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Bail Bonds for All, Reprise

by David L. Finney, Attorney-at-Law, Denton

Since this article was first printed in *The Recorder* in March, 2004, a number of changes in bail bond law have occurred. You can still prosecute bail bond forfeitures regardless of whether you are in a rural or big city environment, but it may be more difficult and less lucrative. Here is an updated primer on getting started.

This article's goal is to give counties and cities ideas on managing bondsmen and attorneys, and prosecuting bail bond forfeitures. Generally, when we talk about the prosecution of bail bond forfeiture

cases, we speak in terms of bail bond board counties and non-bail bond board counties. Often, the difference is characterized in terms of "large vs. small" or "urban vs. rural." It is true that the *regulation* of bail bondsmen in counties with a bail bond board is quite different from those counties without bail bond boards, but the *prosecution* of bail bond forfeiture cases is virtually identical.

While the prosecution of bail bond forfeitures is not particularly difficult, it can be both time- and paper-intensive. Large counties often have sufficient

resources and personnel to engage in a comprehensive bail bond operation, but the majority of Texas counties and cities are limited in both the time and staff available to prosecute forfeiture cases.

Bond forfeitures are criminal in nature, but they follow the Rules of Civil Procedure.¹ In essence, the State is suing to collect the debt created by the contract (bond) for the appearance or return of the principal (defendant) which the bondsman has guaranteed (surety). The ever-present conflict is the final value of the return, or the failure

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Citations - Part I

(Tickets are for Concerts & Sporting Events)

by Ryan Kellus Turner, TMCEC General Counsel & Director of Education

This is the first of a two part series.

In the context of the criminal justice system, a citation is defined as "[a]n order, issued by the police, to appear before a magistrate or a judge at a later date. A citation is commonly used for minor violations (*e.g.*, traffic violations); thus avoiding having to take the suspect into immediate physical custody."¹

During Fiscal Year 2006, roughly 7.9 million cases were filed in Texas municipal courts. During the same period of time, more than three

million criminal cases were filed in Texas justice courts. The vast majority of these cases were instigated by the filing of a citation. In most cases, defendants did not contest their guilt, and the citation substituted for a formal charging instrument.

Citations are such a common staple in the Texas criminal justice system that their purpose and utility are seldom contemplated, let alone fully appreciated. That is unfortunate. Citations are devices of efficiency that

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AROUND THE STATE

TMCEC Recreated as 501(c)(3)

Over the last two years, the TMCEC Board of Directors has worked to file the necessary paperwork with the IRS and create a new set of bylaws to establish a 501(c)(3) non-profit organization status for the Education Center. In the past, TMCEC has simply been a project of the Texas Municipal Courts Association (TMCA), which is a 501(c)(4) entity. The new 501(c)(3) tax status went into effect January 1, 2007. Special appreciation is given to TMCEC/TMCA Treasurer Robert C. Richter of Missouri City for his work on this project.

The purpose of this new organization is stated in the new bylaws: *The Corporation is organized exclusively for charitable, literary and educational purposes of providing: (1) judicial education, technical assistance, and the necessary resource material to assist municipal judges, court support personnel, and city attorneys in obtaining and maintaining professional competence in the fair and impartial administration of criminal justice; and (2) information to the public about the Texas judicial system and laws relating to public safety and quality of life in Texas communities.* The complete bylaws may be found on the TMCEC website: www.tmcec.com/files/BylawsMaster.doc. The bylaws are written such that the officers and directors are the same as those of TMCA.

As a non-profit organization, TMCEC now accepts contributions and memorials that are tax deductible. The first contribution was recently given in honor of Judge Earl B. Webb (see below). It was given in his memory by the Board of Directors of the Texas Municipal Courts Association. Readers are encouraged to send in both memorial contributions and "In Honor" contributions.

In Memory of Earl B. Webb

Judge Earl B. "Bud" Webb passed away on October 17, 2006 at his home in League City. He was presiding judge in League City from 1968 to 1989. During his tenure, he helped to establish the Texas Municipal Courts Association and frequently taught in the clerks training program. Like so many of the judiciary that serve in municipal courts, Judge Webb had a very active career. He served in the Navy submarine service in the Pacific Theater from 1943 through mid-1946. He worked as a safety engineer with Central Power and Light in South Texas and later with Brown and Root-Northrop in Houston. While working for Brown and Root, he returned to college to receive a second undergraduate degree in business administration and, later, a law degree. Also active in the Boy Scouts and the Lions International, his obituary noted that "The words *We Serve* are two words that he took to heart." Although an industrial accident resulted in Judge Webb being a double amputee, to "go on above and beyond yourself to help others" became his creed. His complete obituary can be read at http://leaguecitylions.com/home_memorials_judge_webb.php. He will be missed by many. TMCEC expresses its condolences to his family and friends.

Memorial Contribution

Honorable Earl B. Webb

The Board of Directors of the Texas Municipal Courts Association



FROM THE GENERAL COUNSEL

Ryan Kellus Turner

These Days Your Court is Not the Only Thing in Session

The 80th Legislature convened on January 9th at noon. How excited are our public policy-makers to be back at work in the Capitol City? More than 300 bills bridging the public policy gamut were pre-filed. That's right.

I can tell you now, it's easy to tell that this is going to be a very important session for municipal courts. While we can expect to see garden variety amendments to existing procedural laws and the creation of new offenses, the 80th Legislature potentially promises to resolve issues relating to the use of red light camera enforcement technology, as well as redefine the way our state generally views certain subject matter we currently see in municipal courts (*e.g.*, one bill would authorize a study to investigate converting certain Class C misdemeanors into civil infractions).

A lot of readers want to know what is going on during Session. While TMCEC will be tracking legislation in efforts to prepare for integrating legislative changes into our resource materials, we won't be detailing the specifics of any legislation in *The Recorder* until our special legislative issue this summer. The same information will be presented during the three Legislative Updates in August (August 7–Lubbock, August 14–Houston, August 17–Austin).

By the time our special legislative issue comes out, the proverbial smoke will have cleared, and everyone will have a better idea of the meaning and implications of new legislation.

Rather than finding out what happened after the fact when attending the TMCEC Legislative Updates, many people have inquired about options available for “staying in the loop” during Session. Through the power of the Internet, keeping up on events and being part of the democratic process is just key strokes away. While there are many online legislative services that require payment of fees for services, I am here to mention just a few that are available at no charge.

Texas Legislature Online

Can't make it to Austin to attend committee meetings? Want to search bills by key words? Would you like to receive an email from the Capitol every time a bill has progressed or been amended during the legislative process?

The Texas Legislature Online (www.capitol.state.tx.us) is truly an impressive website. Maintained by the Texas Legislative Council, it provides full text access to state government research materials produced by the Texas Legislature, including: statutes, the Constitution, and the Administrative Code; bills, complete with current status, legislative history, notes, and analyses; committee calendars, schedules, and meeting minutes; house and senate journals; legislative statistics; historical lists of membership and leadership; links to other state agencies; and much more. It includes information about current members of the Texas Senate, Texas House of Representatives, the Texas delegation to the U.S. House of Representatives, and the State Board of Education.

Texas Municipal League

The staff attorneys at the Texas Municipal League (TML) really do an outstanding job of tracking and summarizing bills of interest to Texas municipalities, including municipal courts. Most of your cities receive the hardcopies of their periodic updates throughout the session. A link to the legislative section of their website can be found at www.tml.org.

In December, TML staff began gathering email addresses from city officials (elected or appointed) who are willing to provide testimony during the 2007 Session. If you would like to participate in this E-List project, simply send an email to Rachael Pitts at rpitts@tml.org with your name and email address. In the body of your message, tell her what city you serve and that you are interested in information relating to municipal courts.

TML's E-List project can also be used to receive emails addressing various types of municipal related legislation. For a complete list of subjects, check out their website.

Texas Municipal Courts Association

Thanks to some new initiatives taken by the Texas Municipal Courts Association, including a freshly revamped legislative program, you can stay informed throughout Session. (TMCA is the parent organization of TMCEC.)

At its annual meeting in Galveston last October, TMCA adopted an agenda of legislative initiatives. Judge Robin Ramsay of Denton, President of TMCA, appointed Judge John

Vasquez of Austin to chair the Legislative Committee. Other members appointed to the committee include Judge Victor Lander of Dallas, Judge Robert Doty of Lubbock, Judge Kevin Madison of Lakeway, Judge Cappy Eads of Salado, Judge Phyllis Mathison of Bastrop, Judge Allen Gilbert of San Angelo, Judge Glenn Phillips of Kilgore, Judge Susan Horton of Brady, Judge Joe Pirtle of Seabrook, Judge Robert Kubena of Hallettsville, and Judge Julian Wiesler, II of Brenham. As of this writing, the committee has met three times and will meet throughout the Session.

TMCA has implemented two new measures to apprise interested folks of matters exclusively related to municipal courts:

Briefing by Email - If you would like to receive a timely briefing on legislative issues, please send Judge Vasquez an email. His email address: johnvasq@gmail.com. In the subject line of your message, please state "Briefing by Email." In the body of your message, state your job title and the name of the city or cities you serve.

TMCA Website and Legislative Blog - So, you have enough unopened email as is? Your city has implemented a firewall that does not allow you to receive email from unknown sources? In the words of Radney Foster: "There is another way to go."

Hopefully by now, most of our readers have bookmarked the TMCEC website (www.tmcec.com). But have you bookmarked the TMCA website? Their address is www.txmca.org. (Alternatively, you can click on the TMCA link located on the lower right side of the TMCEC homepage).

By the time you read this, the TMCA website will contain legislative information and a link to a blog exclusively dedicated to legislative happenings of interest to municipal courts. A blog (a.k.a., weblog or web log) is a website that consists of a series of entries arranged in reverse chronological order, often updated frequently with new information about particular topics of interest. The information can be written by the site owner, gleaned from other websites

or sources, or contributed by users. Judge Vasquez and the Legislative Committee will be using the blog as a way to help interested readers keep up to speed. For those of you who may be a little gun shy using a blog, it's really no different than reading a newspaper online at your leisure.

Final Thoughts

In a representative democracy, time spent keeping tabs on the Legislature is hardly time spent in vain. While these are just a few of the resources out there, hopefully they will collectively appease those whose hunger for knowledge cannot wait until August. Time spent watching legislative issues develop will make your job easier when a whole new crop of legislation goes into effect on September 1, 2007. With any luck, it will also make your Legislative Update experience in August a tad less jolting.

Mark your calendars and register now for the TMCEC Legislative Updates. Seats in Lubbock, Houston, and Austin are going fast. (See page 28 for a registration form.)

The Efficient Disposition of DWI Cases: Best Practices

by David L. Hodges, Texas Judicial Resource Liaison, Texas Center for the Judiciary, Austin

Editor's Note: Only the most applicable parts of Judge Hodges' article have been reprinted in this issue of The Recorder. To access the entire article, go to the TMCEC website: www.tmcec.com/Traffic/DUI.html.

Without a constant review of how we do business, delay will insidiously work its way into every phase of the disposition process. Our Texas Supreme Court has stated:

Delay haunts the administration of justice. It postpones the rectification of

wrong and the vindication of the unjustly accused. It crowds the dockets of the courts ... pressuring judges to take shortcuts, interfering with the prompt and deliberate disposition of those cases in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility... . [P]ossibilities for error multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined,

then the wisest judge cannot distinguish between merit and demerit. Southern Pac. Transp. Co. v. Stoot, 530 S.W. 2d 930, 931 (Tex. 1975).

As gatekeepers to the doors of the criminal justice system, it is our job as judges to constantly review and revise the way we dispose of our criminal caseload. We know by intuition, and research confirms, that the more proximate in time disposition is to the date of arrest, the more effective the sentence will be. However, the Office

of Court Administration *Annual Report* shows that more than two-thirds of DWI cases are disposed 90 days or more after arrest. The average disposition rate of DWI cases is much slower than other misdemeanor cases in most counties because of the inherent delays identified in this article. It is our goal to identify where these delays occur in the disposition process and allow individual judges and prosecutors to decide which of these practices might be useful in their counties to eliminate or reduce those delays.

Offense Report

In many jurisdictions there is significant delay from the date of arrest until the date the offense report and criminal records check are received by the prosecution. In many jurisdictions, the local police agency may take one to two weeks to transfer a written office report for prosecution review; smaller arresting agencies within the county may delay the preparation and transfer of an offense report by a month or longer. This obviously delays the ability of the prosecutor to review the facts surrounding the arrest, evaluate and file or decline the case, or request additional information from the arresting agency. It also requires additional staff time by the prosecutor's office to track down and request missing offense reports.


This problem has an easy and accessible solution. The Texas Municipal Police Association, with a grant from TxDOT, has created the LEADRS program, which allows the arresting officer to access an online web based program for creation of a DWI offense report. Not only does the program simplify and standardize the process, it also uses the information that the officer inputs to populate all of the additional forms required when a DWI defendant is arrested. This program benefits not only the arresting officer by reducing

processing time by several hours, but also benefits the prosecutor who can be provided online, password-protected access to the offense report without delay. The program was initially "field tested" in 10 Texas counties and is now available statewide at no cost. The only requirement is for the officer to have online access to input the information. For more information on how to make this program available in your area, go to www.leadrstexas.com.

Magistrate's Warning, Setting Bond, Interpreters, and Appointing Attorneys

After arrest, the law requires a defendant to appear before a magistrate to receive his/her statutory warning; have bond conditions set (including breath interlock); receive an indigency application; and have an attorney appointed, if necessary. Although the delays are as varied as the jurisdiction involved, common delays can be reduced by the following practices:

- Having a magistrate available 24/7. If the jurisdiction's caseload does not warrant having a full-time magistrate at the jail, video conferencing can be established between the jail and remote sites in the county where magistrates are available. The cost of the video conferencing equipment can be recovered by reduced jail population and reduced jail staffing costs.
- Having an interpreter available 24/7. Again, if the caseload does not warrant a full-time interpreter, video conferencing can be used.
- Having a court-appointed attorney available full-time or, on short notice, to consult with the defendant. If the defendant remains in jail, the consultation could also occur through video conferencing. This significantly

reduces time spent by the attorney waiting to see the defendant and can also reduce jail staff time by making defendants available for in-person consultation with attorneys. If the defendant is free on bond, many jurisdictions appoint an "attorney for the day" who is available in court for indigent defendants, instead of appointing a separate attorney for each individual defendant. One consistently identified source of delay results when appointed counsel is given inaccurate contact information for the defendant and is unable to contact and consult his/her client. It is therefore important that the person who generates the contact information provided to appointed counsel (magistrate, jail staff, PR bond coordinator, interpreter) make an effort to ensure accuracy of the contact information. 

Note: The rest of the article applies to non-municipal issues and can be accessed at www.tmccec.com/Traffic/DUI.html. It discusses prosecution and court administration and contains an extensive list of references.

Judge David L. Hodges served on the County Court at Law bench in Waco from 1983 to 2003 and was appointed Texas Judicial Resource Liaison in 2005. He can be reached at 254/744.1115 or dhodges@yourhonor.com.

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to return the principal, to the State's custody.

Since the last federal census, a number of counties have struggled through the creation of bail bond boards and the changes they bring to the bail bond community. Counties with populations of 110,000 or more have mandatory bail bond boards.² Counties with smaller populations may create a discretionary bail bond board with the same rights and powers of a mandatory board.³ A discretionary bail bond board is created through the majority vote of the persons who would serve on the bail bond board.⁴ The advantages to having a board are greater regulation of the bondsmen (including attorneys), diversification of the duties to regulate bondsmen, and a few legal requirements in the prosecution of bail bond forfeiture cases.⁵ The disadvantages include more meetings for elected officials, more people involved in the regulation of bondsmen, and greater overall bureaucracy. Each county without a bail bond board should consider whether the county would benefit from creating a board or whether it would really matter in the operation or prosecution of county business. Once this determination has been made, the county should proceed accordingly.

Philosophy and Education

If your city has never prosecuted bail bond forfeitures and you want to start, one of your first tasks will be to develop a philosophy of prosecution. The prosecutor must determine what goals he or she has for bail bond forfeiture prosecutions, when and under what circumstances cases should be settled or tried, and what ranges of settlement should be available.

Once you have determined and articulated your philosophy and goals, you must educate the players in your bail bond game. There is no right place to begin the education process,

but logically, it begins with the self-education of the prosecutor's office and the development of a prosecution strategy; it proceeds through the law enforcement offices, the offices of the municipal clerks, and the judiciary. The primary purpose of the bail bond forfeiture program, of course, is to return the defendant (principal) to custody, allowing criminal prosecution to continue. The program's by-product is income for the general fund.⁶ The city council will likely appreciate the by-product far more than the purpose.

Each legislative session, the bondsmen and their lobbyists portray the bail bond prosecutors as a group of greedy iconoclasts and complain to the legislature that there is little or no consistency in the prosecution of bail bond cases. One of our goals in the prosecution of bail bond forfeitures should be the consistent application of the law. Consistency in applying the law, however, still leaves considerable discretion for local philosophies on the prosecution or settlement of cases.

Prosecution

The prosecution of a bail bond case begins with the setting and proper execution of the bail bond. The law enforcement office accepts bail bonds in both board and non-board counties. Be sure that the person in the sheriff's office who accept bail bonds inspects each bond carefully to be certain that the bond meets all the legal requirements of a bail bond,⁷ that it is properly signed, that it is readable, and that it has sufficient information to identify and serve citation on both the principal (defendant) and the bondsman (surety). Now, even in counties without bail bond boards, law enforcement must check to see that the person writing the bond is qualified to write bonds. In a non-board county, a person "may not be a surety ... unless ... the person, within two years before the bond is given, completed in person at least eight hours of continuing legal education...".⁸ If the

surety is an insurance company, the law enforcement office also must be sure that a power of attorney from the insurance company is attached to each bond in addition to the certificate of attendance.⁹ If the bond is an attorney bond, law enforcement must also obtain a certificate of completion of continuing legal education (bondsmen's version) and must be sure the attorney is a Texas resident.¹⁰ Remember that the arraigning magistrate may set the bond's amount but may not set the type of bond.¹¹ It is also good to remember that the bond may be used only to secure the principal's appearance in court and not for fines, fees, and costs.¹²

Once the principal has failed to appear in court, the prosecutor should present the judge of the court where the failure to appear occurred a judgment *nisi*. While the judge is not required to sign the judgment *nisi* on the same day as the principal's failure to appear, she should sign it as soon thereafter as is practical.¹³ The judgment *nisi* is the basis of the State's case for forfeiture and becomes the State's petition.¹⁴ It, a copy of the bond, and the citation should be served upon the principal and surety in the same manner as any other civil suit.¹⁵ Please note, however, that a bond forfeiture requires "magic words" in the citation.¹⁶ The magic words are, "... to show cause why the judgment of forfeiture should not be made final." Failure to include the magic words may be fatal to the citation. You may need to spend some time with the county and district clerks to review the service of citation in bond forfeiture cases as a part of your education process.

Service of Citation

One of the biggest problems in bond forfeiture cases is obtaining jurisdiction over the proper parties. Property bail bond companies have individual owners who should be served citation in their individual capacities. For example, if Sam Spade owns Ace Bail

Company, the proper party in a bond forfeiture is Sam Spade d/b/a Ace Bail Company. Ace Bail Company is merely an assumed or trade name (“d/b/a”) and is not an entity with the full capacity to sue or be sued.¹⁷ Sam Spade is the real party in interest, and you should serve him with citation for a bail bond forfeiture. A judgment against Ace Bail Bonds may not be enforceable against Sam Spade and may be uncollectible against Ace.

Unlike an assumed name company, a corporation is an entity having the capacity to sue or be sued, but a bail bondsman may not be a corporation.¹⁸ However, there is an exception to that general corporate rule: Insurance companies that have obtained authority from the Texas Department of Insurance may write surety bonds;¹⁹ an insurance company without authority from the Department of Insurance may not write bail bonds.²⁰ Insurance companies have local bail bond agents who run the company’s day-to-day bail bond business, but the agents have no liability to the State for the bonds.

You must serve citation on the insurance company in a bond forfeiture, not on the local agent. For example, although you may deal with local agent Bill Bond, he is merely the agent for ABC Surety Company. The local agent does business under the trade name of Easy Bail. To obtain proper jurisdiction for a bail bond forfeiture for Easy Bail, you must serve citation on ABC Surety Company. It is likely that ABC will have a registered agent for service of process (citation). If you have a bail bond board, that registered agent should be on file with the board. If you do not have a board, you may contact the Secretary of State’s Office or the Texas Department of Insurance and obtain the name and address of ABC’s registered agent. Both property bondsmen and insurance companies may now waive citation, but this

waiver has not become a common practice.²¹

In Denton County, for example, ABC would be served with citation as follows: ABC Surety Company, Bill Bond, Agent, d/b/a Easy Bail, by and through its registered agent, C.T. Corporation, C/O Jean Phelps, 350 North St. Paul Street, Dallas, TX 75201. The use of local agents, trade names, and registered agents often allows insurance companies to avoid liability on bail bonds. You may have bond forfeiture citations served in person, by certified mail, or even by publication.²² The proper party for the service of citation is the same in all bail bond forfeiture cases regardless of whether you have a bail bond board or not.

Trial and Defenses

After service of the citation, the principal and surety have until the first Monday after the expiration of 20 days from the date of service to file an answer.²³ If either or both fail to answer in a timely manner, the State may take a default judgment against either or both, depending upon the facts of service and the filing of an answer.

Before you may take a default, however, you must address a federal issue. In December 2003, the Servicemembers Civil Relief Act went into effect. It requires that a plaintiff (including the State) provide the court with an affidavit of non-military service prior to proceeding in a bond forfeiture case or any civil matter that might affect an active servicemember.²⁴ Absent a State affidavit that the party is not on active military duty, the court may appoint an *ad litem* for the servicemember, for whom the State must pay the fees, or the court may refuse to proceed with a default and abate the action until the servicemember’s return from active duty.²⁵ This is a huge change from the old Soldiers and Sailors Relief Act,

which was an affirmative defense for members of the armed services. The Servicemembers Civil Relief Act is a bar to prosecution unless the plaintiff complies with its elements.²⁶ Fortunately, the Department of Defense provides a website for government agencies to check military status (www.dmdc.osd.mil). A default judgment against only one party is interlocutory unless the active parties and defaulted parties are severed. The severed default becomes final after 30 days, presuming that a motion for new trial or a notice of appeal is not filed. If an answer is filed, the answering party is entitled to at least a 45-day notice of the trial date and may have a jury trial if one is requested properly.²⁷

At trial, the State has the initial burden of proof. The State may, however, be able to submit a wholly documentary case if neither the principal nor the surety deny the execution of the bond in a sworn pleading. The State’s case must include the bond and judgment *nisi*.²⁸ It has been agreed generally that a court may take judicial notice of the judgment *nisi* and the bond,²⁹ but the better practice is to admit certified copies of the bond, judgment *nisi*, and certificate of call, if available, under Texas Rule of Evidence 902.³⁰ After the court admits the State’s documents, the State will usually rest; once the *prima facie* case has been established, the burden shifts to the principal and surety to show why the forfeiture should not be made final.³¹ Before you spring this procedure on an unwary judge at trial, you may wish to spend some time with him or her reviewing Chapters 17 and 22 of the Code of Criminal Procedure, as the shifting of the burden and a wholly documentary case are somewhat rare for the State. The duty to educate on bail bond issues and their idiosyncrasies extends even to the judiciary.

The majority of the trial on the merits of a bond forfeiture consists of the

principal, who rarely appears, or the surety, attempting to explain to the court why it is unfair to take any of the bond, much less all of it, and to assess the costs of court. Every imaginable excuse will be proffered. Fortunately, only statutory excuses (defenses) will suffice.³² There are only four primary, statutory defenses and a relatively new limitation of liability: 1) The bond is, for any cause, not a valid undertaking; 2) the death of the principal **before** the time of appearance (forfeiture); 3) the State's failure to present an indictment or information at the first term of the court after the principal is admitted to bail (this is rare); 4) the illness of the principal or some uncontrollable circumstance prevented the principal's appearance in court through no fault of his own; and 5) the concept called "exoneration."³³ Exoneration was created by the 78th Legislature to give the bondsmen their "time certain."³⁴ "Exoneration" is a misnomer and is not really a defense or release. If a defendant is incarcerated in any jurisdiction in the United States within 180 days for a misdemeanor or 270 days for a felony, the surety is limited in his liability to costs of court, any reasonable and necessary costs incurred to secure the principal's return, and interest accrued on the bond from the date of the judgment *nisi* to the date of incarceration.³⁵ This is NOT a release of the bondsman as is a traditional defense, but is a certain time that the bondsman's liability is limited to a statutory minimum. Be sure to note that in situations of exoneration, interest is mandatory.³⁶ Surprisingly, the lack of actual notice of the hearing, trial, or any other appearance is not necessarily a defense.³⁷ Unless the principal or surety can provide one of these defenses, including exoneration, or can convince a judge that his story falls within the statutory guidelines, the State must prevail for the bond's full amount. Deportation is also not an acceptable defense to a bond forfeiture.³⁸

If the bondsman or the principal elects to challenge the bond as an invalid undertaking, he will likely do so at the final hearing. Unfortunately for him, such a challenge is not timely.³⁹ An excuse for the principal's failure to appear may exonerate both the principal and the surety, but the excuse must not only be an uncontrollable circumstance, it must also be through no fault of the principal.⁴⁰ Interestingly, however, incarceration elsewhere at the time of appearance can be a defense.⁴¹

Surrender of Principals

Two other points argued as a defense are the Affidavits of Surety to Surrender Principal (ASSP)⁴² and Affidavits of Incarceration.⁴³ The mere filing of an ASSP is not a defense.⁴⁴ The bondsman has an affirmative duty to show that the ASSP was presented to a judge with jurisdiction and that the judge refused to sign it without a legal reason.⁴⁵ The ASSP is a contingent release of partial liability⁴⁶ which only becomes a defense when a judge refuses, without legal reason, to sign the timely filed ASSP.⁴⁷ Many judges do not want to sign ASSPs because they mistakenly believe that they are wholly releasing the bondsman. By signing the ASSP, a judge merely directs the clerk to issue a warrant for the principal, which is the only legal means by which the bondsman can retrieve a principal. The ASSP limits the bondsman's liability to costs of court and rearrest fees once the principal has been returned to custody. If the principal is not returned to custody, the bondsman remains fully liable on the bond and the court may not hold the bondsman to less accountability absent a settlement.⁴⁸ Encourage your judges to sign proper ASSPs and explain the harm of not signing them to your forfeiture.⁴⁹


The Affidavit of Incarceration allows the release of the bondsman without the intervention of a court or the

prosecuting attorney.⁵⁰ If the bondsman actually surrenders the principal before forfeiture or submits an affidavit stating that the principal is incarcerated in federal custody, in the custody of any state, or in the custody of any county of this state, then the bondsman may be relieved of his undertaking.⁵¹ This provision originally contemplated the principal's actual delivery to the sheriff, but the subsequent verification language lessened the surety's burden. The bondsman is not automatically absolved of liability but is released after verification of the incarceration.⁵² Unlike the ASSP, the Affidavit of Incarceration is a complete release. Many judges dislike the Affidavits of Incarceration; some will even try to overrule the release of the bondsman. There is no legal precedent for such judicial interference with an Affidavit of Incarceration release.

Remittitur

In 2003, the Texas Legislature finally removed the language from the Code of Criminal Procedure governing remittitur that the courts held unconstitutional over a decade ago.⁵³ The new provisions for remittitur appear to provide for a form of mandatory remittitur and a limitation of liability,⁵⁴ which may contravene the Court of Criminal Appeals' holding that mandatory remittitur is unconstitutional.⁵⁵ Unfortunately, this provision has not been tested in the courts as of this writing. It is likely, however, that remittitur still lies within the court's sound discretion, but only time and the right facts will answer this question definitively.⁵⁶ While it appears that remittitur is still possible for two years after the forfeiture's date, its availability and amount remain at the trial court's sole discretion.⁵⁷

If you review Chapters 17 and 22 of the Code of Criminal Procedure, the attendant common law, and Texas Occupations Code §1704 for bail

bond board counties, you should find sufficient direction for the prosecution bail bonds regardless of whether you practice in a board county or a non-board county. Many resources are available to help in your endeavors with the prosecution of bail bond cases. You need only ask. 

¹ Tex. Crim. Proc. Code Ann. art. 22.10 (Vernon Supp. 2006); *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993); *Williams v. State*, 707 S.W.2d 40 (Tex. Crim. App. 1986).

² Tex. Occ. Code Ann. § 1704.051 (Vernon Supp. 2006) (The 79th Legislature considered lowering this threshold to 50,000, but the concept never left committee).

³ Tex. Occ. Code Ann. § 1704.052 (Vernon Supp. 2006).

⁴ *Id.* (roughly including the sheriff or a designee, a district judge with criminal jurisdiction, the county judge or a member of the commissioners court or a designee, the judge of a county court or county court at law, the district attorney or an assistant, a licensed bondsman elected annually by the bondsmen, a justice of the peace, the district clerk or a designee, the county clerk or a designee, a municipal judge, the county treasurer, and a criminal defense attorney practicing in the county and elected by other attorneys).

⁵ *E.g.*, Tex. Occ. Code Ann. § 1704.207 (Vernon Supp. 2006) (punishes a bondsman for improperly withdrawing from a bond by making him or her refund part or the entire fee for the bond back to the principal).

⁶ *E.g.*, Tex. Code Crim. Proc. Ann. Art. 103.004 (Vernon 2003) (Although funds from bail bond forfeitures go to the general fund, the commissioners court may direct the funds from the general fund wherever they desire).

⁷ Tex. Crim. Proc. Code Ann. art. 17.08 (Vernon 2001) (All elements set out in the statute must be present).

⁸ Tex. Crim. Proc. Code Ann. art. 17.10(b) (Vernon Supp. 2006) (The sheriff should ask for a copy of the bondsman's certificate of attendance before accepting a bond, and keep a copy of the certificate on file).

⁹ Tex. Crim. Proc. Code Ann. arts. 17.06-17.07 (Vernon 2001); *Schnitzzius v. Koons*, 813

S.W.2d 213 (Tex. App.—Dallas 1991); and *U.S. v. McCallum*, 788 F.2d 1042 (5th Cir. 1985) (An insurance bond without a power of attorney may be unenforceable against the insurance company).

¹⁰ Tex. Crim. Proc. Code Ann. arts. 17.11, 17.10(b) (Vernon Supp. 2006) (Regular attorney CLE is insufficient to meet this requirement).

¹¹ Op. Tex. Att'y Gen. No. JM-363 (1985); *Ex parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1975); *Ex parte Rodriguez*, 583 S.W.2d 792 (Tex. Crim. App. 1979) (While the magistrate may recommend a form [personal recognizance, personal, cash, or surety], it is not independently enforceable).

¹² *Id.*; *Trammel v. State*, 529 S.W.2d 528 (Tex. Crim. App. 1975); *McConathy v. State*, 528 S.W.2d 594 (Tex. Crim. App. 1975); *Grantham v. State*, 408 S.W.2d 235 (Tex. Crim. App. 1966). (It is possible to use a cash bond for fines, fees, and costs, but you must have the express consent of the defendant to do so).

¹³ *Mackintosh v. State*, 845 S.W.2d 261 (Tex. App.—Houston [1st Dist.] 1992).

¹⁴ *Cheatham v. State*, 13 Tex. Ct. App. 32 (1884); *see also Swaim v. State*, 498 S.W.2d 988 (Tex. Crim. App. 1973).

¹⁵ Tex. Crim. Proc. Code Ann. art. 22.04 (Vernon 2001); *Hubbard v. State*, 814 S.W.2d 402 (Tex. App.—Waco 1991) (With a surety, the citation to the principal need only be sent regular U. S. Mail and service is complete upon posting); Tex. Crim. Proc. Code Ann. art. 22.05 (Vernon 2001) (despite this provision, it may be prudent to use certified mail).

¹⁶ *Id.*

¹⁷ Tex. Rul. Civ. Proc. 28 (2002); Tex. Bus. & Com. Code Ann. §36.10 (Vernon 2001); *Chilkevitz v. Hyson*, 22 S.W.3d 825 (1999).

¹⁸ Tex. Crim. Proc. Code Ann. art.17.06 (Vernon 2001); Tex. Ins. Code Ann. art. 1.14 (Vernon 2001); *Freedom, Inc. v. State*, 569 S.W.2d 48 (Tex. Civ. App.—Austin 1978).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Tex. Crim. Proc. Code Ann. art. 22.03 (Vernon Supp. 2006).

²² Tex. Rul. Civ. Proc. 106-107 (2006); Tex. Crim. Proc. Code Ann. arts. 22.05-22.06 (Vernon 2001).

²³ Tex. Rul. Civ. Proc. 15 & 239 (2006); Tex. Crim. Proc. Code Ann. art. 22.15 (Vernon 2001).

²⁴ Servicemembers Civil Relief Act, 108 Pub. L. No. 189, 117 Stat. 2835 (2003).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Tex. Rul. Civ. Proc. 245 & 216 (2006) (Request must be in writing and jury fee must be paid at least 30 days prior to the trial date).

²⁸ *Tocher v. State*, 517 S.W.2d 299 (Tex. Crim. App. 1975); *Hernden v. State*, 865 S.W.2d 521 (Tex. App.—San Antonio 1993).

²⁹ *Hoker v. State*, 545 S.W.2d 463 (Tex. Crim. App. 1977) *But see Williams v. State*, 82 S.W.3d 788 (Tex. App.—Corpus Christi 2002) (indicating that a court may not take judicial notice of a bond).

³⁰ Tex. Rul. Evid. 902 (2006); *Intl. Fid. Ins. Co. v. State*, 65 S.W.3d 724 (Tex. App.—El Paso 2001).

³¹ *Hill v. State*, 920 S.W.2d 468 (Tex. App.—Waco 1996, rev'd on other grounds 995 S.W.2d 96); *Bob Smith Bail Bonds v. State*, 963 S.W.2d 555 (Tex. App.—Fort Worth 1998).

³² *Rodriguez v. State*, 673 S.W.2d 635 (Tex. App.—San Antonio 1984); *Telles v. State*, 911 S.W.2d 820 (Tex. App.—El Paso 1995).

³³ Tex. Crim. Proc. Code Ann. art. 22.13 (Vernon Supp. 2006).

³⁴ Tex. Crim. Proc. Code Ann. art. 22.13(a)(5) (Vernon Supp. 2006).

³⁵ Tex. Crim. Proc. Code Ann. art. 22.13(b) (Vernon Supp. 2006).

³⁶ *Id.*

³⁷ *Yarbrough v. State*, 703 S.W.2d 645 (Tex. Crim. App. 1985); *Alvarez v. State*, 861 S.W.2d 878 (Tex. Crim. App. 1993).

³⁸ *Allegheny Cas. Co. v. State*, 163 S.W.3d 220 (Tex. App.—El Paso 2005); *Castaneda v. State*, 55 S.W.3d 729 (Tex. App.—Corpus Christi 2001); *Castaneda v. State*, 138 S.W.3d 304 (Tex. Crim. App. 2004).

³⁹ *Scott v. State*, 617 S.W.2d 691 (Tex. Crim. App. 1981); *Balboa v. State*, 612 S.W.2d 553 (Tex. Crim. App. 1981); *Watson v. State*, 32 S.W.3d 335 (Tex. App.—San Antonio 2000) (Challenge to the bond must be made at the time of execution, not at final hearing).

⁴⁰ *Hill v. State*, 955 S.W.2d 96 (Tex. Crim. App. 1997); *Reyes v. State*, 31 S.W.3d 343 (Tex. App.—Corpus Christi 2000).

⁴¹ *Gourley v. State*, 344 S.W.2d 882 (Tex. Crim. App. 1961); *Sanders v. State*, 312 S.W.2d 660 (Tex. Crim. App. 1958).

⁴² Tex. Crim. Proc. Code Ann. art. 17.19 (Vernon 2001).

⁴³ Tex. Crim. Proc. Code Ann. art. 17.16 (Vernon 2001).

⁴⁴ *Apodaca v. State*, 493 S.W.2d 859 (Tex. Crim. App. 1973); *McConathy v. State*, 545 S.W.2d 166 (Tex. Crim. App. 1977).

⁴⁵ *Maya v. State*, 126 S.W.3d 581 (Tex. App.—Texarkana 2004); *Cowboy Bail Bonds v. State*, No. 05-03-01419-CV, 2004 Tex. App. LEXIS 7571 (Dallas, August 24, 2004).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Allegheny Mut. Cas. Ins. v. State*, 710 S.W.2d 139 (Tex. App.—Houston [14th Dist.] 1986); *Apodaca*, 493 S.W.2d 859; *McConathy*, 545 S.W.2d 166; Tex. Occ. Code Ann. §1704.205 (Vernon 2001) (The settlement provision appears to apply only the board counties).

⁴⁹ Tex. Crim. Proc. Code Ann. §17.19 (Vernon 2003).

⁵⁰ Tex. Crim. Proc. Code Ann. §17.16 (Vernon 2003).

⁵¹ *Id.*

⁵² *Id.* (It is wise to arrange for a hold or a warrant for the principal before the surety is absolved).

⁵³ Tex. Crim. Proc. Code Ann. art. 22.16 (Vernon Supp. 2006).

⁵⁴ *Id.*

⁵⁵ *Lyles v. State*, 850 S.W.2d 497 (Tex. Crim. App. 1993).

⁵⁶ *Id.*

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Citations continued from page 1

save the government money and save countless people the experience of being arrested, booked, incarcerated, and released on bail.

From a public policy perspective, the importance of citations goes beyond the embarrassment, trauma, or inconvenience of being arrested.

Logistically and financially, it is hard to imagine how society could manage the enormous burden of enforcing its laws relating to public safety and quality of life if every accused violator first had to be arrested, booked, incarcerated, and released on bail.

While there is no comprehensive source of secondary literature on the subject of citations as utilized in the Texas criminal justice system, there are countless numbers of articles on the subject of full custodial arrest. The irony of course is that most Texans have not been, and never will be, subject to full custodial arrest; most, however, sooner or later, will be issued a citation.

Although I began gathering materials for this article five years ago, the truth of the matter is that seeds were planted when I first passed the Texas Bar Examination and realized that after three years of intensive study in law school, not to mention \$100,000 in student loans, I was now a licensed attorney, but did not feel equipped to handle something as common as a speeding ticket.

In this, and in the next issue of *The Recorder*, we will discuss 25 of the most common questions relating to citations asked over the years by judges, lawyers, and law enforcement.

For the uninitiated and veterans alike, citations, like most things in the law, are seldom as simple as they seem. This series of articles is intended to supplement and reinforce a related presentation you are likely to see if you attend a TMCEC seminar this year. The questions touch on issues that range

from the basic to the more advanced. The answers range from the definite to the unknown.

1. How does Texas criminal law define “citation”?

The two statutes authorizing the issuance of what are commonly referred to as citations are the Code of Criminal Procedure and the Transportation Code.

While Article 14.06(b) authorizes a citation to be issued for certain offenses, the term is not defined in the Code of Criminal Procedure.

Chapter 543 of the Transportation Code similarly does not define the term. In fact, the term citation is not even used. In its place, the Transportation Code uses a descriptive phrase: “written notice to appear in court.”²²

The only definition in statutory law is contained in Section 703.001 of the Texas Transportation Code, which states that the term’s meaning is assigned by Article II, Section (b) of the Nonresident Violator Compact of 1977: “any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.”

2. What does the law require to be printed on a citation?

Article 14.06 of the Texas Code of Criminal Procedure states that a citation must contain: (1) written notice of the time and place the person must appear before a magistrate; (2) name and address of the person charged; and (3) the offense charged.

Section 543.003 of the Transportation Code states that the written notice to appear in court must contain: (1) the time and place the person is to appear; (2) the offense charged; (3) the name and address of the person charged; and, (4) if applicable, the license number of the person’s vehicle.

Over the last 10 years, the Legislature has not hesitated to expand the amount of information that is required to be printed on a citation. Akin to the craft of painting portraits on the sides of a single grain of rice; state, county, and municipal governments often struggle to place all of the requisite information on one citation.

How does the citation used in your municipality stack up? What follows are 10 statutes governing the content of citations:

“The 10 Day Rule” – Section 543.006 of the Transportation Code states that the time specified in the notice to appear must be at least 10 days after the date of arrest unless the person arrested demands an earlier hearing. The place specified in the notice to appear must be before a magistrate having jurisdiction over the offense in the municipality or county in which the offense is alleged to have been committed.

Notably, there is no similar parallel rule for citations issued under the Code of Criminal Procedure stating the period of time in which a defendant must appear.

Notice to Appear: Commercial Vehicle or License and the “Social Security Number Rule” – Section 543.007 of the Transportation Code provides that a notice to appear issued to the operator of a commercial motor vehicle or holder of a commercial driver’s license (CDL) or commercial driver learner’s permit for the violation of a law regulating the operation of vehicles on highways, must contain the information required by department rule, to comply with Chapter 522 and the Federal Commercial Motor Vehicle Safety Act of 1986 (Title 49, U.S.C. Section 2701 *et seq.* - this provision was renumbered as Title 49, U.S.C. Section 31302).

The proposition that a citation issued to the holder of a CDL must contain

the social security number of the driver is widely accepted but not expressly stated in federal or state law. Section 31308(4)(B) of the Federal Commercial Motor Vehicle Act of 1986 requires that the license contain the social security number or other number the Secretary of Transportation determines is necessary to identify the driver. Section 543.201 of the Transportation Code requires courts to keep records reflecting that a person is charged with a law violation relating to the operation of a motor vehicle on a highway. Section 543.202 requires “the record must be made on a form or by a data processing method acceptable to the department and must include, among other things, the person’s social security number, if the person was operating a commercial motor vehicle or was the holder of a CDL or commercial driver’s learning permit.” Since such license holders are not required by law to make an appearance in court, and because such information is still manually reported by the court to the Department of Public Safety (DPS) via the citation, the only way that this information can be recorded and reported by the courts is if it is collected by a peace officer at the time the citation is issued.

Specification of the Speeding Charge - Pursuant to Section 543.010 of the Transportation Code, the complaint and the summons or notice to appear on a charge of speeding must specify: (1) the maximum or minimum speed limit applicable in the district or at the location; and (2) the speed at which the defendant is alleged to have driven.

Notice of Potential Suspension - Section 601.233(a) of the Transportation Code states that a citation for an offense under Section 601.191 (Operation of Motor Vehicle in Violation of Motor Vehicle Liability Insurance Requirement; Offense) issued as a result of Section 601.053

(Evidence of Financial Responsibility) must include, in type larger than other type on the citation, except for the type of the statement required by Section 708.105, the following statement: “A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver’s license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the DPS for two years from the date of conviction. The department may waive the requirement to file evidence of financial responsibility if you file satisfactory evidence with the department showing that at the time this citation was issued, the vehicle was covered by a motor vehicle liability insurance policy or that you were otherwise exempt from the requirements to provide evidence of financial responsibility.”

Contract for Enforcement of Certain Arrest Warrants - Section 702.004(b) of the Transportation Code states, “The warning must state that if the person fails to appear in court as provided by law for the prosecution of the offense or fails to pay a fine for the violation, the person might not be permitted to register a motor vehicle in this state.” A similar warning is required pursuant to Section 706.003 when a citation is issued for a traffic offense. (This is often referred to as the Failure to Appear Program. The DPS vendor for this program is Omnibase Services.)

Notice of Potential Surcharge - Section 708.105 of the Transportation Code provides that a citation issued for an offense under a traffic law of this state or a political subdivision of this state must include, in type larger than any other type on the citation, the following statement: “A conviction of an offense under a traffic law of this state or a political subdivision of this

state may result in the assessment on your driver's license of a surcharge under the Driver Responsibility Program." The required warning is in addition to any other warning required by law.

An inequity in the current law governing surcharges is that defendants who are brought to court subsequent to arrest or summons are not legally required to be provided any similar type of notice or admonishment. While some judges have taken it upon themselves to make such admonishments, relatively few defendants in municipal and justice courts in Texas actually come before a judge to enter a plea and to be sentenced. While most defendants accused of offenses to which the Driver Responsibility Program apply are issued a citation, there is an argument to be made that those who are not fortunate enough to have receive notice of the surcharges are not entering informed pleas.

Data for Racial Profiling - Article 2.132 of the Code of Criminal Procedure provides that each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. One of the seven requirements is for "collection of information relating to traffic stops in which a citation is issued and arrests resulting from those traffic stops, including information relating to: (A) the race and ethnicity of the individual detained; and (B) whether a search was conducted and, if so, whether the person detained consented to the search." The data is then submitted to the local governing body as part of an annual report on racial profiling. Section 543.202 of the Transportation Code requires courts to report this information to DPS.

Right to a Driving Safety Course or Motorcycle Operators Course - Article 45.0511(q) of the Code of Criminal Procedure states "A notice to

appear issued for an offense to which this article applies must inform a defendant charged with an offense under Section 472.022, Transportation Code, an offense under Subtitle C, Title 7, Transportation Code, or an offense under Section 729.001(a)(3), Transportation Code committed while operating a motor vehicle of the defendant's right under this article to complete a driving safety course" The required boilerplate language reads: "You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course."

"The Address Obligation": Article 45.057(h) of the Code of Criminal Procedure imposes an obligation of a child and/or parent to keep the court informed of the child's current address. For the obligation to become effective, notice must be provided to the child, parent, or both. One of the three ways that a person may be placed under such an obligation is by being provided with a copy of the language of the subsection at the time they are issued a citation. If local governments have any intention on holding young adults responsible for offenses committed while they were still children, understanding this area of the law, and dispersing this information at the time a citation is issued is a must.³

Special Rule for Commercial Motor Vehicles - Section 16.100 of the Texas Administrative Code states: "A traffic citation issued to a person driving a commercial motor vehicle (CMV), or who is the holder of a commercial driver's license or commercial driver's learner's permit, for a violation of any law regulating the operation of vehicles on highways, must be on a form that contains the

following information: (1) the name, address, physical description, and date of birth of the party charged; (2) the number, if any, of the person's driver's license; (3) the registration number of the vehicle involved; (4) whether the vehicle was a CMV as defined in Texas Transportation Code, Chapter 522; (5) whether the vehicle was involved in the transporting of hazardous materials; and (6) the date and nature of the offense, including whether the offense was a serious traffic violation as defined in Texas Transportation Code, Chapter 522."

3. Who is responsible for compiling and manufacturing a citation?

Texas law provides no authoritative answer to this question.

Since state law authorizes them to be issued by peace officers, a fair argument can be made that it is law enforcement's responsibility. However, there really is no correct answer to the question. TMCEC's experiences with courts suggest that the compilation and content of a citation is a collaborative process between law enforcement and court administration.

4. Does Texas statutory law consider a person "under arrest" at the time a citation is issued?

Yes, according to both the Code of Criminal Procedure and the Transportation Code.

Section 543.003, Transportation Code states:

An officer who arrests a person for a violation of this subtitle punishable as a misdemeanor and who does not take the person before a magistrate shall issue a written notice to appear in court showing the time and place the person is to appear, the offense charged, the name and address of the person charged, and, if applicable, the license number of the person's vehicle (emphasis added).

Chapter 14 of the Code of Criminal Procedure is entitled "Arrest Without

Warrant.” Article 14.06 provides:

(a) Except as provided by Subsection (b), in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in any other county of this state. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

(b) A peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

While the two statutes are by no means parallel, both the Transportation Code and the Code Criminal provide, regardless of whether the defendant is brought before a magistrate or issued a citation, that first the defendant must first be under arrest.

As in all criminal cases, for a person to be lawfully arrested there must be probable cause.⁴ Probable cause exists where the facts and circumstances known by the officer stemming from reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that a particular person has committed or is committing an offense.⁵

Nothing in Texas law authorizes the issuance of a citation on the basis of

something less than probable cause. Yet, because Texas criminal procedure contains no mechanism to weed out citations that are not predicated on probable cause, defendants wishing to raise such arguments must first contest their guilt.

5. Does the “investigatory stop” of a motorist constitute a “seizure” under the 4th Amendment?

Yes. The stopping of a motorist is always a seizure, whether the officer’s purpose is to make a full custodial arrest or arrest and release with a citation.⁶

A “seizure” occurs when (1) a suspect’s freedom of movement is restricted, and (2) the suspect is brought under the officer’s control either by submission to a show of legal authority or physical restraint.⁷

“Investigatory stops” and “arrests” are both seizures. But, not all investigatory stops are arrests. An “investigatory stop” is a seizure of limited scope and duration in which a peace officer is required to have reasonable suspicion that the suspect is involved in criminal activity.⁸ An “arrest” is a seizure of broader scope that can occur either intentionally or because of its duration or intrusiveness exceeds the boundaries of an investigatory stop.⁹ As the Court of Criminal Appeals explained in *Amores v. State*, a peace officer is required to have probable cause to make an arrest¹⁰.

Despite popular misconception, since the Supreme Court’s ruling in *Delaware v. Prouse*, peace officers do not have the authority to stop motorists at random without reasonable suspicion to see their driver’s license or vehicle registration.¹¹ The narrow exception to the ruling involves checkpoint stops that are governed by special rules.¹²

Section 521.025(b) of the Texas Transportation Code states that a peace officer may stop and detain a person operating a motor vehicle to determine if the person has a driver’s license. While this statute could be read to authorize exactly what *Prouse* prohibits, the statute should be read in light of case law. The Court of Criminal Appeals, though refusing to apply it retroactively, acknowledged *Prouse* as it relates to 521.025(b).¹³ Most subsequent case law can be distinguished because the stop was coupled with probable cause for another offense. The Court of Criminal Appeals, and subsequently the courts of appeals, have generally not responded positively to peace officers’ efforts to use 521.025(b) as a subterfuge to stop drivers.¹⁴

6. Who has the legal authority to issue a citation?

The same people who have the legal authority to make arrests. Texas statutory law only authorizes “peace officers” to issue citations.¹⁵

7. Under state law, who has the authority to issue citations for city ordinance violations?

Once again, only peace officers are authorized under state law to issue citations.

Many municipalities have adopted local ordinances for non-peace officers, such as code enforcement personnel, to issue what they refer to as citations. In large cities where the number of code violations would easily overwhelm local peace officers and in small towns where local law enforcement may be nonexistent, or limited by interlocal agreements with county government, the adoption of such an ordinance is necessary to effectively enforce ordinances relating to public safety and maintaining quality of life for its citizens. Ostensibly such ordinances are adopted pursuant to Section 51.001 of the Texas Local

Government Code which states that a “City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City.”

A word of caution: as explained by the Office of the Texas Attorney General, the manner in which such citations are issued must be distinguished from those issued by peace officers.

While the actions of “Code Enforcement Officers” in stopping people ... and questioning them may not *per se* constitute arrests, very little more force may be necessary before such a situation becomes one in which a ‘persons liberty of movement is restricted or restrained.’ *Amores v. State*, 816 S.W.2d. 407, 411 (Tex. Crim. App. 1991).¹⁶

Accordingly, cities adopting such ordinances are encouraged to establish clear guidelines and provide training for key personnel regulating the manner in which such citations are issued.

8. May a Texas peace officer issue a citation for offenses other than fine-only offenses?

No. While other states authorize citations to be used for offenses other than fine-only offenses, Texas law contains no similar express authorization.

Article 14.06(b) of the Code of Criminal Procedure provides that a peace officer “who is charging a person, including a child, with committing an offense that is a Class C misdemeanor ... may instead of taking the person before a magistrate, issue a citation to the person”

Chapter 543 of the Transportation Code contains no similar references limiting the issuance of citations to Class C misdemeanors. In fact, Section 543.002 merely makes references to “persons arrested for a

violation of this subtitle punishable as a misdemeanor.” The subtitle being referenced is Subtitle C – The Rules of the Road.

While most offenses in Subtitle C are fine-only offenses, it also contains Class A and B misdemeanors, as well as some felonies.¹⁷ There is no case law addressing the issuance of citations for such offenses, presumably because defendants in such cases are either subject to full custodial arrest or summoned to court. A review of instructors’ outlines contained on the Texas Commission on Law Enforcement Standards and Education website suggests that their curriculum does not construe the law to authorize citations to be issued for any Transportation Code offense other than fine-only offenses.¹⁸

9. Are peace officers required to issue citations in lieu of arrests for most fine-only offenses?

No, in fact Section 543.004 of the Transportation Code states that peace officers are only required to issue citations in two instances: “An officer shall issue a written notice to appear if the offense charged is either (1) speeding or (2) Section 49.03 of the Penal Code - open container of alcohol.”¹⁹

In 2001 the U.S. Supreme Court in an appeal of a civil rights law suit was asked to adopt a construction of the 4th Amendment that would have classified all full custodial arrests for non-breach of the peace, fine-only offenses as unreasonable seizures. The appeal of the dismissed lawsuit, *Atwater v. City of Lago Vista*, stemmed from an arrest in which multiple Class C misdemeanors were filed in a Texas municipal court and the plaintiff was subject to full custodial arrest, rather than issued citations. The Court in a 5-4 decision rejected the contention that a peace officer’s discretionary authority to either issue a citation or make a full custodial arrest violated the 4th

Amendment.²⁰

During the 78th Texas Legislature of 2003, Senate Bill 1597 was passed in response to the dissent in *Atwater*. The bill would have mandated that peace officers issue citations for fine-only offenses, excluding breach of the peace offenses. In his veto proclamation, Governor Rick Perry explained that the legislation would require a supervisor’s review of a Class C misdemeanor arrest, impeding an officer’s ability to make arrests. Governor Perry explained that he had consistently opposed efforts to restrict a peace officer’s discretionary arrest powers and those arrests for Class C misdemeanor offenses were supported by the Supreme Court’s decision.²¹

10. What happens if a peace officer fails to comply with the “release with promise to appear” provisions of the Transportation Code?

Section 543.008 of the Transportation Code states “A violation by an officer of Sections 543.003-543.007 is misconduct in office and the officer is subject to removal from the officer’s position.”

Presumably, this provision was written to be some sort of safeguard on law enforcement authority and to protect drivers from capricious or discriminatory arrests.

How this statute operates, however, is unclear. There is no case law or secondary source addressing the practical application of this provision. The statute does not state who, if any public official or prosecutor is responsible for its enforcement.

Efforts to locate any record of a peace officer being removed for requiring a person accused of a fine-only offense to provide more information than the law requires, or

Citations continued on page 24

Defense to Prosecution

Offense	Defense	Fee	Dismissal
Fail to Have License in Possession While Operating a Motor Vehicle (Failure to Display Driver's License) - Section 521.025, T.C.	Defendant required to produce in court a driver's license issued to that person appropriate for the type of vehicle operated and valid at the time of the arrest. Section 521.025(d), T.C.	None	Prosecutor required to present motion to dismiss. Judge required to dismiss upon motion from prosecutor.
Failure to Secure Child in Child Passenger Safety Seat System - Section 545.412, T.C.	Defendant required to provide the court with satisfactory evidence that defendant possesses an appropriate child passenger safety seat system for each child required to be secured in a child passenger safety seat system under Section 545.412(a), T.C. Section 545.4121, T.C.	None	Prosecutor required to present motion to dismiss. Judge required to dismiss upon motion from prosecutor.
Restrictions on Windows - Section 547.613, T.C.	Defense if defendant or a passenger of the vehicle is required for a medical reason to be shielded from direct rays of the sun.	None	Prosecutor required to present motion to dismiss. Judge required to dismiss upon motion from prosecutor.
Failure to Display Valid Motor Vehicle Inspection Certificate - Section 548.602, T.C.	Defendant required to show that an inspection certificate for the vehicle was in effect at the time of the arrest. Section 543.602(c), T.C.	None	Prosecutor required to present motion to dismiss. Judge required to dismiss upon motion from prosecutor.
Failure to Maintain Financial Responsibility - Section 601.191, T.C.	Provide the court satisfactory evidence of valid proof of financial responsibility under Section 601.053(a), T.C., that was valid and in effect at the time of the arrest. Section 601.193, T.C.	None	Court (clerk) verifies that document produced by defendant valid. Prosecutor required to present motion to dismiss that documents listed in Section 601.053(a) *was valid at time offense alleged to have occurred. Judge required to dismiss upon motion from prosecutor.
Bail Jumping and Failure to Appear - Section 38.10, P.C.	Appearance was incident to community supervision, parole, or intermittent sentence (does not apply to municipal court). Person had a reasonable excuse for failure to appear in accordance with the terms of his/her release.	None	Prosecutor required to present motion to dismiss. Judge required to dismiss upon motion from prosecutor.
Discharging a Firearm Across a Property Line - Section 62.0121, P.C.	The person owns the property on both sides of the line crossed. The person obtained written permission from the landowners on either side of the property lines crossed.	None	Prosecutor required to present motion to dismiss. Judge required to dismiss upon motion from prosecutor.
Public Intoxication - Section 49.02, P.C.	Alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.	None	Prosecutor required to present motion to dismiss. Judge required to dismiss upon motion from prosecutor.

*Section 601.053(a), T.C., lists the following documents and evidence of financial responsibility:

- A motor vehicle liability insurance policy covering the vehicle that satisfies Subchapter D (motor vehicle liability insurance requirements) or a photocopy of the policy;
- A standard proof of motor vehicle liability insurance form prescribed by the Texas Department of Insurance under Section 601.081 and issued by a liability insurer for the motor vehicle;
- An insurance binder that confirms the operator is in compliance of Chapter 601, T.C.;
- A surety bond certificate issued under Section 601.121, T.C. (bond filed with the Texas Department of Public Safety);
- A copy of a certificate of deposit with the appropriate county judge covering the vehicle issued under Section 601.123, T.C. (A deposit of cash or cashier check filed with the county judge in the amount of at least \$55,000); or
- A certificate or photocopy of the certificate of self-insurance covering the vehicle issued under Section 601.124, T.C. (Person must have at least 25 motor vehicles registered in his/her name to be eligible for self-insurance.)

Required Dismissals

Court Process	Defendant Requirements	Fee/Cost	Dismissal
Deferred Disposition Article 45.051, C.C.P.	Defendant required to comply with requirements imposed during deferral period. Present evidence of compliance.	Court costs required to be collected.* Court may impose special expense when court dismisses complaint. (Special expense may not exceed amount of fine assessed but not imposed when deferred granted.)	Upon determining that defendant complied with the requirements imposed by the court order, the court shall dismiss the complaint and shall clearly note in the docket that the complaint is dismissed and that there is not a final conviction.
Driving Safety Court/Motorcycle Operator Training Course Article 45.0511, C.C.P.	Present proof of completion of driving safety course or motorcycle operator training course. Present certified copy of driving record from the Texas Department of Public Safety if licensed in Texas. (Defendant who is active military will probably not have a Texas driving record.) Affidavit stating that defendant was not taking a driving safety course or motorcycle operator training course, as applicable on the date the request to take the course was made and had not completed a course that is not shown on the defendant's driving record within the 12 months preceding the date of the offense.	Court costs required to be collected.* \$10 fee optional under mandatory provision Article 45.0511(f)(1), C.C.P. Fee up to the maximum amount of fine allowed under the discretionary provisions. Article 45.0511(f)(2), C.C.P.	Upon presentation of evidence of completion of course, certified copy of driver's license showing that defendant was eligible, and affidavit, the court shall remove the judgment (earlier judgment on defendant's plea that court deferred imposition for 90 days) and dismiss the charge. Article 45.051(l), C.C.P.
Teen Court Article 45.052, C.C.P.	Complete teen court program. Show court evidence of completion of teen court program.	Court costs required to be collected.* \$10 optional fee for administering teen court. Article 45.052(e), C.C.P. \$10 optional fee for teen court performing its duties. Paid to teen court program. Teen court program must account to court for disbursement of fee. Article 45.052(h), C.C.P.	Upon presentation of evidence that defendant completed teen court program, court shall dismiss charge. Article 45.052(c), C.C.P.
Attendance at a Tobacco Awareness Program Section 161, 253, H.S.C.	Defendant required to complete tobacco awareness program or tobacco related community service not later than 90th day after conviction. (Court required to suspend execution of sentence for 90 days. Section 161.253(c), H.S.C.)	Court costs required to be collected.*	Upon presentation of evidence of completion of tobacco awareness program or community service, court shall dismiss charge. Section 161.252(f)(2), H.S.C.

*A defendant is considered to be convicted in a case if:

- A judgment, a sentence, or both are imposed on the person;
- The person receives community supervision, deferred adjudication, or deferred disposition;
- The court defers final disposition of the case or imposition of the judgment and sentence. Section 133.101, L.G.C.

Compliance Dismissals

Offense	Defendant Requirements	Fee	Dismissal
Expired Motor Vehicle Registration Section 502.407(b), T.C.	Obtain valid registration within 10 working days of offense; and Pay delinquent registration fee to county tax assessor collector. Present proof of valid registration and payment of late fee to court.	\$10 optional (Judicial discretion whether to charge)	Judicial discretion whether to dismiss charge.
Expired Driver's License Section 521.026, T.C.	Obtain valid driver's license within 10 working days of offense. Present proof of valid driver's license to court.	\$10 optional (Judicial discretion whether to charge)	Judicial discretion whether to dismiss charge.
Expired Motor Vehicle Inspection Certificate Section 548.605, T.C.	Obtain valid inspection certification within 10 working days of offense. Present proof of valid inspection certificate to court.	\$10 required if inspection certification expired less than 60 days.	Judge required to dismiss charge if inspection certificate expired less than 60 days. Judge may dismiss charge if inspection certificate expired more than 60 days.

Other Dismissals

Motions	Hearing	Fee	Dismissal
Defense	Pretrial (Prosecutor notified and gets copies) or trial. Example: motion to quash complaint. Quash means to set aside and dismiss.	None	Depending on information presented at hearing, judge may grant motion and dismiss.
State (Prosecutor - City Attorney or Deputy City Attorney)	Pretrial or trial. Depending on motion, defense gets copy. If motion to dismiss, court should notify defendant and attorney, if any, that charge is dismissed.	None	Depends on information presented at hearing. Article 32.02, C.C.P., provides that the attorney representing the State may, by permission of the court, dismiss a criminal action at any time, upon filing a written statement with the papers in the case setting out his/her reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.



RESOURCES FOR YOUR COURT

Texas Road Tips 2006

TMCEC has received sets of the booklet, *Texas Road Tips 2006*, for use by judges, prosecutors and clerks when speaking to civic and school groups. This colorful 5" x 6" spiral bound booklet provides brief, introductory information on the following topics: Aggressive Driving; Collisions; Driving While Intoxicated; Highway Driving; Motorcycles & Bicycles; Pedestrians & School Zones; Safety Seats & Safety Belts; Underage Drinking; Violations & Cautions; Work Zones & Road Signs

It is an excellent handout for use when speaking before adult and teenage groups. For a complimentary set (up to 50 copies per court), contact TMCEC (800/252-3718 or tmecec@tmcec.com). Only a limited number are available – please place your order ASAP. For larger quantities, contact Tracie Mendez at TxDOT (tmendez@txdot.state.us).



Spring Conferences

Lifesavers 2007

The National Conference on Highway Safety Priorities 25th Anniversary Meeting is being held March 25-27, 2007 at the Hilton Chicago, Chicago, Illinois. Registration Fee: \$300 (after 2/9/07). See www.lifesaversconference.org or call 703/922.7944 for more information.

National Judicial College Courses

May 14-24, 2007 *Traffic Issues in the 21st Century*

June 4-7, 2007 *Criminal Pretrial and Post-trial Challenges*

August 13-16, 2007 *Criminal Pretrial and Post-Trial Challenges: Solutions for Bail, Supervision, and Sentencing*

October 15-16, 2007 *Ethics for Judges*

For more information, call 800/25-JUDGE.

How to Avoid Danger

First, be a cautious and considerate driver. Avoid creating a situation that may provoke another motorist.

- Don't tailgate or flash your lights at another motorist.
- If you're in the left lane and someone wants to pass, move over and let the driver by.
- Use your horn sparingly.

Second, if you do encounter an angry driver, don't make matters worse by triggering a confrontation.

- Avoid eye contact.
- Steer clear and give angry drivers plenty of room.
- Don't make inappropriate hand or facial gestures.

If none of this works and you're concerned for your safety, call 9-1-1.



CourTools

CourTools, developed by the National Center for State Courts, is designed to provide courts with a common set of 10 indicators and clear methods to measure performance in a meaningful and manageable manner. NCSC drew on the civic ideals and major performance areas unique to courts, as defined by the Trial Court Performance Standards (TCPS). These include providing access to justice, reducing delay, and ensuring fairness. *CourTools* includes other success factors linked to management effectiveness that are relevant to all public institutions, such as fiscal responsibility, client-customer satisfaction, and the effectiveness and efficiency of internal processes.

To download a free copy of *CourTools*, go to www.courttools.org. If you need assistance with *CourTools*, contact NCSC at 800/466-3063 or email courttools@nscs.dni.us.

Annual Reports

Annual Reports from both the Office of Court Administration (OCA) and the State Commission on Judicial Conduct are now available online. Both are excellent resources for judges and court support personnel. On the following page are the most recent *Activity Report for Municipal Courts* and *Court Structure of Texas* charts. Note that OCA reports that there are now 1,396 municipal judges in Texas and over 7.8 million cases were filed in Fiscal Year 2006.

The State Commission on Judicial Conduct reports that while municipal judges make up 38% of the Texas judiciary, only seven percent of the cases filed with the Commission are complaints about municipal judges. This issue of *The Recorder* also contains the Examples of Improper Judicial Conduct from their *Annual Report* (see page 19).

For a complete copy of these annual reports, go to: <http://www.courts.state.tx.us/pubs/annual-reports.asp> and http://www.scjc.state.tx.us/Annual_Report_2006.pdf.

2007 GCAT Conferences

The Governmental Collectors Association of Texas (GCAT) is pleased to announce the Eighth Annual GCAT Conference has been scheduled for May 29-31, 2007. GCAT has been at the forefront of innovations in court collections since its inception in 1999. Through its workshops and educational programs, GCAT has helped many Texas cities and counties increase court collections revenue. Sessions scheduled include *Achieving a Higher Level Through Focus, Legislative Update & Overview, Justice & Municipal Court Collections, County & Felony Court Collections, Navigating Negativity, An Auditor's View of Collections, Collection Tools & Resources, Using In-House Computer Resources, the Comptroller's Side of Collections, and Deal or No Deal*. For more information, visit the GCAT website at www.gov.cat.net

May 29-31, 2007

Marriott Horseshoe Bay Resort
Horseshoe Bay, Texas

GCAT also sponsors a National Conference brings together collection professionals from both public and private sectors to examine ideas, technologies, and tools to improve court collections.

September 24-26, 2007

Golden Nugget Hotel
Las Vegas, Nevada

For more information, visit the GCAT web site at www.gov.cat.net or call 281/748-3484 (Lorena Gomez).



Activity Report for Municipal Courts

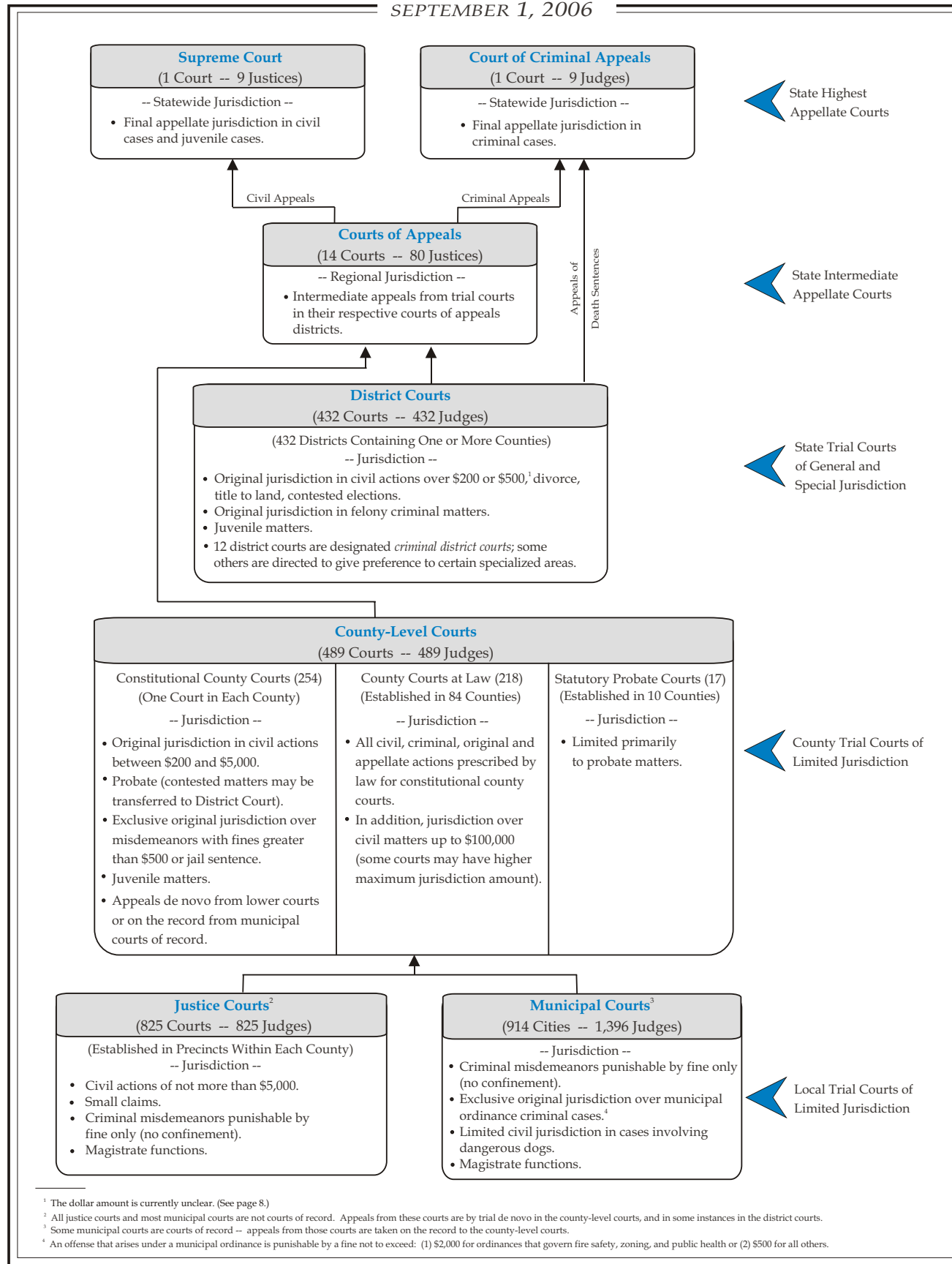
September 1, 2005 to August 31, 2006

99.7 Percent Reporting Rate 10,935 Reports Received Out of a Possible 10,968					
	Traffic Misdemeanors		Non-Traffic Misdemeanors		REPORTED TOTALS
	Non - Parking	Parking	State Law	City Ordinance	
NEW CASES FILED	5,711,966	869,487	959,094	335,051	7,875,598
DISPOSITIONS:					
Dispositions Prior to Trial:					
<i>Bond Forfeitures</i>	42,089	1,387	12,015	2,119	57,610
<i>Fined</i>	1,596,066	554,319	275,983	78,621	2,504,989
<i>Cases Dismissed</i>	312,535	48,077	86,349	43,458	490,419
Total Dispositions Prior to Trial	1,950,690	603,783	374,347	124,198	3,053,018
Dispositions at Trial:					
<i>Trial by Judge</i>					
Guilty	973,057	32,681	236,211	66,028	1,307,977
Not Guilty	11,316	7,405	3,130	2,078	23,929
<i>Trial by Jury</i>					
Guilty	2,568	63	540	379	3,550
Not Guilty	849	24	373	336	1,582
<i>Dismissed at Trial</i>	541,675	7,853	117,124	60,459	727,111
Total Dispositions at Trial	1,529,465	48,026	357,378	129,280	2,064,149
Cases Dismissed After:					
<i>Driver Safety Course</i>	431,615	---	---	---	431,615
<i>Deferred Disposition</i>	529,998	1,753	53,650	20,810	606,211
<i>Proof of Financial Responsibility</i>	506,750	---	---	---	506,750
<i>Compliance Dismissal</i>	440,105	---	---	---	440,105
Total Cases Dismissed After	1,908,468	1,753	53,650	20,810	1,984,681
TOTAL DISPOSITIONS	5,388,623	653,562	785,375	274,288	7,101,848
COMMUNITY SERVICE ORDERED	138,711	830	40,711	10,558	190,810
CASES APPEALED	11,182	98	2,164	378	13,822
JUVENILE ACTIVITY:					
Transportation Code Cases Filed					146,895
Non-Driving Alcoholic Beverage Code Cases Filed					36,286
DUI of Alcohol Cases Filed					3,341
Health & Safety Code Cases Filed					8,856
Failure to Attend School Cases Filed					9,673
Education Code Cases Filed					9,924
Violation of Local Daytime Curfew Ordinance Cases Filed					9,258
All Other Non-Traffic Fine-Only Cases Filed					77,607
Waiver of Jurisdiction of Non-Traffic Cases					3,842
Referred to Juvenile Court for Delinquent Conduct					577
Held in Contempt, Fined, or Denied Driving Privileges					7,269
Warnings Administered					4,209
Statements Certified					1,091
OTHER ACTIVITY:					
Parent Contributing to Nonattendance Cases Filed					5,426
Safety Responsibility and Driver's License Suspension Hearings Held					695
Search Warrants Issued					7,796
Arrest Warrants Issued					
Class C Misdemeanors					2,046,433
Felonies and Class A and B Misdemeanors					75,169
<i>Total Arrest Warrants Issued</i>					2,121,602
Magistrate Warnings Given					
Class A and B Misdemeanors					207,399
Felonies					82,541
<i>Total Magistrate Warnings Given</i>					289,940
Emergency Mental Health Hearings Held					1,674
Magistrate's Orders for Emergency Protection					9,004
TOTAL REVENUE					\$647,071,638

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COURT STRUCTURE OF TEXAS

SEPTEMBER 1, 2006



ETHICS UPDATE

Examples of Improper Judicial Conduct

The following are examples of judicial misconduct that resulted in disciplinary action by the State Commission on Judicial Conduct in fiscal year 2006. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2006. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in descending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public discipline is published on the Commission website and may be requested by contacting the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2006. The reader should note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the integrity, impartiality and independence of the judiciary and further assist the judiciary in establishing, maintaining and enforcing the highest standards of judicial and personal conduct.

CANON 2A: A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

- After finding a woman guilty of neglecting her horses, the judge sentenced her to 30 days in jail and ordered a restricted diet of bread and water for the first three days. After finding a man guilty of illegally dumping chromium from his metal-plating business, the judge ordered him to drink “from a non-toxic volume of water containing the pollutants dumped into the dumpsters.” Although the judge was advised by county officials that neither sentence could be enforced under state law, he failed to amend or withdraw the “bread and water” or “toxic sludge cocktail” sentencing conditions. The judge's actions received widespread media attention. [Violation of Canon 2A of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] *Public Admonition of a Criminal County Court at Law Judge.* (05/04/06).
- While serving as a visiting judge in the State of Texas, the judge pleaded guilty to violation of the federal conflict of interest statutes. The criminal case against the judge received media attention, casting public discredit upon the integrity of the judiciary. [Violation of Canon 2A of the Texas Code of Judicial Conduct and 25 Article V, §1-a(6)A of the Texas Constitution.] *Public Admonition of a Former Appellate Justice.* (06/15/06).

- The judge permitted the local county attorney to generate and provide court referral forms to defendants in plea bargain cases, directing them to take domestic violence and other classes, without prior court review or approval. The judge also permitted the local county attorney to generate and sign Notices of Setting with the court's caption directing defendants to appear for court hearings. Further, the judge failed to comply with the law and failed to maintain professional competence in the law when he failed to set a defendant's case for trial after she entered a plea of “not guilty;” failed to review and approve the terms of the defendant's plea bargain agreement with the local county attorney; and improperly ordered the defendant to pay court costs upon dismissal of her case. [Violation of Canons 2A, 2B and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a County Judge.* (08/31/06).

CANON 2B: A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

- The judge's close relationship with opposing counsel, the daughter of his longtime court coordinator, influenced his conduct and judgment in at least two cases, causing litigants

and their counsel to form legitimate concerns that the judge would not be fair, neutral, and impartial in proceedings involving this attorney. Because of this relationship, the judge failed to diligently review and question the pleadings presented to him by the attorney, which effectively deprived a father of possession and custody of his child on the eve of her mother's funeral, without any opportunity for a hearing to determine whether the representations made by the petitioner were true or what was in the best interests of the child. In addition, the judge's statements about sanctioning an out-of-town attorney, made in open court, were perceived as a threat and confirmed to that lawyer that opposing counsel was in a special position to influence this judge. [Violation of Canons 2B and 3B(4) of the Texas Code of Judicial Conduct.] *Public Warning of a District Judge.* (05/30/06).

CANON 3B(2): A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

- The judge failed to comply with the law and failed to maintain professional competence in the law when he dismissed an eviction suit without notice or hearing, then reinstated the case without notice or hearing. Additionally, the judge and his staff failed to maintain complete and accurate court records. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace.*(05/24/06).
- The judge demonstrated a lack of professional competence in the law when he failed to comply with the procedural requirements set out in the Texas Property Code, the Texas

Rules of Civil Procedure, and the Texas Civil Practice and Remedies Code in issuing a Writ of Possession. [Violation of Canon 3B(2) of the Texas Code of Judicial Conduct]. *Private Order of Additional Education of a Justice of the Peace.* (05/24/06).

- The judge demonstrated a lack of professional competence in the law when he failed to announce his ruling in open court, as required by Rule 557 of the Texas Rules of Civil Procedure. [Violation of 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (06/15/06).
- The judge demonstrated a lack of professional competence in the law when he dismissed a traffic defendant's speeding ticket without a motion from the prosecutor and based on erroneous representations from the city administrator that the ticket had been issued outside the city limits. [Violation of Canon 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Municipal Judge.* (07/10/06).
- The judge demonstrated a lack of professional competence in the law when she went forward with a trial and found a traffic defendant guilty *in absentia*, then issued an arrest warrant against the defendant for failure to appear without completing the underlying paperwork laying out the requisites of a written complaint upon which to base the warrant. Further, the judge erred when she detained the defendant until she was able to pay the outstanding fine assessed against her in the underlying traffic case and failed to afford the defendant the opportunity to post bond to secure her release from custody. [Violation of Canon 3B(2) of the Texas Code of Judicial Conduct.]

Private Order of Additional Education of a Justice of the Peace. (07/27/06).

CANON 3B(4): A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

- The judge made inappropriate and offensive statements to a female police officer following her investiture, which statements demonstrated more than a mere lapse of judgment. As a public official charged with upholding the honor and integrity of the judiciary, the judge knew or should have known that his behavior lacked dignity and would be perceived as offensive, disrespectful, and discourteous not just to the female officer, but to her supervisor and the court employee who witnessed the incident. [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct.] *Public Admonition of a Former Municipal Court Judge.* (03/06/06).
 - The judge made demeaning and discourteous comments to certain litigants appearing before his court in a manner that did not reflect the appropriate demeanor expected of a judicial officer. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Reprimand and Order of Additional Education of a District Judge.* (05/04/06).
- CANON 4D(1): A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers**


or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

- Through his efforts to assist his then-wife's company to obtain an exclusive contract with the county to provide services to the probate court, which efforts included a letter of recommendation from the judge, and through the numerous court appointments given to the judge's friend and business partner who owed him money, the judge lent the prestige of judicial office to advance his own private interests and the private interests of both his then-wife and his business partner, and conveyed the impression that these individuals were in special positions to influence him. Furthermore, the judge's business relationships with his wife and his business partner reflected adversely

on the judge's impartiality and involved the judge in frequent transactions with persons likely to come before the court. The judge's actions received negative media attention, raising serious questions about the judge's impartiality, integrity, and independence and casting public discredit upon the judiciary and administration of justice. [Violation of Canons 2B and 4D(1) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] *Public Reprimand of a Probate Judge*. (08/31/06).

Texas Constitution, Article V, Section 1-a(6)A. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the

duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section.


- The judge's conduct resulted in the filing of a lawsuit by an employee against the county which received extensive media coverage. As a public official charged with upholding the honor and integrity of the judiciary, the judge knew or should have known that his actions would cast public discredit upon the integrity of the judiciary. [Violation of Article V, §1-a(6)A of the Texas Constitution.] *Private Admonition of a Justice of the Peace*. (05/04/06). 

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Citations continued from page 14

for illegally subjecting a person to full custodial arrest were fruitless.

Next Time

In Part II of this article we will delve into some more complicated issues pertaining to citations, including the circumstances where a peace officer is authorized and prohibited from issuing a citation, the consequence of refusing to sign a citation, why citations should not be mailed, and other constitutional and procedural issues relating to charging and trial. 

¹ *Black's Law Dictionary*, Sixth Edition (West 1990).

² Section 543.003.

³ See, Ryan Kellus Turner, "Holding Youth

Accountable: What Peace Officers, Prosecutors, and Judges Need to Know about HB 2319 and Fine-Only Offenses, and Juveniles Now Adults" 13 *Municipal Court Recorder* 1 (December 2003).

⁵ *Amores v. State*, 816 S.W.2d 407, 413 (Tex. Crim. App. 1991) citing *Brinegar v. U.S.* (1949).

⁶ *U.S. v. Martinez-Fuerte*, 428 U.S. 543 (1976); *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975).

⁷ *California v. Hodari D.*, 499 U.S. 621 (1991)

⁸ *U.S. v. Cortez*, 449 U.S. 411 (1981).

⁹ *Kaupp v. Texas*, 538 U.S. 411 (2002).

¹⁰ *Supra*, note 5.

¹¹ 440 U.S. 648 (1979).

¹² *Michigan v. Sitz*, 496 U.S. 444 (1990).

¹³ *Luckett v. State*, 586 S.W.2d 524 (Tex. Crim. App. 1979)

¹⁴ *McMillian v. State*, 609 S.W.2d 784 (Tex. Crim. App. 1980).

¹⁵ Chapter 543 of the Transportation Code; Article 14.06(b) Code of Criminal Procedure.

¹⁶ Texas Attorney General Letter Opinion No. 95-027 (1995).

¹⁷ For example, Section 547.614 (knowingly installing a defective airbag) is a Class A misdemeanor, Section 548.603 (displaying fictitious inspection certificate or insurance document) is a Class B misdemeanor, Section 548.603(b) (making or possessing a fictitious inspection certificate or insurance document) 3rd degree felony.

¹⁸ http://www.tcleose.state.tx.us/GuideInst/instructor_outlines.htm.

¹⁹ Notably Section 49.03 of the Penal Code was repealed in 2001 and was recodified as Section 49.031. The Transportation Code does not reflect this change.

²⁰ 532 US 318 (2001).

²¹ <http://www.governor.state.tx.us/divisions/press/bills/sb1597>.



FROM THE CENTER

Spring 2007 First Friday Webinars

Looking for an extra hour of continuing education for CLE or clerk certification? TMCEC will be offering interactive, web-based training programs on the first Friday of each month from 10:30–11:30 a.m. Please register by logging on to <http://tmcec.premierglobal.com>.

Webinars are free of charge to participants, but you will still be charged any applicable local fees for the use of your Internet. Participants will need a computer, an Internet connection, and a telephone line for toll-free teleconferencing.

Upcoming Webinar Schedule:

- February 2, 2007 *Criminal Law Basics: Hearsay Evidence*, Professor Steven Goode, The University of Texas School of Law
- March 2, 2007 **No Webinar, Texas Independence Day**
- March 9, 2007 *Problem Solving Courts*, Judge John Vasquez, Austin Municipal Court (View the above two and all previously concluded webinars at www.tmcec.com/webinar.html.)
- April 6, 2007 *Fatigued and Distracted Drivers*, Judge C. Victor Lander, Dallas Municipal Court
- May 4, 2007 *The Role of the Administrative Judge of the Judicial Region*, Mena Ramon, Deputy General Counsel, Office of Court Administration
- June 1, 2007 *Juvenile Confessions*, Sharon Pruitt, Assistant Attorney General, Office of the Attorney General
- July 6, 2007 Tentative: *Crime Victims*, Suzanne McDaniel, Office of the Attorney General



Prosecutor Seminar

TMCEC will offer the second of two 12-hour prosecutor programs on May 23-24, 2007 at the Omni Westside Hotel in Houston. The TMCEC Annual Municipal Prosecutors Conference is the only program in the state designed to specifically assist such attorneys in obtaining and maintaining professional competence. Presentations will focus on ethics, as well as procedural, substantive, and case law. Municipal prosecutors may register for the 12-hour prosecutor's conference for \$250. Housing, two breakfasts, one lunch, and course materials are included in the fee. Municipal prosecutors who do not need housing at the conference hotel may pay a \$100 registration fee. Prosecutors who must cancel for personal or professional reasons will be charged a \$100 cancellation fee if notice of cancellation is not received five working days prior to the conference. A registration fee of \$300 (or \$150, if no housing is needed) will be charged for non-municipal prosecutors or attorneys. A registration form can be found in the TMCEC Academic Schedule or on page 27 in this journal. A flyer will be mailed to all courts in early May.

Note: In FY08, there will be an additional fee of \$100 for MCLE credit.

Bailiffs and Warrant Officers Corpus Christi Conference

There will be a 12-hour bailiffs and warrant officers conference June 11-12, 2007 in Corpus Christi at the Omni Hotel Marina Tower. Bailiffs, warrant officers, and contract security personnel are encouraged to attend. A four-hour pre-conference will be offered on Sunday, June 10th on a topic to be determined. Tentatively, regular session courses are: *Force Options, Violence in the Courtroom, Using Non-verbal Communication, Bailiffs 101, Methods of Improving Collections, Warrants: From the Code to the Field, Sovereign Defendants, Juvenile Issues in Municipal Court, Civil Process, Served!, Transporting Prisoners, Fraudulent Documents, and Citations.*

The course has been pre-approved for 12 hours of TCLEOSE continuing education credit. Another four hours of credit will be available for attending the pre-conference. The fee for attending the conference is \$50 and includes three meals and housing accommodations for the two program nights at the Omni. To register, please use the registration form found on page 27 in this journal.



2006-2007 TMCEC Academic Schedule At-A-Glance



Conference	Date(s)	City	Hotel Information
12-Hour Regional Judges and Clerks	April 12-13, 2007	Amarillo	Ambassador Hotel, 3100 I-40 West
12-Hour Low Volume Seminar	April 24-25, 2007	Tyler	Holiday Inn Tyler, 5701 South Broadway
12-Hour Regional Clerks	May 1-2, 2007	S. Padre Island	Radisson South Padre Island, 500 Padre Blvd.
12-Hour Regional Judges (Attorneys)	May 7-8, 2007	S. Padre Island	Radisson South Padre Island, 500 Padre Blvd.
12-Hour Regional Judges (Non-Attorneys)	May 9-10, 2007	S. Padre Island	Radisson South Padre Island, 500 Padre Blvd.
12-Hour Prosecutors	May 23-24, 2007	Houston	Omni Houston Hotel at Westside, 13210 Katy Freeway
8-Hour Court Interpreters	May 23, 2007	Houston	Omni Houston Hotel at Westside, 13210 Katy Freeway
12-Hour Bailiffs/Warrant Officers	June 11-12, 2007	Corpus Christi	Omni Corpus Christi Hotel Marina Tower, 707 North Shoreline
12-Hour Court Administrators	June 13-14, 2007	Corpus Christi	Omni Corpus Christi Hotel Marina Tower, 707 North Shoreline
12-Hour Regional Judges and Clerks	June 27-28, 2007	Odessa	MCM Elegante, 5200 E. University
32-Hour New Judges and Clerks	July 16-20, 2007	Austin	Omni Hotel Southpark, 4140 Governor's Row
2007 Legislative Updates:	August 7, 2007	Lubbock	Holiday Inn Hotel & Towers, 801 Avenue Q
	August 14, 2007	Houston	Omni Westside, 13210 Katy Freeway
	August 17, 2007	Austin	Omni Southpark, 4140 Governor's Row

Wait List

Reminder: Alternative Judicial Education

Experienced municipal judges who have completed two years of TMCEC courses may opt to fulfill the 12-hour mandatory judicial education requirements for 2006-2007 by attending a course offered by an approved continuing legal education provider. The accredited providers are the American Academy of Judicial Education, the Harvard Law School, the Houston Law School and Foundation, the Juvenile Law Section of the State Bar of Texas Professional Development Programs, the Texas Defense Lawyers Project, the Texas Justice Courts Training Center, the Texas Juvenile Probation Commission, and the Texas Municipal Courts Association. Please check with TMCEC for the most up-to-date list of approved providers. The course must relate to the jurisdiction of the municipal courts and be at least 12 hours in length. Video, audio, and online programs are ineligible. After an initial two-year period, judges may "opt out" only every other year. Judges are asked to complete an Intent to Opt Out form prior to April 30, 2007. This form is found on page 13 in the TMCEC Academic Schedule or online at www.tmcec.com/FY07/AcadCat07.pdf. If you have questions, please contact Hope Lochridge at TMCEC (800/252-3718).

TEXAS MUNICIPAL COURTS EDUCATION CENTER FY07 REGISTRATION FORM

Conference Date: _____ **Conference Site:** _____

- Check one:** Non-attorney Judge (\$50 fee) Clerk (\$50 fee) Prosecutor (\$250 fee)
 Attorney Judge **not seeking CLE credit** (\$50 fee) Court Administrator (\$50 fee) Prosecutor **not requiring a room** (\$100 fee)
 Attorney Judge **seeking CLE credit** (\$150 fee) Assessment Clinic (\$100 fee) Bailiff/Warrant Officer* (\$50 fee)

TMCEC computer data is updated from the information you provide. Please print legibly and fill out form completely.

(Please print legibly): Last Name: _____ First Name : _____ MI: _____

Names also known by: _____ Female/Male: _____

Position held: _____

Date appointed/Hired/Elected: _____ Years experience: _____ Emergency contact: _____

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars: four nights at the 32-hour seminars, three nights at the 24-hour seminars/assessment clinics and two nights at the 12-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

- I need a private, single-occupancy room.
 I need a room shared with a seminar participant. [Please indicate roommate by entering seminar participant's name: _____ (Room will have 2 double beds.)]

- I need a private double-occupancy room, but I'll be sharing with a guest. [I will pay additional cost, if any, per night]

I will require: 1 king bed 2 double beds

- I do not need a room at the seminar.

How will you be traveling to seminar? Driving Flying

Arrival date: _____ Smoker Non-Smoker

Municipal Court of: _____ Email Address: _____

Court Mailing Address: _____ City: _____ Zip: _____

Office Telephone #: _____ Court #: _____ FAX: _____

Primary City Served: _____ Other Cities Served: _____

STATUS (Check all that apply):

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> Full Time | <input type="checkbox"/> Part Time | <input type="checkbox"/> Attorney | <input type="checkbox"/> Non-Attorney |
| <input type="checkbox"/> Presiding Judge | <input type="checkbox"/> Associate/Alternate Judge | <input type="checkbox"/> Justice of the Peace | <input type="checkbox"/> Mayor (<i>ex officio</i> Judge) |
| <input type="checkbox"/> Court Administrator | <input type="checkbox"/> Court Clerk | <input type="checkbox"/> Deputy Court Clerk | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Bailiff/Warrant Officer* | <input type="checkbox"/> Prosecutor | | |

***Bailiffs/Warrant Officers:** Municipal judge's signature required to attend Bailiff/Warrant Officer programs.

Judge's Signature: _____ Date: _____

Municipal Court of: _____

I certify that I am currently serving as a municipal judge, prosecutor or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the conference. Participants in the Assessment Clinics must cancel in writing two weeks prior to the seminar to receive refund. I will cancel by calling the Center. If I must cancel on the day before the seminar due to an emergency, I will call the TMCEC registration desk at the conference site. If I do not attend the program, TMCEC reserves the right to invoice me or my city for meal expenses, course materials and, if applicable, housing (\$85 plus tax per night). I understand that I will be responsible for the housing expense if I do not cancel or use my room. If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the conference site. Payment is due with registration form. **Registration shall be confirmed upon receipt of registration form and payment.**

Participant Signature _____ Date _____

PAYMENT INFORMATION

- Check Enclosed (Make checks payable to TMCEC.)
 Credit Card (Complete the following; \$2.00 will be added for each registration made with credit card payment.)

Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)

Credit card type:	Credit Card Number	Expiration Date	Verification Number <small>(found on back of card)</small>
<input type="checkbox"/> MasterCard	Name as it appears on card (print clearly): _____	_____	_____
<input type="checkbox"/> Visa	Authorized Signature: _____		

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701.

Fax registration forms with credit card information to 512/435-6118.

Legislative Update Registration Form



TMCEC will send you hotel information upon receipt of your registration form and the \$50 fee (\$100 for defense lawyers & council members). Please add \$2 for all credit card payments. If you need lodging, you will have to make your own reservation and cover the cost with the hotel.

Please check the program you would like to attend and return completed form with the registration fee to TMCEC. For credit card payments, please add \$2 for each registration.

- | | | |
|--|--|--|
| <input type="checkbox"/> HOUSTON
August 14, 2007
Omni Houston Westside
Telephone: 281.558.8338 | <input type="checkbox"/> LUBBOCK
August 7, 2007
Holiday Inn Towers
Telephone: 806.763.1200 | <input type="checkbox"/> AUSTIN
August 17, 2007
Omni Hotel Southpark
Telephone: 512.448.2222 |
|--|--|--|

Course lasts from 9:00 a.m. to 4:00 p.m. with an optional Q&A from 4:00-5:00 p.m.

REGISTRATION FORM:

Name (please print legibly): _____
Street: _____ City: _____ Zip: _____
Office Telephone #: _____ Court #: _____ FAX: _____
Primary City Served: _____ Other Cities Served: _____
Email Address: _____

Check all that apply:

- | | | | | | |
|--|--|---|--|-------------------------------------|---|
| <input type="checkbox"/> Full Time | <input type="checkbox"/> Part Time | <input type="checkbox"/> Attorney | <input type="checkbox"/> Non-Attorney | <input type="checkbox"/> Prosecutor | <input type="checkbox"/> Defense Lawyer (\$100) |
| <input type="checkbox"/> Presiding Judge | <input type="checkbox"/> Associate/Alternate Judge | <input type="checkbox"/> Justice of the Peace | <input type="checkbox"/> Mayor & Council (\$100) | | |
| <input type="checkbox"/> Court Administrator | <input type="checkbox"/> Court Clerk | <input type="checkbox"/> Deputy Court Clerk | <input type="checkbox"/> Other (\$100): | | |
| <input type="checkbox"/> Bailiff/Warrant Officer | | | | | |

I certify that I am currently serving as a municipal judge, city prosecutor, or court support personnel in the State of Texas. I understand that I will be responsible for making and paying for my own hotel reservation. Payment is required for this program; payment is due with this form. The registration fee is refundable if the Center is notified of cancellation in writing 10 days prior to the seminar.

Participant Signature _____

Date _____

PAYMENT INFORMATION: (\$2.00 is added for each registration with credit card payment.)

- \$50 Check Enclosed (Make checks payable to TMCEC.) \$52 Credit Card (Complete the following.)

For participants who do not work in a municipal court: \$100 Check Enclosed (Make checks payable to TMCEC.)
 \$102 Credit Card (Complete the following.)

Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)

Credit card type:	Credit Card Number	Expiration Date	Verification Number (found on back of card)
<input type="checkbox"/> MasterCard	_____	_____	_____
<input type="checkbox"/> Visa	Name as it appears on card (print clearly): _____		
	Authorized Signature _____		

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701.
Fax registration forms with credit card information to 512.435.6118.



The Winds of Change

by Margaret Robbins, Program Director, TMCEC

The 80th Legislature is meeting and the courts know what this means—change. Preparation takes planning. Planning, however, is not all of it. The court must also be a learning organization. So, what are the ingredients for being successful? Since this is just a short column, not all avenues can be explored; but some ideas are discussed here.

Let us first look at what it means to be a learning organization. This depends on the vision of the court. A learning organization usually has a commitment to creating a future in which it is continually improving. Its members are encouraged to expand their personal capacity. In other words, the organization is on a path of continual change and development.

Judges, clerks, court administrators, and other city personnel can work together to create the vision of the court and then develop a plan for the future. The plan must include how to anticipate change, how to react to change, and how to manage change. Learning and change are inextricably intertwined.

Many people do not like change. But change can be exciting—it moves people from “hum-drum” to new paths. Think about it like taking a vacation to a new place. If a person takes the same vacation several times, it becomes a known path. In a similar manner, the Legislature changes the path of the court. The court over the next year learns this path like the person who takes the same vacation multiple times. The key to learning this new path is planning, training, learning,

implementing, and reviewing.

Likewise, the court should have a plan and should have considered past experiences with legislative changes and the problems involved with making the changes. It helps if the court has a picture of its current processes, such as flowcharts. [TMCEC has a flowchart of the overall procedures. Call 800/252-3718 and ask for the “Procedures Flowchart” to have it mailed to the court.] Before a court can make changes, it must know what its current procedures and processes are in order to know what changes to make and how to implement the coming legislative changes.

The following are some planning issues that courts might want to consider:

Forms

- Do not order new forms until after the legislative session is over so that all changes can be made; this includes citations, minimum fine schedules, driving safety course forms, deferred disposition forms, receipt forms, any forms given out to the public, and any other forms the court needs to review.
- Determine the costs and how long it takes to print new forms.
- Determine who is in charge of reviewing forms and coordinating changes.
- Determine deadlines for submitting changes to forms and

getting forms to printers.

Changes to Case Management Software

- Talk with software vendors to get an estimate of how long it will take for legislative changes to be released to the court.
- Determine who is responsible or liable for changes that are incorrect.
- Determine if the court has the capability of making any of the changes itself.

Training Staff

- Determine if money is available in the budget to attend TMCEC Legislative Updates for both judges and clerks.
- Determine who is responsible for training court staff.
- Determine who is responsible for disseminating information to the police department, code enforcement officials, animal control officers, prosecutor, other city staff, and the city council.

Work with the Judge

- Get approval from the judge for changes in court processes.
- Coordinate changes with the judge.
- Review changes with the judge.

Audit

- Review changes to determine compliance with new legislation.
- Review changes to determine if processes are on budget and

timetables.

- Identify any alternative means of processing changes.
- Identify coordination issues, *i.e.*, with police department, code enforcement, *etc.*

Courts do not have a choice when it comes to change—the Texas Legislature meets every two years. To succeed at implementing change, courts must plan their change efforts.

For the courts, this includes understanding how the law works. This means that anyone involved in legislative change should be familiar with the Code Construction Act codified in Chapter 311 of the Government Code. Information about the Code Construction Act is found in Level II study guides, *Code of Criminal Procedure and Penal Code*, and *Legal Research*. If the court does not have a copy of these two guides, they

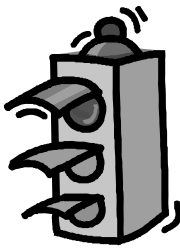
can be found on TMCEC's website: www.tmcec.com under Publications.

Planning means being prepared for the future. Although the courts may not yet know what changes the Legislature will make, they know there will be changes. Knowing this gives courts time to start planning now how to anticipate, react, and manage the change. 🚧

Public Safety Training and Red Light Camera Enforcement

by Meichihko Proctor, TMCEC Program Attorney & Deputy Counsel

Red light camera systems are designed to decrease the number and severity of crashes and increase pedestrian safety by controlling the running of red lights. Cities across the nation and Texas are choosing to use this method of traffic enforcement.



How do they work? Generally, a camera photographs vehicles that enter the intersection after the light has turned red. It usually does not photograph vehicles that enter on yellow and are in the intersection when the light changes to red. The technology is intended to catch vehicles driven by motorists who intentionally enter the intersection after the signal has turned red.

Typically, the camera system takes a series of images. The first shows the vehicle before the white stop line with the red light illuminated. The second displays the license plate of the vehicle past the white stop line. The third shows the vehicle in the middle of the

intersection with the red light illuminated. Time, date, and duration of the yellow and red lights are also recorded. Some systems do not take photographs of the vehicle operator and some systems do. Violations are issued by the local police department and sent to the registered owner of the vehicle within a number of business days after the violation.

Along with the red light camera enforcement systems, some cities have required bidders to incorporate an element of public safety training into proposals for red light camera enforcement. For example, some cities, in partnership with service providers, have designed and produced special logos for the program, such as “Safe on Red,” or “Red for a Reason.” The logo is then placed on special bumper stickers and key chains and featured in coloring books that are available to the public. This public safety training requirement could be inserted into a city’s Request for Proposals under the heading “Public Relations Support Services,” or “Public Safety Training Requirement.” Below is an example

of bid language that could be incorporated into your city’s Request for Proposals.

Public Safety Training Requirement

At the direction of, and under the supervision of an authorized City Public Information Officer, the Vendor will coordinate the provision of public safety training to include the creation of a public safety logo, the production of proposed materials using the logo such as coloring books, key chains, bumper stickers (to be specified by the Vendor). The public safety training program will be consistent throughout the contract period. The Vendor shall describe how its proposed public training program will enhance public support for program operations.

This article is intended to serve as an informational guide; however, it is written with the intention that TMCEC is not engaged in rendering legal or other professional advice. Cities should consult with their city attorney regarding legal advice on this subject matter and for legal drafting advice regarding Requests for Proposals. 🚧

FOR COURT INTERPRETERS

Code of Ethics and Professional Responsibility

80.100. Code of Ethics and Professional Responsibility. *(Effective April 1, 2003, 28 TexReg 2742)*

(a) Preamble. Many persons who come before the courts are non- or limited-English speakers. The function of court interpreters and translators is to remove the language barrier to the extent possible, so that such persons' access to justice is the same as that of similarly situated English speakers for whom no such barrier exists. The degree of trust that is placed in court interpreters and the magnitude of their responsibility necessitate high, uniform ethical standards that will both guide and protect court interpreters in the course of their duties as well as uphold the standards of the profession as a whole. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

(b) Applicability. This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary. This code is therefore intended not only to set forth fundamental ethical precepts for court interpreters to follow, but also to encourage them to develop their own, well-informed ethical judgment.

(c) CANON 1: ACCURACY AND COMPLETENESS. Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation. The register, style and tone of the source language should be conserved. While interpreting or translating, court interpreters are to use the same grammatical person as the speaker.

Guessing should be avoided. Interpreter errors should be corrected for the record as soon as possible.

(d) CANON 2: REPRESENTATION OF QUALIFICATIONS. Interpreters shall accurately and completely represent their certifications, accreditations, training, education, and pertinent experience. Court interpreters shall bring to the judge's attention any circumstances or conditions that impede full compliance with any canon of this code, including, but not limited to: interpreter fatigue, inability to hear, or inadequate knowledge of specialized terminology, and must decline assignments under conditions that make such compliance unattainable.

Acceptance of a case by an interpreter conveys linguistic competency in legal settings.

(e) CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICTS OF INTEREST. Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall immediately disclose to the Court and all parties any real, potential or perceived conflicts of interest. Interpreters shall abstain from comment on cases in which they serve. An interpreter who is also an attorney should not serve in both capacities in the same matter, unless agreed to by the judge and all parties.

(f) CANON 4: PROFESSIONAL DEMEANOR. Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

(g) CANON 5: CONFIDENTIALITY. Interpreters shall not disclose privileged or

confidential communications or information acquired in the course of interpreting or preparing for interpretation, unless authorized by the Court or by law.

(h) CANON 6: SCOPE OF PRACTICE. Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter. An interpreter may convey legal advice including the explanation of forms and/or services to a person only while an attorney is giving it.

(i) CANON 7: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE. Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the judge.

(j) CANON 8: DUTY TO REPORT ETHICAL VIOLATIONS. Interpreters shall report to the judge any effort to influence or impede the performance of their duty, or their compliance with any legal requirement, any provision of this code, or any other official policy governing court interpreting. An interpreter having knowledge that another interpreter has committed a violation of any provision of this code shall inform the judge and/or the appropriate licensing authority.

(k) CANON 9: PROFESSIONAL DEVELOPMENT. Interpreters shall

Interpreter's Code continued on page 33



Assessing Threats in Our Courts

by Lois Wright, TMCEC Program Attorney

Courtroom violence has undoubtedly increased in recent years, along with school shootings, sectarian violence, random acts of terrorism, and countless other classifications of crimes that accompany a rapidly industrializing planet.

Informal research by the National Sheriff's Association suggests that since 1970, eight state or local judges, three local prosecutors, 42 court participants, and at least five law enforcement officers have been killed in and around local courthouses.¹ And those numbers only represent a best estimation, since no uniform system for tracking judicial violence exists among the states.

Court rulings even in seemingly simple cases can trigger feelings of anger and revenge that manifest as threats or violence against contributors to the justice system. Threat management, while more discreet than its quantifiable reactive counterpart, is a highly effective form of proactive court protection. Someone on every court security team should be assigned to quickly assess threats, accurately determine how to protect judges against various levels of threats, and collect and share intelligence on threats against judges and court personnel.

The Bureau of Justice Assistance recently published a bulletin about threat management processes to facilitate the reduction of and appropriate reaction to violence committed and attempted against the judiciary.² It is critical that every city designate a threat manager to handle all threats before the court. The threat manager or contract personnel should

train all staff on behaviors constituting inappropriate communication or contact and how to report them. These initial reports will be used to glean facts about a situation and determine the appropriate response.

Reports should be accepted from all levels of court personnel—from judges and clerks to mail handlers and parking lot attendants—because the people with the most public exposure are the most likely to see, hear, or receive inappropriate communications or contact.

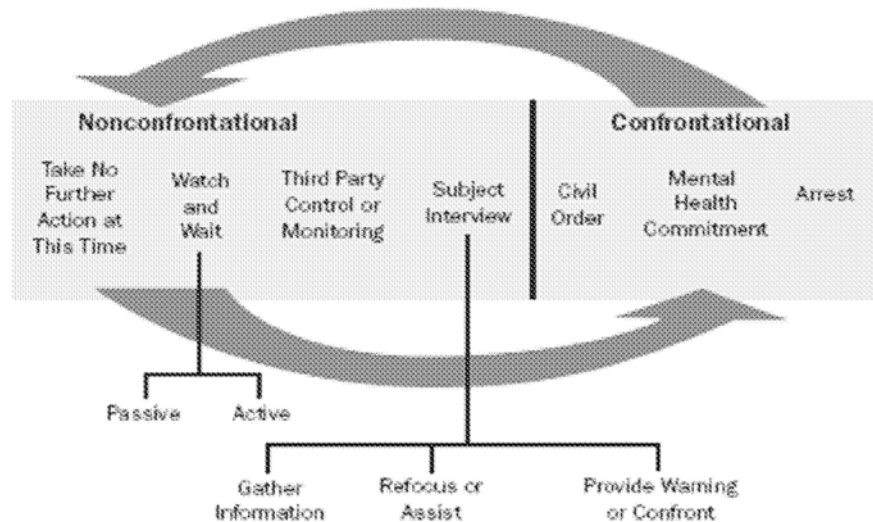
Tracking systems, whether highly sophisticated computer databases or simple index card systems, should be easily accessible by other agencies when cases span multiple levels or geographical jurisdictions of the court. Additionally, inappropriate communication or contact (IC&C)

reports should maintain, at a minimum, the following information:

- A case summary along with information regarding the case specifics;
- The manner in which the IC&C was delivered;
- The context of the situation and any exact quotes used;
- Demographics of the suspect, if known;
- Target information; and
- Initial perceptions regarding a possible motive.

Based on the IC&C data and subsequent research, the threat manager should provide an assessment of the risk and design a suitable protective response. A subject can be either a “hunter”—someone who attacks without having made threats or

Figure 1: Threat Management Strategies



From Frederick Calhoun & Stephen Weston, *Protecting Judicial Officials: Implementing an Effective Threat Management Process* 5.


Copyright 2006, Bureau of Justice Assistance.

a “howler”—someone who makes threats but never attacks. In order to predict the subject’s behavior, the threat manager should consider the person’s background, the level of despair they may be facing, the person’s proclivity towards violence, and previous behavior that was related to the attack.

When the time comes to issue a response, it will vary widely, depending on the facts of the case. Figure 1 presents an example of the intrinsic fluidity and range of responses involved in threat management.

Targets of threats related to specific court cases are often already aware or suspicious of dangerous suspects. Other bystanders or court employees may have their own impressions about certain persons as well. A security briefing to the target and other people who may be affected will help amalgamate the information that is available and quell extraneous rumors or suspicions. Frequent updates and information dissemination will put potential targets at ease and dissipate fear throughout the court.

Remember that there is rarely closure in a threat management case. Arrest,

conviction, the passage of time: none of these factors ensure that the subject will never be heard from again. Threat management is more closely related to a behavioral science than a legal process, but with due consideration, it offers a great return to our justice system. 

¹ Knowledge and Info. Services Off. & George Perkins, *Protecting Court Staff: Recognizing Judicial Security Needs* 2-3 (Natl. Ctr. for St. Courts 2006).


² Frederick Calhoun & Stephen Weston, *Protecting Judicial Officials: Implementing an Effective Threat Management Process* 1-7 (Bureau of Just. Assistance 2006).

Court Interpreters

On May 23, 2007 TMCEC will offer eight hours of continuing education for Licensed Court Interpreters at the Omni Westside Hotel in Houston. Topics to be discussed include: *Laws and Regulations Affecting Court Interpreters*, *Interpreter’s Ethics*, *Courtroom Terminology*, *Trial Courts Procedures*, *Jurisdiction*, and *Case Law Update on Interpreter Issues*. The registration fee is \$50. The program is designed for interpreters working on a full-time basis in municipal courts. The school is designed to provide eight hours of continuing education for court interpreters licensed by the Texas Department of Licensing and Regulation (TDLR), including two hours of ethics. It is **not** a preparation course for the licensing exam. To register, please use the registration form found on page 27 in this journal.

TMCEC has set up a web page for municipal court interpreters: www.tmcec.com/Interpreters.html. There is also a listserv for municipal court interpreters. To join, email your name, email address, and court name to tmcec@tmcec.com. In the subject line, insert “Request to Join Court Interpreter Listserv.” Questions about the program can be addressed to Hope Lochridge or Lois Wright at TMCEC (800/252-3718).

Interpreter’s Code continued from page 31

continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields. Interpreters should keep informed of all statutes, rules of courts and policies of the judicial system that relate to the performance of their professional duties. 

Tired of Sharing?

The Recorder is sent at no charge to municipal judges and court support personnel who attend TMCEC programs. If members of your local law enforcement or members of other levels of the judiciary would like to subscribe, the cost is \$50 for four issues each year. To subscribe, email tmcec@tmcec.com. We then will send an invoice for payment.



Municipal Traffic Safety Initiative: News You Can Use

Costs and Benefits of Improving Traffic Safety in Your Community

by Paul Isham, Attorney-at-Law, Lago Vista, and Noël Wells, TMCEC Administrative Assistant

Although statistics reported by the National Highway Traffic Safety Administration (NHTSA) indicate that traffic safety continues to improve within the country, traffic collision-related injuries and fatalities remain at a staggering high. Every year in America, traffic collisions are responsible for approximately four million emergency room visits, half a million hospitalizations, and 40,000 American deaths. Communities manage the costs of traffic crashes, including the economic and emotional impact on their citizens. Fortunately, every city has the opportunity to take steps to improve traffic safety within their community.

Research and statistics from NHTSA show important trends that provide a framework for evaluating possible targets for safety improvements across the country. In general, the majority (64%) of people killed or injured in crashes were drivers (70%), males have a higher injury rate than females, and 45% of traffic fatalities are alcohol-related. In

Texas, 3,504 people died in 2005, down 2.2% from the previous year. However, Texas remains second to California in the number of traffic fatalities suffered per year, particularly among younger citizens. The impact hits hard in Texas cities since over 58% of all fatalities occurred on streets and roadways commonly considered to be under the control of municipalities or other local entities. This takes a tremendous economic toll; in Texas, motor vehicle crashes resulted in \$19.8 billion in statewide costs in 2000, again, second to California.

Death and serious injury from traffic crashes affect everyone and require everyone to be accountable. Most motor vehicle injuries are no accident. Like most medical conditions, these injuries are predictable and can be prevented or controlled. Studies have proven that traffic laws combined with high visibility law enforcement does actually save lives. Even with statistics that show that wearing a safety belt can significantly reduce the risk of death and serious injury in motor vehicle crashes, 18% of

passenger vehicle occupants are still not buckling up. Young males living in rural areas and drive pick-up trucks are especially inclined to drive without a seatbelt and are also at higher risk of being involved in fatal crashes. Targeted, statewide ad campaigns such as “Click it or Ticket” as well as increased traffic enforcement of seat belt laws serve as continuous reminders to the public of the necessity to buckle up. These measures attempt to combat careless behavior, and more than ever, people are using seat belts. Continued campaigning will only help to reinforce these fundamental safety precautions.

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Traffic law enforcement is one of the most important factors in the crusade to increase safety on public streets and roadways. Enforcement can also be an effective tool for reducing criminal activity. The “Looking Beyond the Ticket” traffic program implemented in Peoria, Illinois increased criminal arrests by 34%,

decreased traffic crashes by 12%, and increased traffic ticket issues by 16%, simply through a proactive effort to treat every traffic stop as a unique opportunity to improve traffic safety. A similar approach in Albuquerque, New Mexico, called the “Safe Streets” program helped to reduce crimes against people and property by five percent, traffic crashes by 12 percent, and traffic fatalities by nearly one-third by focusing on high crime and high collision areas within the city. Examples like these show that a thoughtful approach to traffic enforcement and a proactive mindset create measurable and sustainable results that benefit the entire community.

Improving traffic safety is not simply a matter for police departments to handle. It requires the involvement of your city governing body. Administrative staff, municipal judges, prosecutors, and the community must make a collaborative effort to help manage the public’s negative perception of traffic enforcement. Community opinions can be changed through education, public relations, and media coverage.

Educating and involving your community are essential elements of a successful traffic enforcement program. Furthermore, your community can receive the benefits of improved traffic enforcement without requiring costly resources.

Numerous resources are available to assist cities in creating and managing traffic safety programs in their communities. The NHTSA website (www.nhtsa.dot.gov) holds valuable statistics and trends, and the Texas Department of Transportation's site (www.dot.state.tx.us) contains information for maintaining a "safe community." The Governor's Highway Safety Association's site (www.ghsa.org) is also an excellent resource for initiating a traffic enforcement program. With continued persistence and the initiative of every municipality, implementing a strong traffic law enforcement program will prevent and reduce motor vehicle injuries and deaths, reduce crime rates, and become an integral part of the community policing policy.

TMCEC encourages court personnel to log onto the TMCEC blog for traffic safety issues and share effective solutions in their communities on these important issues. Go to: <http://municipaltrafficsafetyinitiative.blogspot.com>. 

Trend of Texas Fatalities 2001-2005

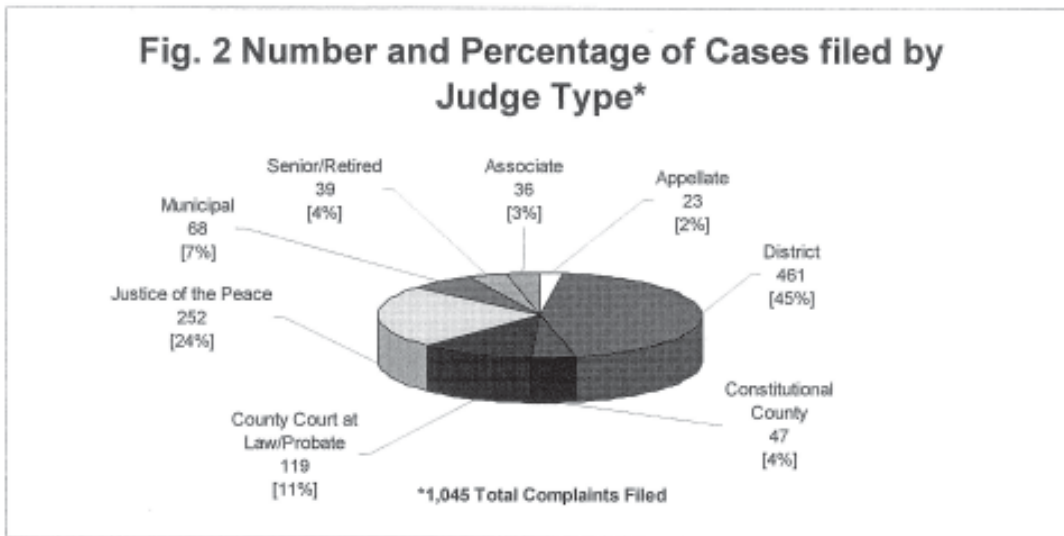
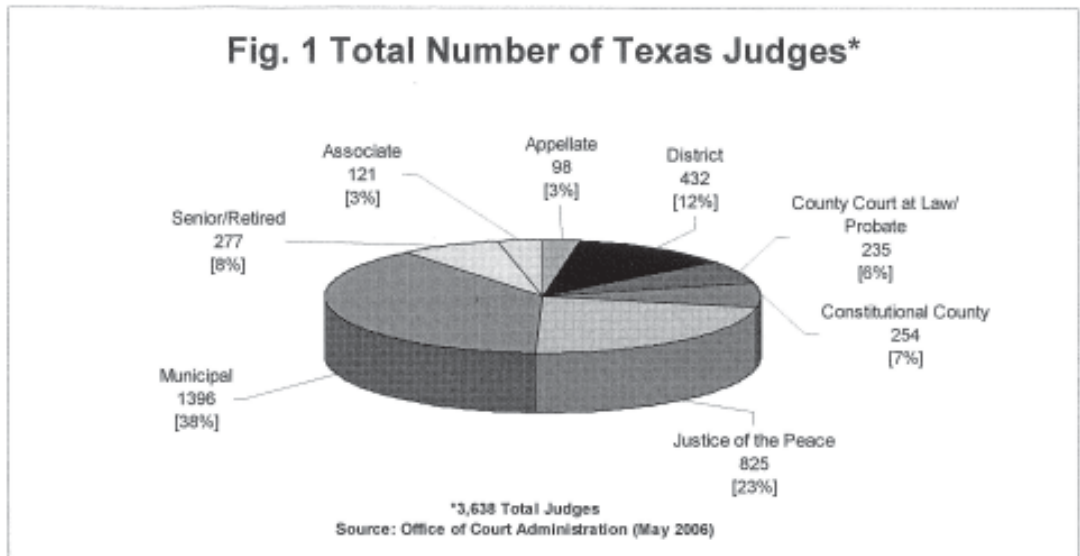
	2001	2002	2003	2004	2005
Total Fatalities	3,736	3,823	3,821	3,699	3,504
Alcohol-Related	1,807	1,810	1,771	1,704	1,569
Speeding Involved Crashes	1,423	1,580	1,560	1,466	1,426

Alcohol-Related Fatalities 2005

2005	Alcohol-Related (Number)	Alcohol-Related (%)	Fatalities where Highest BAC in Crash was .08+	Percentage where Highest BAC in Crash was .08+
Texas	1,569	45%	1,371	39%
US	16,885	39%	14,539	33%

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Ethics Update



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