4

Charging and Pre-Trial

Table of Contents

INTRODUCTION

In municipal court, a case is usually initiated by either a charging instrument known as a complaint, or a written notice to appear called a citation. Anyone, including citizens, may file charges in municipal court, but potential criminal cases are generally first reviewed by law enforcement or the prosecutor.

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. The clerk is considered the custodian of court records and as such is responsible for maintaining the records. This duty includes keeping records updated, properly maintained, and archived.

This chapter discusses what is commonly referred to as pre-trial procedure, including 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

There are generally two paths to file charges in municipal court. The first is the citation, commonly known to the public as “a ticket.” Citations are written notices to appear issued by a peace officer. Under certain procedural circumstances, a citation may also serve as the formal charging instrument through trial. The second is the complaint. A complaint is a sworn allegation charging an accused with an offense. In most municipal court cases, the complaint

serves as the formal charging instrument through trial. There are certain circumstances where a complaint is required to be filed.

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 alleged in the complaint. *Villareal v. State*, 729 S.W.2d 348 (Tex. App.−El Paso 1987, no pet.).

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 Opinions JM-876 (1988) and JM-869 (1988).

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.

It should be noted, however, that although clerks should have an understanding of the elements of the offense and mental states, it is the prosecutor's responsibility, as the representative of the state, to draft the complaint.

2. Signed

A complaint must be signed. Art. 45.019, C.C.P. A complaint not signed by the affiant is defective. *Bender v. State*, 353 S.W.2d 39 (Tex. Crim. App. 1962). A signature on the complaint may be rubber-stamped or contain an electronic signature. *Parsons v. State*, 429 S.W.2d 476 (Tex. Crim. App. 1968). Article 45.012(h) of the Code of Criminal Procedure provides that a statutory requirement that a document contain a signature is satisfied if the document contains the signature as captured by an electronic device. This rule applies to the signature of any person, judge, clerk of the court, or defendant. The name of the affiant need not appear in the body of the complaint.

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 law may allow the court to 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 arising from the same act, for example a lawsuit seeking damages from a car crash.

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 or her 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 five 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 willfully violates a written promise to appear in court commits a misdemeanor regardless of the disposition of the charge on which the person was arrested. Sec. 543.009, T.C. The offense of 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.

Offense	**Failure to Appear (Sec. 38.10, Penal Code)**	**Violate Promise to Appear (Sec. 543.009, Transportation Code)**
Vehicle Registration Laws Chapter 502, T.C.	Yes	No
Driver's License Laws Chapter 521, T.C.	Yes	No
Commercial Driver's License Laws Chapter 522, T.C.	Yes	No
Subtitle C, Rules of the Road offenses Chapters 541-600, T.C.	No	Yes (if signed the citation)
Financial Responsibility Law Chapter 601, T.C.	Yes	No
Other Transportation Code offenses outside Subtitle C, Rules of the Road	Yes	No
Alcoholic Beverage Code offenses	Yes	No
Education Code offenses	Yes	No
Health and Safety Code offenses	Yes	No
Penal Code offenses	Yes	No
City Ordinance offenses	Yes[1]	No

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:

	Failure to Appear (Sec. 38.10, Penal Code)	**Violate Promise to Appear (Sec. 543.009, Transportation Code)**
Decision to file charge	City prosecutor	City prosecutor
Charge initiated by sworn complaint	Yes	Yes
Culpable mental state	Intentionally or Knowingly	Willfully
Custody of defendant required	Yes	No
Defendant released on bail required	No	No
Signature on citation, if any, required	No	Yes
Maximum possible fine if convicted	$500.00	$200.00

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, they typically 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 summonses 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 summonses 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 affect 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 and 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.

True or False

Q. 85. Clerks are required to have copies of warrants and affidavits on file for public viewing after the warrants have been executed. ____

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. ____

Q. 87. A judge does not need probable cause to issue a capias. ____

Q. 88. Complaints alone are enough evidence to establish probable cause. ____

Q. 89. Probable cause must always be in a separate affidavit from a complaint. ____

Q. 90. Judges must always remain neutral when assessing probable cause. ____

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.

For more information and an in-depth discussion on legal issues taking bail, see Mark Goodner, "Bail: Filing, Taking, and the Limits on Law Enforcement Involvement," *The Recorder* (May 2015) at 1.

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 the entire 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. 21. 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. 26. True.

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. 39. False.

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. 109. True.

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 6

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. 157. False.

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.