who is under 21 years of age. In the Health and Safety Code, a minor is person under the age of 18.
**Misconduct of Office:** An offense that is an intentional or knowing violation of a law committed by a public servant while acting in an official capacity as a public servant. Municipal judges, court clerks, and deputy court clerks are public servants.

**Misdemeanor:** A classification of criminal offense according to the relative seriousness of the offense; misdemeanors are less serious than felonies; misdemeanors are classified into three categories: Class A, Class B, and Class C misdemeanors; Class A and B misdemeanors are punishable by fine and confinement in jail; Class C misdemeanors, over which municipal courts have jurisdiction, are punishable by fine-only.

**Mitigating Circumstances:** Circumstances that do not constitute a justification or excuse of the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.

**Municipal Court:** Statutory courts created in each city with original jurisdiction over fine-only offenses; exclusive original jurisdiction over city ordinance violations with the exception of concurrent jurisdiction with a justice court involving a sign ordinance violation dealing with signs in the city’s extraterritorial jurisdiction; and concurrent original jurisdiction with the justice of the peace courts over fine-only state law violations.

**Municipal Court of Non-Record:** A municipal court created by statute in which a city has not opted by ordinance for the court to be a record court. Hence, the trials are not recorded and appeals from the court are de novo, which means that the defendant gets a new trial as if a trial had not occurred in the municipal court.

**Municipal Courts of Record:** A municipal court that is required to keep a record of its proceedings. Established either by state legislation or city election.

**Must:** Required by law; mandatory; creates or recognizes a condition precedent.

**No Contest or Nolo Contendere:** A plea in which the defendant does not contest the charge. Nolo contendere has the same legal effect as a guilty plea; however, it may not be used against the defendant as an admission of guilt in a civil suit based upon or growing out of the act upon which the criminal prosecution is based.

**Nonresident Violator Compact:** An agreement between certain states involving participation in a reciprocal program to provide for the fair and impartial treatment of traffic violators operating within party jurisdictions.

**Nonsecure Custody:** An unlocked multipurpose area where juveniles may be detained for up to six hours. While the juvenile is in the custodial area, they cannot be handcuffed to a chair, railing, or any object, and they must be under continuous visual observation by a law enforcement officer or a member of the facility staff.

**Not Guilty Plea:** A plea in which the defendant informs the court that he or she denies guilt or has a defense in the case and that the State must prove what it has charged in the complaint.

**Oath of Office:** An oath taken by officers when they assume their office, whereby they declare that they will faithfully discharge the duties of the office. Appointed and elected clerks and judges are required to take an oath of office.
**Office of Court Administration (OCA):** An agency of the State that operates under the direction and supervision of the Supreme Court and the Chief Justice of the Supreme Court charged with collecting data on the work conducted by the judiciary.

**Onerous:** A burden imposed.

**Ordinance:** A law passed by a county or municipal lawmaking body.

**Original Jurisdiction:** The first jurisdiction to try a case and pass judgment upon the law and facts.

**Overt:** Open to view.

**Peace Bond:** A type of surety bond required by a judge or magistrate of one who has threatened to harm another person.

**Pecuniary:** Relating to money.

**Peremptory Challenge:** An objection made to a particular juror that does not require that any cause be shown or that any ruling be made by the judge; the striking of a juror. In municipal court, three peremptory challenges or strikes are allowed both to the State and to the defendant.

**Perfected:** Completed; person has completed all the acts required to be done.

**Plaintiff:** A person who brings an action; the person who complains or sues in a civil action; a person who seeks remedial relief for an injury to rights.

**Plea:** The defendant’s answer to the accusation or complaint brought against a person by the state in municipal court. There are five possible pleas: guilty, not guilty, nolo contendere (no contest), not guilty by reason of insanity, or the special plea of double jeopardy.

**Preponderance of the Evidence:** Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

**Presumption of Innocence:** A principle of criminal law that places the burden of proving every element of a crime beyond a reasonable doubt; the defendant has no burden to prove his or her innocence.

**Pre-Trial Hearing:** A court hearing before the trial to attempt to narrow the issues to be tried, secure stipulations, and rule on motions. The actions taken at the hearing or conference are made the subject of an order that controls the future course of the action.

**Privileged Information:** Information that is protected from disclosure.

**Privileged Parking:** Once called handicapped parking, now often referred to as disabled parking. (Section 681.001, T.C.)

**Probable Cause:** Probable cause is the amount of evidence necessary to cause a person to believe someone has committed a crime. An arrest warrant, a summons, and a capias require probable cause before being issued. A complaint is not sufficient to issue a warrant unless it contains probable cause.
**Process:** A series of actions leading to the preparation of court orders, complaints, and other required papers.

**Processes:** Written orders such as warrants, *capias, capias pro fine*, subpoenas, and summons issued by the municipal judge.

**Promulgate:** To publish; the formal act of announcing a statute or rule of court.

**Proration:** The process of dividing or distributing proportionately.

**Reasonable Doubt:** All persons are presumed innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, indicted, or otherwise charged with the offense gives rise to no inference of guilt at his or her trial.

**Record:** A written transcription of testimony, exhibits, and documents of a trial.

**Recusal:** The process by which a judge is disqualified from hearing a charge filed in his or her court.

**Remand:** To send back; as when the appellate court sends a case back to the same court from which it came, for the purpose of having some further action taken on it there.

**Rendering Judgment:** The judicial act of pronouncing the decision of the court.

**School Crossing Zone:** A reduced speed zone designated by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies.

**Scire Facias:** A special docket required by law to handle all cases and proceedings involved in the forfeiture of bail bonds.

**Sealing of Records:** The process whereby a juvenile’s court records are closed and the matter is regarded as if it never occurred. The records will not be opened except by order of the juvenile court brought about by a petition of the person whose records were sealed.

**Search Warrant:** An order in writing issued by a magistrate authorizing a peace officer to search for and seize any property that constitutes evidence of the commission of a crime, contraband, the fruits of crime, or things otherwise criminally possessed.

**Separation of Powers Doctrine:** The constitutional requirement that the three branches of government—judicial, legislative, and executive—not encroach upon or usurp each other’s powers.

**Serious Traffic Violations:** Traffic offenses, which when committed by a person operating a commercial motor vehicle, are considered to be more serious than others. They include: excessive speeding 15 mph over the posted limit or more; reckless driving; violation of State and local traffic laws other than parking, weight, or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely. (Section 522.003(25), T.C.)

**Shall and Shall Not:** Denotes binding obligations that if violated can result in disciplinary action.
Should or Should Not: Relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

Stare Decisis: To abide by or adhere to decided cases; the policy of courts to stand by precedent and to not disturb settled points; the doctrine that when a principle of law as applicable to a certain state of facts is laid down, it will apply to all future cases where facts are substantially the same.

Statute: A particular law enacted and established by the state legislature.

Statute of Limitations: Time limit for filing criminal charges. For all fine-only misdemeanors in Texas, a charging instrument must be filed two years from the date the offense occurred.

Statutory Courts: Courts established by the state legislature and defined by statute. Municipal courts are statutory courts.

Strict Liability: Offenses in which the state is not required to prove a culpable mental state. Commission of the act itself is sufficient to determine guilt.

Strike: A common name for peremptory challenge where an objection is made to a particular juror which does not require that any cause be shown or that any ruling be made by the judge.

Style of the Action: The title of the case; for example, The State of Texas vs. John Doe with the case number.

Subsidiary Dockets: Listings of cases set for a particular date for trial; also called trial dockets.

Subpoena: A command by a court to appear at a certain time and place to give testimony upon a certain matter.

Subpoena Duces Tecum: A command by a court to appear at a certain time and place and to produce books, papers, or other things requested by the court.

Summons: An order from a magistrate or judge directed to a peace officer commanding him or her to notify a person that he or she must appear in court on a stated day and time to plead to a complaint filed in the court.

Supersedeas Bond: A writ or bond that suspends the execution of a judgment pending appeal.

Suppress: To keep evidence from being presented during a trial.

Supreme Court: A constitutional court that has statewide final appellate jurisdiction in most civil and juvenile cases and makes and enforces all necessary rules of civil trial practice and procedure, evidence, and appellate procedure.

The Rule: Rule 614 of the Texas Rules of Evidence, requiring the removal of all witnesses who are not parties to the case to an area outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged.
**Trial Court:** A court of original jurisdiction and the first to consider evidence and render a judgment.

**Trial De Novo:** Trying a matter anew on appeal; the same as if it had not been previously heard before and as if no decision had been previously rendered.

**Trial Dockets:** Listings of cases set for a particular trial date and are commonly called subsidiary dockets.

**Truancy:** The unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days of parts of days within a four-week period from school without the consent of the child’s parents.

**Venire:** The whole group of prospective jurors; the panel from which jurors are selected to hear the case; jury pool.

**Venire Person:** A person summoned as a juror.

**Venue:** The particular geographical area in which a court with jurisdiction may hear and determine a case.

**Verdict:** The formal and unanimous decision of a jury impaneled and sworn for a trial of a case and returned in open court to the judge on the matters or question of fact submitted to the jury during the trial; Finding of “guilty” or “not guilty.”

**Verity:** The quality of being true or real.

**Violate Promise to Appear:** An offense that may be filed when a defendant fails to appear for an offense charged under Subtitle C, T.C.

**Voir Dire:** This phrase means “to speak the truth” and describes questioning by the court, defense, or prosecutor about a person’s qualifications as a potential juror in a case or a witness’s competency during a trial.

**Voluntarily:** Intentionally and without coercion.

**Waive/Waiver:** Voluntary, knowing, and intentional relinquishment or surrender of a right, claim, or privilege.

**Warrant of Arrest:** A written order issued by a magistrate or judge directed to a peace officer commanding him or her to take the body of the accused to be dealt with according to law.

**Witness:** One who personally sees, observes, or is an expert concerning something and later testifies to what was seen, perceived, or known; a person whose declaration under oath or affirmation is received as evidence.

**Writ:** A written order.

**Writ of Mandamus:** A written order issued from a court of superior jurisdiction commanding an administrative or judicial officer of an inferior court to perform a particular act, directing the restoration of the complainant’s rights or privileges of which he or she has been illegally deprived, or compelling the performance of a ministerial act or mandatory duty.
**Writ of Procedendo:** A written order by which the county court declares its lack of jurisdiction over an appeal and returns the case to municipal court to collect the judgment.

**Writ of Venire:** An order from the judge commanding the proper officer (usually the court clerk) to summons immediately a list of prospective jurors to serve for a particular term of the court.