

Case Law and Attorney General Opinion Update Academic Year 2008

by Ryan Kellus Turner, General Counsel & Director of Education, TMCEC
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Except where otherwise noted, the following case law and opinions were handed down August 31, 2006 through October 1, 2007.

I. Constitutionality

A. 5th Amendment

Does the assessment of a surcharge pursuant to the driver responsibility program constitute double jeopardy?

Ex parte Drake, 212 S.W.3d 822 (Tex.App. Austin-2006)

No. The facts leading up to this opinion are all too familiar to most readers. Drake was previously convicted in municipal court for failing to maintain financial responsibility and paid a fine. Afterwards the Department of Public Safety notified Drake that the surcharge imposed under the driver

responsibility program was due and that her driver's license would be suspended if she did not pay it within 30 days. She failed to pay the surcharge and her license was suspended. Three months later she was arrested for driving while license suspended (DWLS). This opinion arose from a pretrial writ of habeas

Case Law continued on page 4

New Educational Offerings

TMCEC is offering two conferences this year that vary from the typical regional programs or the introductory week long programs: the *CoLoGo Technology Conference* on January 29-31, 2008 and the *Traffic Safety Conference* on May 21-23, 2008. The TMCEC staff encourages you to register for both – more information is contained inside this issue of *The Recorder* and a summary is shown below:

Co LoGo Technology Conference: January 29-31, 2008 - Crowne Plaza Hotel, Austin.

Learn about the latest in technological advances for your

courts. Program offered in conjunctions with the other judicial education centers. Bus excursion to see the exhibits at the Austin Convention Center offered by the Government Technology Show. Targeted audience: Judges, clerks and court IT staff. Attendance does not count toward mandatory judicial education requirements for judges. It does count toward clerk certification requirements. Registration fee: \$175 before January 1; \$200 afterwards. Housing and meals are at individual or city's expense.

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AROUND THE STATE

TMCA Judge and Clerk of the Year

At the September TMCA Annual Meeting in Dallas, the Outstanding Judge and Clerk for 2007 were announced. Information about individual is shown below and the Texas Municipal Courts Education Center (TMCEC) congratulates each. These awards honor those judges and clerks who demonstrate leadership and innovation in their courts.



The Honorable Deanie King was selected Judge of the Year for her extensive and long term commitment to juvenile justice issues in Nueces County. She has presided over the specialized Corpus Christi Juvenile Municipal Court and has been instrumental in raising greater awareness of the needs of juveniles and alternative juvenile disposition options in the Corpus area. Judge King graduated Magna Cum Laude from Sam Houston State University with a B.S. in Criminology and

Corrections (1982) and received honors and acknowledgement as a Criminal Justice Scholar. She earned her Juris Doctorate from Texas Tech University School of Law (1986). Judge King received the designation of Certified Public Manager from Texas A&M University Corpus Christi in 2006.

Judge King has served on many boards and committees involving youth, including service as a steering committee member of Youth Opportunities United and a member of the South Texas Mentoring Alliance, the Child Abuse Prevention Task Force, and the National Truancy Prevention Association. She also currently serves as Director Place 8 of the Municipal Judges Section of the State Bar of Texas, as a council member of the Women and the Law Section of the State Bar of Texas, and as a steering committee member for the National League of Cities' Municipal Network for Disconnected Youth.

Tracie Glaeser, Court Manager for the Lewisville Municipal Court, was selected Clerk of the Year. Ms. Glaeser was chosen for her numerous contributions to the education program throughout Texas, both offered by the TMCEC, the Texas Court Clerks Association (TCCA), and local chapters of TCCA. Ms. Glaeser was the 11th clerk in Texas to earn her Level III certification. She currently serves as Education Chair of the TCCA Education Committee that has oversight over the Clerks Certification Program. She has also served as President, Secretary and Treasurer of the Texas Court Clerks Central Texas Chapter and as Director at Large for the TCCA. Her recent move from Round Rock Municipal Court to Lewisville will allow her to share her considerable expertise with the TCCA chapters in the North Texas area.

In FY 08, information about the awards program will be sent in late Spring/early summer to all TMCA members. TMCA board members have traditionally not been eligible for nomination. 🗳️

The Important Role of Municipal Judges in Child Passenger Safety

by Bev Kellner, Program Coordinator, Texas Cooperative Extension, Passenger Safety

Safety belts and child restraints are the most effective tool in reducing deaths and injuries. Nevertheless, almost half of the children 14 years of age and younger, who were in fatal crashes as recently as 2005, were unrestrained. In that same year, 203,000 child occupants were injured. While we keep trying to improve such sad statistics, it will be many years, if ever, before we reach our goal of zero unrestrained children. The two keys in preventing such deaths and injuries to children in motor vehicle crashes are *enforcement* and *education*. Campaigns centered on enforcement, as well as those focused on education, have been effective in reducing child fatalities and injuries from crashes.

Enforcing both safety belt laws and child restraint laws go hand in hand in saving young lives, especially as adult safety belt use has a direct correlation on child restraint use. A study conducted by the National Highway Traffic Safety Administration (NHTSA), using data from 1991-2001, showed that when children were riding with an unrestrained driver they were four times more likely to be unrestrained as compared to being with a driver that was wearing a safety belt.

In the past 20 years, child restraints have been credited with saving over 7,000 lives. For infants under one year old, child safety seats reduce the likelihood by 71% of infants being killed in a vehicle crash. For toddlers 1-4

years of age, the risk is reduced by 54%. Booster seats help to protect children ages 4-7 and reduce their risk of injury in a crash by 59%. Despite these facts, a 2006 NHTSA study found almost half of children between 20 and 40 pounds were not riding in appropriate child safety seats for their age and weight.

Municipal courts have a direct impact in saving lives. Not only do municipal judges encourage enforcement of the child restraint and safety belt laws, they can also refer violators to a Texas Education Agency approved course. A referral to a nationally certified child safety seat technician can also help to educate parents on the correct selection, use and installation of a child safety seat.

Certified child passenger safety technicians are readily available statewide, and there is no charge for such assistance. Passenger Safety, Texas Cooperative Extension, offers a website (<http://buckleup.tamu.edu>) for parents to locate a certified technician in their area. Parents can enter their zip code, city or county to locate a technician for a free inspection to make sure they are transporting their children correctly.

Municipal judges, working together with law enforcement and certified technicians, can make a profound difference in protecting Texas children from needless injuries and deaths as a result of motor vehicle crashes. 🚗

SAFETY BELT LAWS

Back Seat

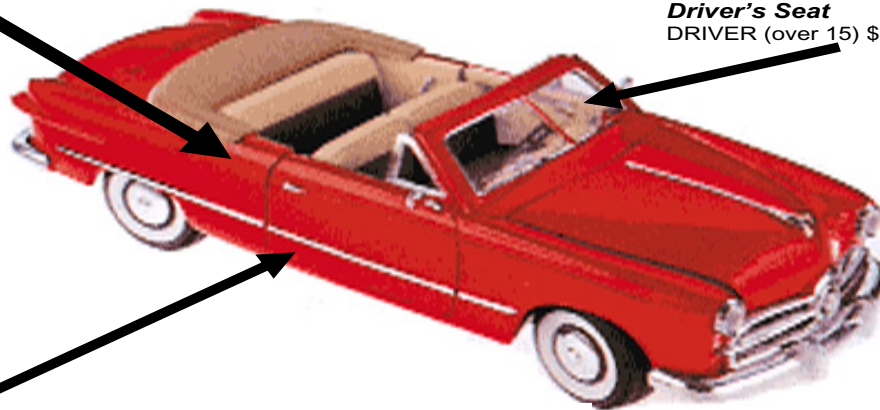
ADULTS (17 and over) No violation
CHILDREN (5-16) \$100 - \$200 fine to driver
CHILDREN (under age 5 and under 36 inches tall) \$100 - \$200 fine to driver

Driver's Seat

DRIVER (over 15) \$25 - \$50 fine

Front Passenger's Seat

ADULTS (17 and over) \$25 - \$50 to offender
ADULTS (15 and under 17) \$25 - \$50 to offender or driver
CHILDREN (5-16) \$100 - \$200 to driver
CHILDREN (under age 5 and under 36 inches tall) \$100 - \$200 to driver



corpus alleging that surcharge imposed under the driver responsibility program constituted a second punishment and, therefore, violated the Texas Constitution's guarantee against double jeopardy.

In rejecting Drake's double jeopardy claim, the court repeatedly cites *Hudson v. United States*, 522 U.S. 93, 118 S.Ct. 488 (1997) (a case that in an era of emerging "civil penalties" you may want to read). "The question remains whether the surcharges are so punitive in their purpose or effect as to make them criminal penalties regardless of the Legislature's intent. Among the factors we must consider are whether the surcharges: (1) involve an affirmative disability or restraint; (2) have historically been regarded as punishment; (3) come into play only on a finding of scienter; (4) promote the traditional aims of punishment—retribution and deterrence; (5) apply to behavior that is already a crime; (6) have a rational alternative purpose other than punishment; (7) are excessive in relation to this alternative purpose." 212 S.W.3d 822 at 826.

The surcharge assessed on Drake's driver's license following her conviction and fine for driving without financial responsibility were deemed not a criminal punishment in violation of the double jeopardy guarantee against multiple punishments for the same offense, and the suspension of her driver's license for failing to pay the surcharge was not constitutionally tainted.

While concise in its reasoning, the courts reliance on *Hudson* for some readers may be hard to digest (e.g., "Monetary penalties have long been recognized as enforceable in civil proceedings and are not historically

viewed as punishment.") 212 S.W.3d 822 at 826.

B. 4th Amendment

1. Did peace officers violate the 4th Amendment during execution of a search warrant?

Los Angeles County v. Rettele, 127 S. Ct. 1989 (2007)

On December 11, 2001, after a three month investigation, a peace officer obtained a search warrant for two houses where he believed he could find four suspects believed to be involved in a fraud and identity-theft crime ring. All four were African-Americans. According to public records one of the suspects owned a nine millimeter handgun. Six officers were involved with the execution of the search warrant. The officers with guns drawn entered the house and then a bedroom in which the plaintiffs were in bed under bed sheets. The plaintiffs, who were white, were ordered to get out of bed despite being naked. They were held at gunpoint for one to two minutes before being allowed to dress. The officers apologized to the plaintiffs, thanked them for not becoming upset, and left within five minutes of arriving.

The Court ruled that the officers did not act unreasonably under the Fourth Amendment in executing the search warrant. Concerning the plaintiffs' race, the Court noted that when the officers ordered them from their bed, they had did not know whether the African-American suspects were elsewhere in the house. The officers, who were searching a house where they believed a suspect was armed, could have secured the premises before deciding whether to continue the search. The Constitution does not require an officer to ignore the possibility that an armed suspect

may sleep with a weapon within reach. The officers were not required to turn their backs to allow the plaintiffs to retrieve clothing or to cover themselves with the bed sheets. And there was no allegation that the officers prevented the plaintiffs from dressing longer than necessary to protect their safety.

It is important to note that the plaintiffs did not challenge the validity of the search warrant or the means by which it was obtained.

2. Did the peace officers ramming of respondent's vehicle to stop public endangerment violate the 4th Amendment?

Scott v. Harris, 127 S. Ct. 1769 (2007)

No. Because the car chase posed a substantial and immediate risk of serious physical injury to others, Officer Scott's attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott was deemed entitled to summary judgment.

3. Are all occupants of a car "seized" for purposes of the 4th Amendment during a traffic stop, or just the driver?

Brendlin v. California, 127 S. Ct. 2400 (2007)

Just as the driver of a car is seized during a traffic stop, so are occupants.

Prior to this case, the law was clear that a traffic stop seized the driver of the car. However, the Court had never expressly held that a traffic stop in fact seizes everyone in the vehicle.

In this case, the car's registration had expired, but the owner had applied for a renewal, and a valid temporary registration permit was properly affixed to the car. Nevertheless, the peace officer

decided to investigate further. The defendant argued that the police had neither probable cause nor reasonable suspicion to make the traffic stop.

The trial court denied the motion, reasoning that Brendlin was first “seized” at the point he was removed from the car and arrested. The court of appeals reversed. The California Supreme Court reversed the court of appeals because (1) Brendlin was not the initial focus of the police’s investigation, (2) only the driver of the car, not Brendlin, was in a position to submit to the officers’ show of authority, and (3) under the opinion of the court of appeals occupants of cars merely stuck in traffic would also be deemed “seized.”

In rejecting the California court’s holding as an incentive for the police to conduct “roving patrols” that would violate the 4th Amendment rights of drivers, the U.S. Supreme Court ruled, reviewing its prior cases defining the seizure of a person under the 4th Amendment, that Brendlin was seized and therefore could contest the validity of the stop of the vehicle. The Court stated that any reasonable passenger in Brendlin’s position would have understood the officers to be exercising control to the extent that no one in the car was free to depart without their permission. The case was accordingly remanded to the California Supreme Court for further proceedings.

4. Did the record substantiate the trial courts conclusion that the peace officer’s warrantless search of defendant during investigative detention was justified by furtive gesture?

Canales v. State, 221 S.W.3d 194 (Tex.App.-Houston [1 Dist.] 2006)

No. A peace officer is permitted to detain an individual temporarily if the officer has a reasonable suspicion that something out of the ordinary is occurring and that unusual activity is related to crime. An officer must be able to articulate facts that when considered together with any rational inferences that may be made from those facts, lead the officer to conclude that the detained individual is, has been, or will soon be involved in criminal activity. The detention may not last longer than is necessary to complete the purpose of the stop; once the reason for the stop is satisfied the detention may not be used as a means for the officer(s) to go looking for unrelated criminal activity. The court of appeals held that the detention of the appellant was justified. There were sufficient facts in the record which supported the peace officer’s decision to temporarily detain the appellant and question him.

A vehicle may be searched without a warrant if the officer has probable cause to believe that there is contraband or evidence of a crime in the vehicle. In this case, one of the two arresting officers did not testify at the suppression, but told the peace officer who did testify that that he witnessed the appellant put his hand between the seat and console as the testifying officer approached the vehicle. The general rule regarding similar gestures, often called furtive gestures, is that furtive gestures alone do not establish probable cause for a search because such movements are ambiguous and potentially innocent. Here, there was no evidence in the record to establish that the non-testifying peace officer had any reason to believe that there was contraband or evidence of a crime in the vehicle, other than the appellant’s gesture. Thus, there was no probable cause.

C. 1st Amendment

Does Section 1704.109 of the Texas Occupations Code violate the 1st Amendment by prohibiting bail bondsmen from certain forms of solicitation of business?

Pruett v. Harris County Bail Bond Board, — F.3d —, 2007 WL 2421744 (C.A.5 (Tex.))

Yes. Pruet, a bail bondsman, challenged the constitutionality of Section 1704.109 of the Texas Occupations Code. Specifically Pruet argued that Subsection (b) of Section 1704.109 violates the 1st Amendment. Subsection (b) prohibits a bail bondsmen from soliciting any business regarding an outstanding warrant unless the person subject to the warrant is a previous customer; and restricts the time of solicitation after arrest, prohibiting solicitation within 24 hours after arrest, in person or by telephone between the hours of 9 A.M. and 9 P.M., either with or without a warrant. Pruet argued that these provisions restrict his commercial speech.

The rule to determine if a restriction on commercial free speech violates the 1st Amendment is from *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Com. of New York*, 447 U.S. 557 (1980). In *Central Hudson*, the Supreme Court developed a three-prong test to analyze restrictions on commercial speech. First, the State must assert a substantial interest to be achieved by the restrictions. Second, the State must show that the restriction directly advances the state interest involved. Third, if a more limited restriction would serve the government interest as well, the excessive restrictions cannot survive (447 U.S. at 564).

The 5th Circuit Court of Appeals held that the portion of the statute

that does not allow bail bondsmen to solicit individuals with outstanding warrants unless they are existing customers is unconstitutional. The court held that this provision fails the third prong of the *Central Hudson* test; the provision is too restrictive because it is not drafted narrowly enough and other, less restrictive means could have been employed to advance the State's interests. In order to remedy this, the court suggests that the Legislature could amend Section 1704.109 to include a time limit on solicitation. This would allow the State to advance its interest – giving peace officers time to act on warrants – while not being too restrictive on the bondsmen's commercial speech.

Regarding the second portion of the statute, the court held that the 24-hour restriction was unconstitutional while the nighttime ban is constitutional. The court held that the 24-hour restriction fails the second prong of the *Central Hudson* test; the restriction does not directly advance the state's interest of preventing harassing solicitations. However, the nighttime ban did directly advance the state's interests because it promotes privacy, protects against harassing solicitation. Further, the nighttime ban is drafted narrowly enough that it is not overly broad or overly restrictive.

II. Substantive Law Issues

A. Transportation Code

1. In assessing the sufficiency of evidence, when a defendant is charged with Accident Involving Damage to Vehicle, must the proof allege the cost of repair as is required in cases alleging Criminal Mischief?

Dudley v. State, 205 S.W.3d 82 (Tex.App.-Tyler 2006)

No. Dudley was convicted by a jury of failing to stop and give information after a motor vehicle accident. The Texas Transportation Code Section 550.022 states that a person commits an offense if the person is involved in an accident resulting in more than \$200.00 in damage to a vehicle and he leaves the scene of the accident without giving his name, address, and the registration number of his vehicle to the owner of the other vehicle involved in the collision. Here, Dudley argues on appeal that the State must prove that the damages to the other vehicle were in fact in excess of \$200.00. Dudley cites to two cases *Elomary v. State* and *Sebree v. State*. (*Elomary*, 796 S.W.2d 191 (Tex. Crim. App. 1990); *Sebree*, 695 S.W.2d 303 (Tex. App.—Houston [1st Dist.])).

However, both *Elomary* and *Sebree* were criminal mischief cases rather than accident involving damage to a vehicle. The criminal mischief statute requires proof of the cost to repair the damaged item as a measure of damages. The accident involving damage statute does not have a similar provision; rather the only provision dealing with damages states that the damages are limited to damages to vehicles. The Tyler Court of Appeals reasoned that without a specific provision requiring proof of the cost of repair it must be assumed that the Texas Legislature did not intend for proof of cost of repair to apply to the Transportation Code provision. The court held that the criminal mischief rule regarding damages does not apply to cases of an accident involving damage to a vehicle. Rather, it is only necessary that there be sufficient evidence to allow a finder of fact to conclude that more than \$200.00 in damage was done to the two vehicles. The court also notes that it expects that a jury would have at least some

understanding of automobiles and would also understand that by setting the bar at just \$200.00 the Legislature intended to include nearly all collisions in the statute.

2. May an "Affidavit of Right of Possession or Control" be used only by a member of the registered vehicle owner's immediate family?

Op. Tex. Atty. Gen. No. GA-0493 (2006)

No. The Texas Department of Transportation reasonably has construed Sections 18.82(3) and 18.92(a)(3)(G) of the Administrative Code to permit individuals who are not members of a vehicle owner's immediate family to claim the stored vehicle using an Affidavit of Right of Possession and Control. A licensed vehicle storage facility may release a stored vehicle to an individual who is not a member of the vehicle owner's immediate family but who presents a properly completed Affidavit and who otherwise complies with Section 18.92(a)(3).

B. Penal Code

1. Was the evidence presented at trial sufficient to support the defendant's conviction for assault by threat?

Olivas v. State, 203 S.W.3d 341(Tex.Crim.App. 2006)

Yes. The appellant, Olivas, was convicted of aggravated assault by threat, stalking, and four counts of evading arrest. On appeal, Olivas argued that the evidence was not sufficient to support a conviction of assault by threat because the State did not prove that the victim was aware that Olivas had shot at her truck. Olivas relied on the Court of Criminal Appeals' decision in *McGowan v. State*, 664 S.W.2d 355 (Tex. Crim. App. 1984). Olivas

argued that the decision in *McGowan* required that in a prosecution for assault by threat the State must prove that the victim perceived a threat as it occurred.

However, in this case the Court of Criminal Appeals clarifies the holding in *McGowan*. The Court states that the result in *McGowan* was reached because in that case there was no evidence presented that the defendant threatened the victim before stabbing her. The state failed to prove the element of threat entirely, not that the victim did not perceive the threat as it occurred. The Court in *Olivas* held that *McGowan* decision does not explicitly interpret the assault by threat statute as requiring that the victim perceive the threat. Rather, the holding is that in order to support a conviction of assault by threat there must be some evidence that a threat was made.

In *Olivas*, the Court held that there was enough evidence to support the conviction of assault by threat. The appellant had a history of leaving threatening messages on the victim's telephone, the victim had sought a restraining order against the appellant, and the victim had contacted the police about the appellant on more than one occasion. The Court held the history of threatening behavior toward the victim, the fact that the victim perceived a threat of imminent bodily harm, and the fact that the appellant used a firearm was enough to support the appellant's conviction.

2. Is a machine that records a player's winnings onto a stored-value debit card a "gambling device" for the purposes of Section 47.01(4)(B) of the Penal Code?

Op. Tex. Atty. Gen. No. GA-0527 (2007)

Yes. A stored-value card enabling the purchase of merchandise is a medium of exchange within the definition of cash and therefore does not constitute a "noncash merchandise prize" within the exception of Section 47.01(4)(B), Penal Code. Eight-liner machines rewarding play with such a stored-value card are gambling devices.

III. Procedural Law Issues

A. Jurisdiction

1. Charging Instruments

When a case is appealed from a municipal court to a county court, what action bestows appellate jurisdiction on the county court?

Schinzing v. State, — S.W.3d —, 2007 WL 2276862 (Tex.App.-Waco)

The appellate jurisdiction of a court hearing an appeal from a municipal court or municipal court of record is triggered by the filing of an appeal bond. In contrast, the original jurisdiction of the municipal court is invoked by the filing of a complaint against a defendant. Even though an appeal from a non-record municipal results in a trial de novo, there is no need for an additional charging instrument (i.e., an information) to be filed in county court. Contrary to the defendant's assertions, the Texas Constitution does not make an indictment or information the exclusive means to invoke a court's jurisdiction in a criminal case.

Are defects in an information alleging speeding subject to harmless error analysis?

Tollett v. State, 219 S.W.3d 593 (Tex.App.-Texarkana 2007)

Yes. Tollett appeals from a conviction by a jury on the Class C misdemeanor offense of speeding. Tollett's speed was clocked by radar at 73 miles per hour along a section of road with a posted speed limit of

60 miles per hour. Tollett argues on appeal the trial court erred in denying his motion to quash, the information was fundamentally defective, the evidence was factually insufficient, and the evidence was legally insufficient. Because the error in the information was harmless and the evidence was legally and factually sufficient, the judgment of the trial court was affirmed.

Though this case raises some odd questions (e.g., why was the defendant charged in county court by information despite Article 44.181, Code of Criminal Procedure) this is a rare and recent example of the court of appeals examining the raw mechanics of allegation and proof in a speeding.

2. Is the jurisdiction of the Court of Appeals limited by Chapter 30 of the Government Code to convictions affirmed in county court and where the fine exceeds \$100?

Alexander v. State, — S.W.3d —, 2007 WL 2066296 (Tex.App.-Austin)

Yes. Defendant was convicted in the City of Austin Municipal Court for violating the city's smoking ordinance and fined \$100, and he appealed. The County Court at Law, No. 1 of Travis County, affirmed, and he appealed.

The Court of Appeals held that defendant convicted in a municipal court of record and fined \$100 or less, and whose conviction was affirmed by the county court at law, could not appeal to Court of Appeals to challenge the constitutionality of city's smoking ordinance, on which his conviction was based.

Various courts of appeals have expressly or impliedly construed Article 4.03, Code of Criminal

Procedure, to give a defendant convicted in a municipal court of record and fined \$100 or less the right to appeal to the court of appeals if the sole issue is the constitutionality of the statute or ordinance on which the conviction is based. Renouncing such case law, including its own prior opinions, the 3rd Court of Appeals in Austin opined that such opinions err by failing to recognize the distinction between the appellate jurisdiction of the courts of appeals (which is prescribed by Article 4.03) and the defendant's right to invoke that jurisdiction (which in cases originating in a municipal court of record is determined by Section 30.00027, Government Code).

The courts appeared to send a rescue flare of sorts to the Legislature. "We do not know if this distinction between cases that originate in municipal courts of record and cases that originate in municipal courts without record or justice of the peace courts was intended by the legislature or is merely an accident of statutory history. Although we find ourselves bound to dismiss these appeals, we invite the Legislature to revisit this issue and amend Section 30.00027(a) to permit appeals of constitutional issues without regard to the amount of the fine." (Slip Opinion at 3).

3. Did the statutory trial court of limited jurisdiction have subject matter jurisdiction to determine whether an administrative law judge properly sustained the Department of Public Safety's suspension of licensee's driver's license?

Texas Dept. of Public Safety v. Styron, 226 S.W.3d 576 (Tex.App.-Houston [1 Dist.]2007)

No. Subject matter jurisdiction concerns a court's power to hear a

particular type of case. If a trial court lacks subject matter jurisdiction, then an appellate court has jurisdiction only to set the judgment aside and dismiss the case. The trial court in question, the Harris County Criminal Court, much like a municipal court, is a statutory court of limited jurisdiction. Because the Legislature has specifically limited the subject matter jurisdiction of Harris County criminal courts to criminal cases, and because a driver's license suspension proceeding a civil matter, petitions for judicial review of administrative determinations regarding driver's license suspensions belonged one of the four civil county courts at law in Harris County.

4. Is the Texas Department of Public Safety's "Failure to Appear" system limited to traffic offenses and can it be used by courts with criminal jurisdiction other than justice and municipal courts?

Op. Tex. Atty. Gen. No. GA-0479 (2006)

No. The failure to appear system, authorized by Chapter 706 of the Transportation Code, is not limited to traffic citations. It is available for all offenses that arise in a justice or municipal court. However, other than in instances where a defendant fails to pay fines and/or court costs, the failure to appear system may not be used for offenses that arise in any other courts of criminal jurisdiction.

B. Pretrial Appeals

Does a docket sheet entry reflecting the trial court's oral ruling on the defendant's motion to suppress constitute a signed, written order for the purposes of appeal?

State v. Cox, —S.W.3d —, 2007 WL 2405125 (Tex.App.-Fort Worth)

No. The trial court orally granted Cox's motion to suppress and made a handwritten entry on the docket sheet. The trial judge did not issue a written order and declined to do so over the State's objection. The State later filed a notice of appeal. When the Fort Worth Court of Appeals notified the State that the court believed it lacked jurisdiction because there was no written order the State requested that the Court of Appeals clarify whether the docket sheet constituted a written order. Cox moved to dismiss the appeal, arguing that the docket sheet was a written order but the Court of Appeals lacked jurisdiction because the State's appeal was untimely.

The Fort Worth Court of Appeals held that a docket sheet entry does not constitute a written order for the purpose of appealing the granting of a motion to suppress under Article 44.01 of the Code of Criminal Procedure. A docket sheet entry does not memorialize the trial court's intent to authenticate the action taken. If the State wishes to appeal the granting of a motion to suppress it is imperative that the State be sure that the trial judge has issued a written, signed order.

C. Probation Revocation

1. Did the trial court abuse its discretion during a probation revocation hearing in allowing a witness to testify from the probation file when the witness did not have personal knowledge of the contents of the file?

Canseco v. State, 199 S.W.3d 437 (Tex.App.-Houston [1 Dist.] 2006)

No. Canseco was convicted in 2001 of possession of cocaine with intent to deliver. He was sentenced to six years imprisonment and six years of

community supervision. In 2005, the State moved to revoke Canseco's community supervision and the trial court held a revocation hearing. The State alleged that Canseco had violated the terms of his community supervision by failing to perform the required community service, failing to submit to drug testing, and testing positive for marijuana on several occasions. In order to revoke a defendant's community supervision the State must prove by a preponderance of the evidence that the defendant violated the terms of his or her community supervision on at least one occasion.

At the revocation hearing, Canseco's parole officer testified regarding the information in Canseco's file. Canseco objected to the officer testifying about the information in the file because the officer had only worked as Canseco's parole officer for three months; Canseco's previous parole officer created the file. The trial court overruled the objection and allowed the parole officer to testify under the business records exception found in Texas Rules of Evidence Rule 803(6).

However, the business records exception does not require that the person authenticating the record be the person that created the record or a person with firsthand knowledge of the information in the record. Rather, the Court of Criminal Appeals has held that a probation file is admissible under the business records exception if the person who made the entries in the file was a person with firsthand knowledge of the facts contained in the file.

The Court of Appeals thus held that the trial court did not abuse its discretion in admitting the probation file. There was no evidence to support Canseco's argument that the officer that

created the file was terminated for incompetence or failure to maintain adequate records.

As there is no case law specifically addressing evidence in revocation hearings in the context of deferred disposition, opinions like this one (though in the context of deferred adjudication) are noteworthy.

D. Expunction

1. Was the petitioner statutorily eligible for expunction of records, and did the county court at law lack jurisdiction to enter a conviction on the offense of issuing a bad check?

Rodriguez v. State, 224 S.W.3d 783 (Tex.App.-Eastland-2007)

No. Rodriguez was originally charged with theft by check in county court. Pursuant to a plea agreement, she pleaded *nolo contendere* to the lesser charge of issuance of a bad check, a Class C misdemeanor. The trial court accepted the plea and convicted Rodriguez of the offense of issuance of a bad check. The trial court did not place her on community supervision.

Rodriguez sought to have all records stemming from the original charge expunged. The Court of Appeals ruled that Rodriguez failed to meet the requirements of Article 55.01(a) because she was not tried, acquitted, or pardoned. Although the theft charge was dismissed, Rodriguez was convicted of a Class C offense for issuing a bad check. Thus, the charge resulted in a final conviction rendering her records ineligible for expunction.

Rodriguez also claimed that the county court at law lacked the ability to find her guilty of the Class C offense of issuance of a bad check. Rejecting this argument the court stated that no statute excluded the

county court's jurisdiction or provided for exclusive jurisdiction in either the justice or municipal court. Citing case law, the court explained that the county court had concurrent jurisdiction. Consequently, Rodriguez's conviction for issuing a bad check was not void.

2. If a defendant on deferred adjudication is subsequently arrested for violating the terms of his probation, is he entitled to expunge information about his arrest from public records pursuant to Article 55.01, Code of Criminal Procedure?

In re Wilson, 205 S.W.3d 82 (Tex.App.-Texarkana 2006)

No. Wilson was on deferred adjudication when he was arrested in April 1990 for violating the conditions of his community supervision. The basis of the revocation was a charge of Class C misdemeanor public intoxication. Wilson later sought to have information about the arrest expunged from public records. The trial court denied Wilson's request and Wilson appealed.

Articles 55.01 and 55.02 of the Code of Criminal Procedure set out the requirements and procedures for expunction. Section 55.01 provides that a person who was placed under arrest for the commission of either a felony or misdemeanor is entitled to have the record of the arrest expunged if an indictment or information charging the person with the commission of a felony has not been presented, or if an indictment or information has been presented but has been dismissed or quashed and the statute of limitations has expired before the date on which the defendant filed a petition for expunction.

The Court of Appeals of Texarkana held that Wilson was not arrested for the commission of a felony or misdemeanor. Rather, he was arrested for violation of his probation. The document that justified Wilson's arrest did not allege a violation of any criminal statute. Instead, it alleged a violation of the terms of Wilson's probation and requested final adjudication of the offense for which he was placed on deferred adjudication. Because Wilson did not meet the statutory requirements for expunction he is not entitled to have his arrest for violating the terms of his community supervision expunged.

E. Habeas Corpus

Is a defendant convicted of a fine-only offense entitled to relief pursuant to a writ of habeas corpus?

Ex parte Rinkevich, 222 S.W.3d 900 (Tex.App.-Dallas 2007)

Maybe, but in this instances the defendant failed to present a cognizable issue.

Appellee was convicted of assault by contact in the Rowlett Municipal Court. The judge assessed a \$400 fine, which appellee paid in full. Appellee filed an application for writ of habeas corpus in (Dallas) County Court of Criminal Appeals No. 1. An affidavit from appellee's trial counsel, Nancy Gail Huggins, was submitted as an exhibit to the application. In the affidavit, trial counsel states she did not advise appellee to request the trial be recorded because she mistakenly believed the assault case was before a justice of the peace. She stated her belief that the justice of the peace court was not a court of record, and an appeal would be by trial de novo. Appellee did not request the trial be recorded. Hence, the application for habeas corpus relief stemmed

from ineffective assistance of counsel claim.

The application was transferred to and received by Dallas County Criminal Court No. 6 where it was transferred to a statutory county magistrate. The magistrate entered an order containing findings of fact and conclusions of law setting aside appellee's conviction and remanding the case to the municipal court for further disposition. The county court subsequently adopted the statutory county magistrate's order. The State filed a motion for reconsideration stating it had not had notice or opportunity for a hearing, and requested the opportunity to appear for a hearing on the application. The State filed a supplemental motion for reconsideration. A hearing pursuant to the State's motion was held before the statutory county magistrate. Subsequently, the county court withdrew its previous order and entered a new order issuing the writ, vacating the conviction and returning appellee to the original position of answering the complaint. The State filed a notice of appeal.

The court of appeals rejected the argument that transferring the habeas corpus issue to the statutory magistrate was without basis and then turned to the issue of the county court granting the application for writ of habeas corpus. The court construed the State's arguments as essentially challenging the application as failing to present a cognizable issue. Holding that no cognizable issue was presented, the court side stepped most of the State's issues relating to habeas corpus and Class C misdemeanors. In fact, in dicta the court held out some apparent possibility when it stated "A defendant convicted of a misdemeanor offense may attack the

validity of the conviction by way of habeas corpus if he is either (i) confined or restrained as a result of a misdemeanor charge or conviction or (ii) is no longer confined, but is subject to collateral legal consequences resulting from the conviction." 222 S.W.3d 900 at 902.

IV. Municipal and Local Government Issues

A. Judicial Appointments

Did a former municipal judge's suit for reinstatement constitute a justiciable claim and was the city judicial nominating commission a governmental body subject to Texas Open Meetings Act?

Fiske v. City of Dallas, 220 S.W.3d 547 (Tex.App. Texararkana-2007)

No. In her pleadings, Fiske admitted that her term expired and the summary judgment evidence shows, that the city council took action to appoint new judges within 91 days of the time the preceding terms expired. Fiske, therefore, was not a holdover judge under Section 29.005 of the Texas Government Code. The court also held that the city judicial nominating commission (JNC), was not a "governmental body" subject to the Texas Open Meetings Act (TOMA), and thus former judge could not seek reinstatement to judicial post based on the JNC's alleged violation of TOMA. The JNC had no rulemaking power; it had no quasi-judicial power, and was not classified as a department, agency, or political subdivision of a county or municipality.

B. Ordinances

1. Did the district court have jurisdiction to enjoin the municipality from enforcing its ordinance?

City of La Marque v. Braskey, 216 S.W.3d 861 (Tex.App.-Houston [1 Dist.] 2007)

No. Landowner who operated state-licensed cat shelter filed suit, seeking a declaration that city's kennel location ordinance did not apply to her and an injunction. District court declared that the kennel location ordinance did not apply to landowner and issued an injunction to prevent the city from enforcing the ordinance, and the city appealed.

The Court of Appeals explained that, generally, the meaning and validity of a penal statute or ordinance is determined by a court exercising criminal jurisdiction. A court of equity does not have jurisdiction to enjoin the enforcement of a penal ordinance or statute unless (1) it is unconstitutional and (2) it threatens vested property rights with irreparable injury. If a party fails to prove the two-part test for jurisdiction then a civil court lacks jurisdiction over the cause. In this case, the ordinance's restrictions on the use of landowner's property as cat shelter did not constitute threats to vested property rights, and thus, district court did not have jurisdiction to hear landowner's lawsuit involving the city's penal kennel ordinance.

Beware; the dictum of this case has significant potential for misuse and to cause confusion. While the court of appeals explains the two-part test for jurisdiction, it does not thoroughly explain the parameter within which a court of criminal jurisdiction has the authority to determine the validity of an ordinance. When the court states "the municipal court is the proper court to hear Braskey's challenges to the ordinance" (216 S.W.3d 861 at 864), it is silent to the fact that as a

court of criminal jurisdiction, a municipal court (which is also a court of limited jurisdiction), lacks the authority to enjoin the municipality from enforcing the ordinance. While the court distinguishes between instances where ordinances are challenged facially (i.e., they are unconstitutional without regard to the circumstances they are applied) and when they are challenged in context of a specific application, they never explain that as a matter of law, a municipal court may only find someone not guilty or grant a motion for new trial for either type of challenge and that only a court of equity can enjoin the municipality from enforcing its ordinances.

2. Does the Texas Constitution's grant of general supervisory control over the commissioner's court and the jurisdiction to enjoin illegal acts empower a district court to enjoin enforcement of the penal ordinance that banned fireworks?

Morrow v. Truckload Fireworks, Inc., 230 S.W.3d 232 (Tex.App.-Eastland 2007)

No. Appellants, elected officials in Midland County, challenged the district court's decision to grant injunctive relief from an executive order banning outdoor use of all combustibles, including fireworks, in the county. The general rule is that courts of equity do not have jurisdiction to interfere with the enforcement of a criminal statute. Instead, the meaning and validity of a penal statute or ordinance should ordinarily be determined by a court exercising criminal jurisdiction. Firework vendor argued that the executive order was administrative, and not penal in nature. The Court of Appeals found that because state law allowed violations of the order to be prosecuted as a Class C

misdemeanor it was a criminal statute

The exception to the general rule lies in four classifications of constitutional arguments. Courts of civil jurisdiction have the authority to act in scenarios in which (1) the statute is enforced and the party is being prosecuted; (2) the statute is enforced and the threat of prosecution is imminent, although the party has yet to be prosecuted; (3) there is no actual or threatened enforcement of the statute and the party does not seek an injunction against its enforcement, but the statute is nonetheless integrally related to conduct subject to the court's equity jurisdiction; and (4) there is no actual or threatened enforcement of the statute and no complaint of specific conduct remediable by injunction.

Because the court concluded that the fireworks vendor did not have a vested property right in inventory and leases, the district court did not have jurisdiction to enjoin enforcement of the fireworks ban. Accordingly, the Court of Appeals vacated the district court's injunction and remanded the cause with instructions to dismiss for want of jurisdiction.

3. On appeal, may a defendant challenge the constitutionality of an ordinance violation that gave rise to probable cause without first preserving such an argument at the trial court level?

Barnett v. State, 201 S.W.3d 231 (Tex.App.-Fort Worth 2006)

No. Barnett appeals his conviction at county court for driving while intoxicated. Barnett was driving his vehicle, a Jeep, with two female passengers sitting on top of the headrest area of the rear seats. A peace officer stopped Barnett because it was a violation of a local

ordinance to operate a vehicle with passengers seated in the way that Barnett's passengers were. Barnett was subsequently arrested for driving while intoxicated. The trial court denied Barnett's motion to suppress and appellant then entered a plea of *nolo contendere*. On appeal, Barnett argued that the city ordinance that gave rise to the probable cause for the officer's initial stop was facially unconstitutional.

There are two kinds of constitutional challenges: that a statute is unconstitutional as applied, and that a statute is facially unconstitutional. Generally, the constitutionality of a statute as applied must be raised at trial in order to preserve the error. A challenge that a statute is facially unconstitutional does not need to be raised at trial in order to preserve the error and a defendant may raise the issue for the first time on appeal. However, this rule only applies to challenges regarding the statute under which the defendant was convicted. Here, Barnett was challenged the constitutionality of the ordinance that provided probable cause for the officer to stop him not the driving while intoxicated statute. Thus, the Fort Worth Court of Appeals held that Barnett could not raise the issue on appeal because he failed to preserve the error by presenting the argument to the trial court.

4. May a pool hall operate on a "BYOB" basis without a permit or license from the Texas Alcoholic Beverage Commission? Is the City of Corsicana prohibited from regulating a "BYOB" pool hall through a city ordinance?

Op. Tex. Atty. Gen. No. GA-0561 (2007)

The answer to both questions is yes. A pool hall may operate on a "bring

your own bottle" (BYOB) basis without a permit or license from Texas Alcoholic Beverage Commission (TABC). The TABC, as a state agency, has only the authority that is specifically granted to it through the Legislature and any authorities that may be implied from the powers specifically granted by the Legislature. The powers, duties, and functions of TABC are laid out in the Alcoholic Beverage Code. The Code does not refer to BYOB establishments or the regulation of BYOB establishments. Because there has been no specific grant of authority for TABC to regulate a BYOB establishment the pool hall in question may operate as a BYOB establishment without obtaining a license or permit.

Although Attorney General opinions generally do not construe particular city ordinances, Opinion GA-0561 does briefly discuss the authority of the City of Corsicana to regulate the BYOB pool hall. The general rule for alcoholic beverages is that the Alcoholic Beverage Code exclusively governs the regulation of alcoholic beverages in Texas. The Alcoholic Beverages Code does not authorize the City of Corsicana to regulate the possession or consumption of alcoholic beverages at the BYOB pool hall.

5. May municipalities prohibit a registered sex offender from living in certain locations within the municipality?

Op. Tex. Atty. Gen. No. GA-0526 (2007)

It depends on whether a municipality is general law or home-rule.

General law municipalities are political subdivisions created by the State and possesses only those privileges and authorities explicitly conferred to them by State law.

There is no state statute or constitutional provision specifically authorizing a general law municipality to adopt a restriction regarding where a registered sex offender may and may not live within the municipality.

In a home rule municipality, perhaps. Home rule municipalities do not rely on specific grants of authority from the Legislature. Rather, a home rule municipality looks to the Legislature only for a specific limitation on its power. A home rule municipality may not adopt any ordinance that is in contravention of the State Constitution or any statute enacted by the Legislature. If a municipal ordinance regulates the same subject as a state statute, any part of the ordinance that conflicts with the state statute is unenforceable. There is no state statute that would conflict with a home rule municipality's ordinance prohibiting a registered sex offender from living in certain locations. Article 42.12 of the Code of Criminal Procedure and Section 508.187 of the Government Code both create a child-safety zone that prohibits certain sex offenders from entering certain areas. However, the child-safety zone statutes do not conflict with the proposed municipal ordinances. Instead, the two are complementary; a sex offender may comply with both the municipal ordinance and the state statute.

When considering whether the proposed municipal ordinances violate the State or Federal constitutions, in order to be constitutional it is only necessary that the proposed regulation or classification be rationally related to a legitimate state interest. The courts consider the totality of the facts and circumstances surrounding

the law or ordinance. The Attorney General does not reach a decision regarding whether the proposed municipal ordinances would violate the State or Federal Constitutions. However, no court has found thus far those residence restrictions like the one proposed for the municipal ordinances violates any constitutional provision.

C. Extraterritorial Jurisdiction

Does a home-rule city have statutory authority to regulate off-premises signs in its extraterritorial jurisdiction along federally-funded primary highways?

Brooks v. State, 226 S.W.3d 607 (Tex.App.-Houston [1 Dist.] 2007)

Yes. Appellant asserted that TxDOT had exclusive jurisdiction over permitting off-premises signs in such circumstances. The Houston Municipal Court denied appellant's motion to dismiss in a written order reasoning that Texas Local Government Code Sections 216.901 and 216.902 permit a city to regulate signs in its extraterritorial jurisdiction. Appellant pleaded no contest, and was convicted of the misdemeanor offense of "Using a Sign Without a Permit" and assessed a \$500 fine. Appellant filed a motion for new trial, which was denied. Appellant appealed to county criminal court. The county criminal court affirmed the judgment.

The Court of Appeals explained that Section 216.902 has no provisions limiting a home-rule city's regulation of off-premises signs along interstates and primary highways in the city's extraterritorial jurisdiction and that nothing in that section prohibits both the State and a home-rule city from regulating concurrently off-premises signs along interstates and

primary highways in the city's extraterritorial jurisdiction.

Notably, the Court of Appeals did not address the authority of general law cities pursuant to Sections 216.901 and 216.902.

D. Designated Funds

1. Can a justice court technology fund be used to purchase technology equipment and to provide training for constables?

Op. Tex. Atty. Gen. No. GA-0560 (2007)

The Justice Court Technology Fund established under Code of Criminal Procedure Article 102.0173 may be used only for technological enhancements for the justice court and continuing education and training for justice court judges and clerks regarding technological enhancements. Whether the purchase of a computer for a constable serves as a technological enhancement for the justice court is a fact question to be determined by the commissioners court. The Fund may not, however, be used to finance continuing education and training for a constable.

Interesting to note how this opinion defers to the local governing body to "fill in the details" as the statutes in question relates to factual determinations.

2. May a district attorney accept donations of funds to supplement the compensation of the employees of the district attorney receive from the county?

Op. Tex. Atty. Gen. No. GA-0562 (2007)

District attorneys generally are not authorized to accept funds donated to compensate their employees. A commissioners court is authorized to accept such donations, and a commissioners court's acceptance of

such donations is necessary before the funds may be used to compensate a district attorney's employees.

A commissioners court that accepts funds donated on condition that the funds be used to compensate the district attorney's employees, but fails to use the funds for that purpose, risks revocation of the donation.

E. Public Information

May the El Paso County District or County Clerk establish an online electronic database of court records accessible to the public?

Op. Tex. Atty. Gen. No. GA-0566 (2007)

Yes. Section 191.008 of the Local Government Code provides that the commissioner's court of a county may provide for the creation and operation of an electronic information system to provide direct access to court records. The commissioner's court must obtain an agreement in writing from the custodian of the records to allow public access to the records. If the El Paso County commissioner's court wishes to, it may establish an electronic database to include court records maintained by the county and district clerks and the clerks must agree in writing to allow public access to the information. However, the only public information may be made available online; confidential or privileged information may not be disclosed.

Although not required by law, the Attorney General strongly encourages court clerks to redact social security numbers and bank account information from any documents or records that are to be made available online.

In determining what information should be made available through

the internet system, the commissioner's court should help to establish eligibility criteria for user access and determine what information will be classified as public information. The records maintained by each clerk must be available for free in the clerk's office but, the commissioner's court may set a reasonable fee for individuals who contract with the county for internet access to the records.

V. Judicial Conduct

A. Did the wearing of buttons displaying murder victim's image violate the Antiterrorism and Effective Death Penalty Act of 1996?

Carey v. Musladin, 126 S.Ct. 1769 (2006)

No. The Court's prior rulings on when courtroom practices prejudiced the right to a fair trial were limited to state-sponsored conduct, and had consequently left it an open question regarding the conduct of spectators. In reversing the 9th Ninth Circuit Court of Appeals, the Court ruled that the state court did not unreasonably apply clearly established federal law when it upheld the conviction.

Contrary to popular perception, this decision does not condone or even address the issue of maintaining decorum in the courtroom. Rather, it responds to the 9th Circuit's overbroad interpretation of the Antiterrorism and Effective Death Penalty Act of 1996, the statute the Court of Appeals construed in granting the defendant's petition for habeas corpus.

B. Was there sufficient evidence to conclude that a justice authorized the public use of his name and made statements about a federal judicial nominee that constituted

an endorsement? Was Canon 2B, which prohibits a Texas judge from lending the prestige of judicial office to advance the private interests of others, applicable?

In re Hecht, 213 S.W.3d 547 (Tex.Spec.Ct.Rev. 2006)

No. In a matter of first impression, a special court of review concluded, that: (1) the Commission on Judicial Conduct failed to prove that Justice Nathan Hecht, an Associate Justice on the Texas Supreme Court, authorized the public use of his name to endorse U.S. Supreme Court nominee, Harriet Miers, when he spoke to media about Meirs; (2) To violate the prohibition against authorizing the public use of his name endorsing another candidate for any public office, a judge must give permission for others to publicly use the judge's name in endorsements of the candidate; (3) Hecht's statements about Meir's did not constitute an endorsement under Canon 5(2); (4) Canon 2(B) which prohibits a judge from lending the prestige of judicial office to advance the *private interests* of others did not apply in this instance because it involved a composite of two different political systems for the selection of judges. (Emphasis added.) Texas elects most of its judges, whereas in the federal system, a nomination-confirmation process is utilized. Mier's nomination involved a "public interest," rather than a "private interest."

VI. Law Enforcement

A. May a deputy sheriff may use a county patrol vehicle to perform off-duty security work?

Op. Tex. Atty. Gen. No. GA-0480 (2006)

Article III, Section 52(a) of the Texas Constitution prohibits the

state and its political subdivisions from granting a thing of value for private use. An exception is made where the grant's predominant purpose is to accomplish a public purpose, not to benefit private parties; where there is public control over the assets to ensure that the public purpose is accomplished and to protect the public's investment; and where the public receives a return benefit. Thus, a sheriff may authorize the sheriff's deputies to use county patrol vehicles for off-duty employment without reimbursing the county only if the predominant purpose is to conserve the peace within the county, the sheriff retains control over the vehicles in a manner that ensures the peace will be conserved, and the county actually receives this public benefit.

There is no authority for a sheriff or a commissioners court to contract with a deputy sheriff to guarantee reimbursement to the county for the deputy's private use of a county patrol vehicle. Thus, neither a sheriff nor a commissioners court may set a rate for reimbursement. The sheriff, and not the commissioners court, is responsible for seeing that the sheriff's deputies use patrol vehicles only for lawful purposes.

B. Can a bail bond be accepted by a sheriff in Texas for a person that has been jailed in another state for an offense committed in a Texas county?

Op. Tex. Atty. Gen. No. GA-0515

No. A Texas sheriff lacks the authority to accept bail for an offense committed in the sheriff's county if the accused has been jailed in another state. The provisions for granting bail for a person accused of committing an offense in Texas are

found in Chapter 17 of the Code of Criminal Procedure. Article 17.20 provides that when a sheriff has a defendant in custody, the sheriff may take a bail bond for the defendant in misdemeanor cases regardless of whether the court is in session. Article 17.21 deals with felony cases and provides that if the court is in session the court fixes the amount of bail and determines if the defendant is eligible for a bond. The sheriff is then authorized to accept a bail bond in the amount fixed by the court. If the court is not in session, the sheriff may take a bail bond in the amount set by the court, or in an amount that the sheriff considers to be reasonable. However, both Article 17.20 and 17.21 require that the defendant be in the sheriff's custody or control. A person that is jailed in another state is not in the sheriff's custody or under the sheriff's control. Chapter 23 of the Code of Criminal Procedure also deals with the authority of an arresting officer or sheriff to accept bail. However, the provisions in Chapter 23 are all contingent upon an arrest; the sheriff or officer is required to have custody or control over the defendant. There is no authority for a sheriff in a Texas county to accept a bail bond for a person that is accused of committing an offense in a Texas county but has been jailed in another state. The sheriff lacks custody and control over that individual and as such cannot accept a bail bond.

C. Does 18 U.S.C. 926(c) preempt portions of Section 1701.357 of the Occupations Code relating to handgun proficiency certifications for retired law enforcement officers?

Op. Tex. Atty. Gen. No. GA-0564 (2007)

No. The federal statute, 18 U.S.C. § 926C, authorizes a qualified retired

law enforcement officer to carry a concealed weapon if the officer also carries proof of weapons proficiency. Section 1701.357 of the Occupations Code is not preempted by the federal statute. Rather, it provides a means by which some retired peace officers may obtain the proof of proficiency required by the federal law. Section 1701.357 provides that peace officers who retired with 15 or more years of service, without having had the officer's license as a commissioned officer suspended or revoked at any time during his or her service, and without any psychological or physical disabilities that affect the safe use of a handgun may obtain a handgun proficiency certificate from the head of the law enforcement agency from which the officer retired. The agency shall issue the proficiency certificate if the officer is also receiving retirement benefits from the agency. If an officer is not eligible for a certificate under Section 1701.357, he or she may also obtain a proficiency certificate under Section 411.199 or Section 1701.355.

The federal statute requires that the retired peace officer carry a certification issued by the state from which the officer has retired indicating that the officer was tested or found to meet the proficiency standard. The certification must have been issued within one year. This provision does not preempt Section 1701.357 of the Government Code because while the certificate issued under Section 1701.357 is valid for two years, Section 1701.357 also allows for an honorably retired officer to request certification annually. 📌

New continued from page 1

Traffic Safety Conference: May 21-23, 2008 - Omni Mandalay Hotel, Irving.

Learn about important legal issues related to traffic safety for municipal courts, as well as public outreach programs for our courts. Targeted audience: judges, clerks and city officials. Attendance does count toward mandatory judicial education requirements for judges and toward clerk certification requirements. Registration fee: \$50. No extra CLE fee for attorneys – approximately 14.5 hours CLE will be requested. Housing and several meals are funded by a grant from the Texas Department of Transportation.

For more information, go to page 22 of *The Recorder* or the TMCEC web site (www.tmcec.com). 📌

ORDER OF FINE COMMITMENT

CAUSE NUMBER: _____

STATE OF TEXAS § IN THE MUNICIPAL COURT
VS. § CITY OF _____
_____ § _____ COUNTY, TEXAS

TO THE SHERIFF OF _____ COUNTY, TEXAS – GREETINGS:

You are commanded to take into custody and commit to the jail of your County the above-named Defendant, who was, on the _____, day of _____, 200____, convicted before the Municipal Court in the City of _____, _____ County, Texas of the offense of _____ and was assessed a fine and court costs totaling \$ _____, of which \$ _____ is unpaid.

The undersigned finds that EITHER

- (1) the arrestee is the same person as the Defendant in the cause described above;
(2) the Defendant has intentionally failed to make a good faith effort to pay said fine and costs; and,
(3) the Defendant is not indigent and has failed to make a good faith effort to discharge said fine and costs.

OR

- (1) the arrestee is the same person as the Defendant in the cause described above;
(2) the Defendant has intentionally failed to make a good faith effort to pay said fine and costs; and,
(3) the Defendant is indigent and:
(a) has failed to make a good faith effort to discharge the fine and costs under Art. 45.049, C.C.P. (community service);
(b) could have discharged the fine under 45.049, C.C.P. (community service) without experiencing any undue hardship.

Therefore, you are commanded to keep the Defendant in custody until the sum of \$ _____ is fully paid or defendant is otherwise discharged by law. Unless otherwise specified in the judgment or sentence in said cause, pursuant to Article 45.048(b), Code of Criminal Procedure, the Court specifies that the Defendant remain in jail:

_____ hours (not less than eight (8) or more than 24) to earn.
_____ (minimum dollar amount \$50) to satisfy the fine and costs.

In the event Defendant is committed for defaulting in more than one judgment, jail credit is to be assessed:

- Concurrently (at the same time, per judgment until jail credit exceeds or equals the sum total of fine and costs).
Consecutively (“stacked,” one sentence of confinement is to follow another until jail credit exceeds or equals the sum total of fine and costs).
Consecutively with following cause(s): (List cause number(s), Court(s), date of judgment(s), offense(s), and fine and costs total(s).)

Ordered on this _____ day of _____, 200____.

Judge, Municipal Court
City of _____
_____ County, Texas

2008 Texas State Warrant Roundup

Law Enforcement Officers from across the State of Texas will be conducting a statewide warrant roundup for Class C offenses from February 16 -24, 2008.

The purpose behind this roundup is to increase levels of compliance through voluntary means or arrest. It is our belief that a unified effort across the state will help us achieve this goal.

Media releases and press conferences announcing the roundup will begin on February 1, 2008. We hope that advance media coverage of the roundup will motivate people to voluntarily take care of their warrants before it begins. Each agency is encouraged to coordinate press releases/conferences on their own or with other agencies.

There is only one requirement to participate. Each agency must be able to collect statistics (stats) that will be accumulated and released to the media at the end of the roundup. The reporting period is from February 1 to February 24, 2008. The stats to be kept are:

- Number of warrants cleared by arrest.
- Value of warrants cleared by arrest. This is the amount that the person would have paid if he/she had paid the warrant(s).
- Number of warrants cleared by other means.

This includes payment, setting for court, deferred, dismissals, etc.

- Value of warrants cleared by other means. This is the amount that the person would have paid if he/she paid the warrant(s).
- Those stats will need to be sent to tdavis@mckinneytexas.org.


Each agency will determine its own level of involvement during the roundup period and will plan its own operations. There are no other requirements but this is likely to capture media interest so each agency is encouraged to put forth its best effort.

Any agency that is interested in participating in this roundup should contact any of the following people before December 15, 2007:

Sgt. Mike Hollier, Arlington Police Department, at hollierm@ci.arlington.tx.us

Rebecca Stark, Austin Municipal Court, at Rebecca.Stark@ci.austin.tx.us

Tim Rich, McKinney Marshall Office, at trich@mckinneytexas.org

Lisa Howard, Hurst Municipal Court, at lhoward@ci.hurst.tx.us 

2008 State Wide Warrant Roundup

- Yes we wish to participant in the 2008 SWWR
- Please put us on the list to be contacted next year
- Please provide additional information

Name of Court/Agency _____

Contact Person _____

Email Address _____

Phone Number _____

Address _____ City _____ Zip _____

I agree to send out notices by February 1, 2008 and participate in the State Wide Warrant Roundup beginning February 16, 2008 in whatever capacity my city can participate.

Signature _____

FAX AGREEMENT TO: 972-547-7685 • EMAIL REGISTRATION AGREEMENT TO: lwalden@mckinneytexas.org

Converging Technologies

2008 Courts and Local Government Technology Conference

COLOGO IS COMMITTED TO KEEPING CITY AND COUNTY OFFICIALS INFORMED

Technology is always changing, growing and becoming more sophisticated. The only way to stay abreast of new and useful technologies is through a consistent effort to continually learn. The annual Courts and Local Government Technology Conference (CoLoGo) offers county and city officials and employees an opportunity to stay informed of digital and electronic trends. The conference focuses on specific ways counties can utilize valuable technology to their benefit.

A SPECIALIZED CONFERENCE

In past years, the CoLoGo Technology Conference has shared space with the Southwest Government Technology Conference (GTC). This year, the CoLoGo Technology Conference will be conducted at the Crowne Plaza Hotel with an agenda focused on technology for courts and local governments. The agenda includes a visit to the GTC trade show at the Austin Convention Center.

KEY TOPICS

- Electronic payments
- Digital archiving
- Web publishing
- Electronic evidence
- Video-magistration demonstration
- Paperless courtrooms
- Courthouse security
- Electronic court recordings
- Online legal research
- Innovative traffic technologies
- Policies and procedures for electronics usage
- Allowable expenditures of court technology and security funds

FEATURED SPEAKERS



Peter S. Vogel is the co-chair of the Internet and Computer Technology Practice Group at Gardere Wynne Sewell. He has a master's degree in computer science, and for more than 29 years, he has represented buyers and sellers of computer technology and Internet

services, including many local governments. Since 1997, Vogel has been chair of the Texas Supreme Court Judicial Committee on Information Technology. He also teaches courses on the law of ecommerce at Southern Methodist University's Dedman School of Law.



John Bradley is the district attorney for Williamson County. He graduated from the University of Houston Law Center in 1985. Bradley helped rewrite the penal code in 1993 and served as general counsel for the Senate Criminal Justice Committee. In 1996,

he served on Governor George W. Bush's Committee to Rewrite the Code of Criminal Procedure. Bradley also contributes to legal publications and has appeared on Court TV, the Jim Lehrer News Hour and National Public Radio.

CONTINUING EDUCATION

TCLEOSE hours will be requested. Municipal court clerks can also receive continuing-education credit. This program is not approved for credit towards mandatory judicial education requirements.

HOTEL INFORMATION

This year's conference will be hosted at the Crowne Plaza Hotel at 6121 North IH 35 in Austin. CoLoGo Technology Conference attendees will receive a special room rate of \$85 for a single occupancy room, \$125 for a double. Please call 512-323-5466 and request the "Courts and Local Government Technology room block" when reserving your room for the conference. The hotel has a limited number of rooms available at the special rate, so please make reservations early. The guaranteed reservation deadline is Jan. 11. **Note: TMCEC is not making hotel reservations for participants nor paying for hotel expense. All hotel and meal expenses are the responsibility of the city or individual.**

REGISTRATION

Registration for the entire conference, including the preconference sessions, is \$150 before Jan. 1, and \$175 after Jan. 1. Registration is transferable. Requests for refunds (minus a \$10 administration fee) should be submitted in writing by Jan. 1. After Jan. 1, refunds will be subject to an administrative fee equal to half the registration fee. You may register online at www.county.org or by submitting the registration form.

CO-SPONSORS

The 2008 conference is co-sponsored by Texas Municipal Courts Education Center, Texas Center for the Judiciary, Texas Justice Court Training Center, Judicial Committee on Information Technology, Texas Judicial Academy, and the Texas Association of Governmental Information Technology Managers.

AGENDA *

TUESDAY, JANUARY 29, 2008

8:00 a.m. – 10:00 a.m. Vendor Set Up
10:00 a.m. – 5:00 p.m. Vendors Trade Show Open (Ballroom Lobby area)

Municipal Courts Training

Developed by The Texas Municipal Courts Training Center

9:00 a.m. – 10:00 a.m. Roaming the Web...the Freer Side of Life
10:15 a.m. – 11:15 a.m. Red-Light Technology
11:15 a.m. – 12:45 p.m. Lunch (on your own)
12:45 p.m. – 2:45 p.m. What's New: Court-Security Technology
3:00 p.m. – 4:00 p.m. Innovative Traffic Technologies
4:00 p.m. – 5:00 p.m. Electronic Payments Made Simple
6:00 p.m. – 8:00 p.m. Welcome Reception (Ballroom area)

Justice Court Training

Developed by the Texas Justice Court Training Center

9:00 a.m. – 10:00 a.m. Hiring the Technology-Experienced Clerk;
Developing Job Descriptions
10:15 a.m. – 11:15 a.m. E-Filing in the Justice Court
11:15 a.m. – 12:45 p.m. Lunch (on your own)
12:45 a.m. – 2:45 p.m. Technology Funds: Rules for Utilization
3:00 p.m. – 4:00 p.m. Navigating the TJCTC Web Page
4:00 p.m. – 5:00 p.m. Electronic Payments Made Simple
6:00 p.m. – 8:00 p.m. Welcome Reception (Ballroom area)

Information Technology Managers Training

Conducted by the Texas Association of Governmental Information Technology Managers

9:00 a.m. – 10:00 a.m. Police-Reporting Automation
10:15 a.m. – 11:15 a.m. GIS and Visualization of Crime Statistics
11:15 a.m. – 12:45 p.m. Lunch (on your own)
12:45 p.m. – 1:45 p.m. Comprehensive Integrated Justice Information Management Systems
1:45 p.m. – 2:45 p.m. "Green" Data Centers
3:00 p.m. – 4:00 p.m. Advantages of Server Virtualization
4:00 p.m. – 5:00 p.m. Best Practices for IT Service Delivery
6:00 p.m. – 8:00 p.m. Welcome Reception (Ballroom area)

County Judges Training

Developed by the Texas Association of Counties

12:45 p.m. – 1:45 p.m. Technology Funds: Rules for Utilization
1:45 p.m. – 2:45 p.m. Benefits of Electronically Filed Criminal Cases
3:00 p.m. – 4:00 p.m. Legal Research: Using LexisNexis Effectively

4:00 p.m. – 5:00 p.m. Electronic Court Recordings: A Replacement for Court Reporters
6:00 p.m. – 8:00 p.m. Welcome Reception (Ballroom area)

General Technology Training

Developed by the Texas Association of Counties

9:00 a.m. – 10:00 a.m. E-Filing
10:15 a.m. – 11:15 a.m. Understanding Law Enforcement Advanced DUI/DWI Reporting Systems
11:15 a.m. – 12:45 p.m. Lunch (on your own)
12:45 p.m. – 1:45 p.m. Electronic Web Presence: What is Required
1:45 p.m. – 2:45 p.m. Archive Access: Digitizing Pays Off
3:00 p.m. – 4:00 p.m. Pros and Cons of Web Publishing
4:00 p.m. – 5:00 p.m. Electronic Payments Made Simple
6:00 p.m. – 8:00 p.m. Welcome Reception (Ballroom area)

WEDNESDAY, JANUARY 30, 2008

8:00 a.m. – 12:00 p.m. Vendors Trade Show Open (Ballroom Lobby area)

General Sessions

8:30 a.m. – 10:00 a.m. Internet's Impact on Local Government and Future Trends
Opening Keynote: Peter Vogel, Co-Chair, Internet and Computer Technology Practice Group; Gardere Wynne Sewell
10:00 a.m. – 10:30 a.m. Break with the Vendors
10:30 a.m. – 11:30 a.m. Developing Policies and Procedures for the Use of Business Electronics
11:30 a.m. – 1:00 p.m. Lunch (on your own)
1:00 p.m. – 1:45 p.m. Great Gadgets: Voice Over IP Telephone Systems (VoIP)
1:45 p.m. – 2:30 p.m. With CISV Going Away, How Do I Purchase Now From DIR?
2:30 p.m. – 4:30 p.m. Bus Trip to the GTC Trade Show (Downtown Austin)

THURSDAY, JANUARY 31, 2008

Closing General Sessions

8:30 a.m. – 9:15 a.m. Video Magistrating
9:15 a.m. – 10:15 a.m. High-tech Alternatives to Incarceration
10:30 a.m. – 11:30 a.m. Electronic Evidence: Rules for Acceptability
Closing Keynote: John Bradley, District Attorney; Williamson County

* Agenda is subject to change

Converging Technologies

2008 Courts and Local Government Technology Conference January 29-31, 2008 • Crowne Plaza Hotel in Austin

Name: _____

Title/Office: _____

County: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

Email: _____

Please check one:

- I will take the bus to the GTC Vendor Show.
- I will take a personal vehicle to the GTC Vendor Show.
- I will not be attending the GTC Vendor Show.

PAYMENT INFORMATION:

- Check Enclosed (*Make checks payable to TMCEC.*)
- P.O. attached.
- Credit Card (*Complete the following. \$2.00 will be added for each payment made by credit card.*)

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

Credit Card Number

Expiration Date

Credit card type: _____

MasterCard

Visa

Name as it appears on card (print clearly): _____

Authorized Signature

MAIL TO:

Texas Municipal Courts Education Center
Attn: Carrie Harper
1609 Shoal Creek Blvd., Suite 302
Austin, TX 78701

FAX TO:

512/435-6118

♿ If special accommodations are needed, please contact
Carrie Harper at 800/252-3718.



FOR JUDGES

Rules of Judicial Education

According to the Rules of Judicial Education, all municipal judges (both attorney and non-attorney) must attend one accredited judicial education program every year. Newly appointed or elected attorney judges must attend a TMCEC 12-hour conference within one year from appointment or election and once every school or academic year thereafter. To qualify as an attorney judge, you must be licensed by the State Bar of Texas. Newly appointed or elected non-attorney judges must, within one year from the date of appointment or election, complete 32 hours of continuing judicial education from TMCEC before attending a 12-hour conference the next year and once every school year thereafter.¹

The TMCEC academic year is September 1, 2007 through August 31, 2008. Judges who have been on the bench longer than one year must attend an approved program for judicial education credit regardless of birthdate or date of appointment. For the attorney judges, this is a different reporting year than the State Bar's Minimum Continuing Legal Education (MCLE) rules, which are based on birthdate.

The Center will request approval to offer MCLE and Advanced Criminal Law credits at most TMCEC judges' conferences *except* for the 32-hour schools for new non-attorney judges, the low volume court series for experienced non-attorney judges, the court technology conference, and the four-hour orientations.

Municipal judges have an alternative to attending programs offered by TMCEC. The Municipal Courts Education Committee allows alternative providers for mandatory judicial education for municipal judges (see www.tmcec.com).

Under current rules passed by the Municipal Courts Education Committee, a judge who has completed two years of training from TMCEC may opt to attend courses provided by other approved entities during his/her third year of education. Alternate providers approved by the TMCEC Education Committee include the American Academy of Judicial Education, ABA Traffic Seminar, Harvard Law School, Houston Law School and Foundation, Juvenile Law Section of the State Bar of Texas, National College of District Attorneys, The National Judicial College, South Texas School of Law, State Bar of Texas Professional Development Programs, Texas Defense Lawyers Project, Texas Justice

Courts Training Center, Texas Juvenile Probation Commission, and Texas Municipal Courts Association. Judges who choose to opt out must complete a TMCEC program every other year.

All alternative courses must be predominately criminal law, criminal procedure, judicial trial skills, or judicial ethics courses related to the jurisdiction of the municipal courts. Courses must be at least 12 hours in length.

Video, audio, and online programs are ineligible. The changes to the rule went into effect for the 1992-1993 academic year and continue in 2007-2008. If you have any questions, please contact Hope Lochridge, Executive Director, at TMCEC (800.252.3718). If you wish to complete the ALTERNATIVE JUDICIAL EDUCATION FORM, a copy is found on page 17 in the Academic Catalog. We ask that you indicate your intention to opt out **prior to April 30, 2008** so that we can anticipate summer enrollment.

The Waiver Process

If a judge is unable to attend the mandatory 12 hours of judicial education within the academic year (September 1, 2007 - August 31, 2008), he or she may request a waiver from the Municipal Courts Education Committee. A form to make this request can be obtained from the TMCEC office (800.252.3718). The Committee typically reviews requests for waivers in September **after** the end of the academic year. If an emergency situation has occurred and is well documented in the request for a waiver, the Committee may grant a conditional waiver that will require the judge to attend two conferences (one at his or her own expense) in the next year. Only in rare cases is an unconditional waiver granted. More often, waivers are denied. If a waiver is denied, the judge's name is sent to the Commission on Judicial Conduct. It is highly recommended that judges not wait until the summer to attend a judicial education program. With 10 regional and two low volume programs being held this year, it is unlikely that the Committee will view requests for either unconditional or conditional waivers with any leniency. In FY07, the TMCEC reported to the State Commission on Judicial Conduct five municipal judges as noncompliant. 🗑️

¹ *Justices of the peace (non-lawyers) who are appointed to the municipal court bench must attend a TMCEC 32-hour school within one year of appointment. Those who are licensed by the State Bar of Texas must attend a TMCEC 12-hour conference within one year of appointment. See www.tmcec.com for dates and locations of judges programs.*



RESOURCES FOR YOUR COURT

Texas Class Cs

TMCEC has released a booklet that provides a comprehensive list of 1271 Class C misdemeanors define by state law. Organized by statute, the publication also includes base court costs (effective 1-1-08) and traffic reporting codes promulgated by the Texas Department of Public Safety.

Cost is \$10 plus \$2.00 handling if ordered by mail. Checks should be made payable to TMCEC. Copies of the booklet will be sold at all TMCEC 12-hour and 32-hour seminars.

New Spanish Forms

TMCEC has recently translated judgment forms. These are available on the TMCEC web site and may be downloaded at no charge. Special appreciation is expressed to the Texas Court of Criminal Appeals for the additional funding to hire a translator to prepare these forms. TMCEC cautions users of the formers to check the translations before use. There are varying interpretations of how to translate many of the legal terms. Please compare the TMCEC version with what is commonly used in your court.

Save the date! May 21 - 23, 2008 TMCEC Traffic Safety Conference Irving, Texas!

Municipal judges, clerks, and city officials are invited to attend. The preliminary agenda includes topics such as *Blood Warrants, Booster Seats/Child Safety Seats, How Municipal Courts Can Make a Difference, Red Light Cameras & Enforcement, OmniBase Failure to Appear, Community or Problem Solving Courts, Aggressive Drivers, Young Drivers, DUI, Deferred Disposition, Role of Courts in City Government* and much more.

www.tmcec.com

Electronic Payment Processing

Official Payment Corp. allows its customers to accept credit cards and electronic check payments via internet, telephone or kiosks. This paperless payment process provides a convenient and efficient method of collecting court costs and fines through a trusted and reliable service provider. Though a convenience fee is applied to the payee, depending on their card's program, they can earn reward points, frequent flier miles, or cash back. All major credit cards are accepted.

CoLoGo

TMCEC is again sponsoring the 2008 Courts and Local Government Technology Conference: CoLoGo.

It will be held January 29-31, 2007 at the Crowne Plaza Hotel in Austin. It is offered in conjunction with the other judicial education entities (Texas Association of Counties, Texas Justice Courts Training Center, the Texas Center for the Judiciary), as well as the Judicial Committee on Information Technology and the Texas Association of Government Information Technology Managers. TMCEC thanks the Texas Association of Counties for each leadership and resources in its role as the primary planner behind this joint effort.

The program is not offered for mandatory judicial education credit for municipal judges, but does offer certification credit. No housing or meals are provided by TMCEC.

A promotional brochure was mailed to all members of the TMCEC constituency in November with additional information. The brochure may also be accessed on the TMCEC web site (www.tmcec.com). The registration fee is \$150 before January 1st and \$175 afterwards. Hotel accommodations are at the state rate and may be made by calling 512/323-5466.

The conference will offer specific ways cities and counties can utilize technology to their benefit. There will be information on lots of new gadgets that will make your court more efficient. A field trip to the Southwest Government Technology Conference is planned with bus transportation provided.

For more information, contact Shane Scribner at TMCEC: 800/252-3718 or scribner@tmcec.com.



FROM THE CENTER

TMCEC Web Site

TMCEC is about to launch a new web site. We hope that it will make access to information contained within it much more accessible. The new site has an “Old Western” theme. TMCEC is seeking photographs of court buildings, offices or the Texas landscape to feature on the new web site. Please submit all photographs to Lois Wright (wright@tmcec.com). Resolution need not be high, as the photos will all be cropped to 516 x 125. Please send them in .jpeg or .gif format. We plan to recognize each contributor on our “About Us” page. Great appreciation is expressed to Lois Wright for her work on the new web site.

Municipal Court Week

Many thanks to you who celebrated Municipal Court Week in your court and community. It was officially held November 5-9, 2007. TMCEC has learned of activities in the following courts:

- Alvin
- Austin
- Balch Springs
- Bastrop
- Brenham
- Bryan
- Burnet
- Cockrell Hill
- Crowley
- Forest Hill
- Highland Village
- Hurst
- Lockhart
- Katy
- Keller
- Kennedale
- Pearland
- Pecan Hill
- Princeton
- Richardson
- Round Rock
- Royse City
- Sachse
- San Antonio
- San Marcos
- Shenandoah
- Webster

Great appreciation is expressed to those organizing the events. While at the TML Annual Meeting, TMCEC staff members witnessed court official, judges and clerk picking up small freebies to bring back to their courts. No gesture is too small to count. Please send us news of what you did in your court if your city is not listed above. More details about each event can be found on the TMCEC web site.

FAQ for

TMCEC Traffic Safety Conference

Who?

This conference is planned for city officials (city managers — mayors where there is no city manager), judges and clerks. TMCEC, via a grant from TxDOT, will provide two nights lodging, several meals and all course materials. The registration fee is \$50 for all participants, except the Traffic Award Winners, whose registration fees will be waived (see page 25 of *The Recorder* for information about the Awards).

Can I attend if I have already attended or registered for a 12 or 32-hour TMCEC program this year?

Yes. The Traffic Safety Conference is an entirely different curriculum. Since there is TxDOT funding, you will not be charged for a second seminar.

Does the conference count as credit?


Yes. For judges, it could toward mandatory judicial education credit (14.5) hours. For clerks it counts towards certification credit (14.5 hours). There is no TCLEOSE credit. There is 12.5 hours of CLE credit for attorneys.

Why is CLE credit less than judicial education or certification credit?

The State Bar does not allow breaks to be counted towards credit.

Register early!

Space is limited. Enrollment will be allowed on a first-come-first-served basis. In order to meet the performance measure required by the funding, 20 spaces will be reserved for judges and 20 spaces will be reserved for city officials.

A promotional brochure was mailed to all judges and clerks in November 2007. It contains a detailed agenda and more information. The brochure may also be accessed on the TMCEC web site. 



Municipal Traffic Safety Initiative: News You Can Use

Traffic Safety Can Go Far Beyond the Traffic Stop Or Positive Decreases Negative

by Lisa R. Robinson, TMCEC TxDOT Grant Administrator

There are so many things we can do to encourage Traffic Safety in our own community; unfortunately we forget sometimes the importance of the little things. For example, some easy ways to reach those in your community are, by hanging up a poster showing the importance of safety belt use, distributing *Texas Road Tips*, speaking with the children and youth in your community, sponsor a safety belt check point, encourage different organizations in your community to work together collaboratively, sponsor a traffic safety poster contest, speak to local and civic groups on the importance of traffic safety, put traffic safety tips on paper placemats at your local restaurant, create coloring sheets with traffic safety tips, write articles for the local news publications, and much more. The list is endless of creative, fairly easy and inexpensive ways to encourage traffic safety in your own community. Sometimes it just takes one person to create an amazing initiative with just one thought or idea that will spark others into action as well.

Gay Kilgore, Court Clerk of Little River Academy, recently shared with me something their city does during the month of December. To encourage residents to drive carefully, Chief of Police, Lee Dixon, will stop people at random who are not in any violation. Instead of giving them a citation he gives them a reward for driving safely, in the form of a check from the city. People are pleasantly surprised, and appreciate getting the checks.

What a way to encourage good driving. Have you heard the expression, "Positive reinforcement, decreases negative behavior"? This works well with all ages.

I encourage and challenge you to think of little things you can do that bring about big change in your community. Share these ideas with TMCEC. One way you can do that is to email me at robinson@tmcec or apply for the Municipal Traffic Safety Award. For more information, go to the TMCEC web-site at www.tmcec.com and click on Municipal Traffic Safety Initiative or call me at 800/252-3718. 📧

Alcohol and Drug Use National and State Statistics

- 📌 **125,000,000 Americans drank alcohol in the last month, and more than 12% drove after drinking.**
- 📌 **8,700,000 Texans describe themselves as current drinkers, while 4,300,000 admit to binge drinking in the last month.**
- 📌 **28% of 12-20 year olds drank in the last month, and 19% had at least one binge episode in the last month.**
- 📌 **57% of the 1,569 Texas killed in alcohol-related crashes were impaired drivers.**

Source: Center of Transportation Safety, Texas Transportation Institute

Municipal Traffic Safety Initiatives

Traffic Safety Awards

Purpose:

To recognize those who work in cities that have made outstanding contributions to their community in an effort to increase traffic safety. This competition is a friendly way for municipalities to increase their attention to quality of life through traffic safety activities. Best practices will be shared across the state. Each submission will be recognized.

Eligibility:

Any municipal court in the State of Texas. Entries may be submitted on behalf of the court by the following: Judge, Court Clerk, Deputy Court Clerk, Court Manager, Court Administrator, Bailiff, Marshal, Warrant Officer, City Manager, City Councilperson, Law Enforcement Representative, or a Community Member.

Awards:

Award recipients will be honored at the Texas Municipal Courts Education Center (TMCEC) Traffic Safety Conference that will be held on May 21-23, 2008 at the Omni Mandalay Hotel at Los Colinas in Irving, Texas.

Nine (9) awards will be given:

- Two (2) in the large volume courts, *servicing populations of 150,000 or more;*
- Three (3) in the medium volume courts, *servicing populations between 30,000 and 149,999; and*
- Four (4) in the small volume courts, *servicing populations below 30,000.*

Award recipients receive for two municipal court representatives, complimentary conference registration; travel to and from the Traffic Safety Conference to include airfare or mileage that is within state guidelines, two night's accommodations at the beautiful Omni Mandalay Hotel and most meals and refreshments.

Honorable Mentions:

If there are a number of applications that are reviewed and deemed outstanding and innovative, at the discretion of TMCEC, honorable mentions may be selected.

Honorable mentions will be provided airfare or mileage that is within state fiscal guidelines to attend the Traffic Safety Conference and will be recognized at the Traffic Safety Conference.

Judging Committee and How Entries are Judged:

A panel of judges made up of TMCEC staff and board members will review each application and assign points based on the materials submitted. After judging, the scores will be averaged and a final score assigned. *There may be categories where no awards will be presented due to a lack of entries.*

Applicants will be judged on the basis of what their court is doing in terms of public outreach in their community to increase traffic safety while decreasing traffic crashes, traffic fatalities, juvenile DUI, child safety seat offenses, red light running, and other traffic related offenses. It may be helpful to review "What Can You Do" on page 19 of this publication.

Section I: *A maximum of 50 points can be awarded.*

What are you currently doing or planning to do to address traffic safety? Please provide a written report that is no longer than five pages in length. This may include details regarding, but not limited to: monthly or regular articles in local publications; sponsorship of mock trials; community outreach; distribution of written materials and pamphlets; creative sentencing; bilingual programs and initiatives on traffic safety; adoption of the national and state programs such as Click It or Ticket; web-pages addressing traffic safety; presentations to local civic groups and organizations; interaction with youth; outreach with repeat offenders; and community partnerships. Court programs may be represented in conjunction with city departments, local schools, civic groups, and other community programs.

Section II: *A maximum of 30 points can be awarded.*

Attachments/Samples. Seeing is believing. Show us samples or digital photos of your materials. This may include, but is not limited to: copies (*these will not be returned*) of photos, news articles, press releases, materials you distribute, copies of your web-pages, flyers, and letters of support.

Section III: *A maximum of 20 points can be awarded.*

Neatness, organization of materials, and following submission guidelines.



General Tips on a Winning Submission:

- First impressions count. A neat, well-organized submission that is easy to understand during the judging makes big difference.
- Make sure that all of the information you want the judges to see is securely attached.

Entry Rules:

- **Three copies** of the application packet must be submitted.
- Provide a completed application packet that includes the application form.
- All typed pages should be 1.5 or double spaced, printed single-sided in at least a font size of 12, *excluded: attachments and samples do not have to follow these guidelines.*
- Each application packet cannot contain more than thirty pages or documents, including attachments, pictures, and supporting documentation. You may include letters of support as long as you do not exceed page limitations. If, for example, you create a four page handout on Juvenile DUI to distribute to your local schools, this will count as one document.
- Applications are divided into three (3) categories:
 1. *Large Volume Courts are those serving populations of 150,000 or more;*
 2. *Medium Volume Courts are those serving populations between 30,000 and 149,999; and*
 3. *Low Volume Courts are those serving populations below 30,000.*
- Please provide copies only, **no originals, as your submission will not be returned.**
- No late submissions will be considered.

Deadline:

Entries must be postmarked no later than **Thursday, January 31, 2008.**

Send applications to:

TMCEC – Traffic Safety Awards
Attn: Lisa Robinson, CFLE
TxDOT Traffic Safety Grant Administrator
1609 Shoal Creek Boulevard, Suite 302
Austin, TX 78701

Presentation:

Award recipients and honorable mention winners will be notified by February 29, 2008 and will be honored during the Traffic Safety Conference to be held May 21-23, 2008 at the Omni Mandalay Hotel at Los Colinas in Irving, Texas.

Best Practices:

Information submitted will be compiled and shared statewide for community networking, collaboration, and examples of best practices. 📌

For more information, please contact Lisa R. Robinson, CFLE, TxDOT Traffic Safety Grant Administrator, at 512/320-8274 or robinson@tmcec.com

Traffic law enforcement benefits can go far beyond the traffic stop!

What Can You Do?

- Get involved
- Add traffic safety materials to your city's and court's web-sites
- Host a warrant round-up with nearby cities
- Invite school groups into your court
- Start a proactive fine collection program
- Recognize situations where a "fine is not fine"
- Join the TMCEC listserv on traffic safety
- Approve adequate funding, staff, and support for your municipal court
- Speak to local civic groups on the importance of traffic safety
- Build community partnerships
- Ask law enforcement officers and prosecutors to work together to identify at-risk drivers in your community
- Create meaningful sentencing alternatives for repeat offenders, especially juveniles and minors using deferred disposition
- At the close of a trial after sentencing, remind jurors and court observers of the importance of compliance with traffic laws
- Adopt a seat belt policy for all city employees
- Participate annually in Municipal Court Week

Municipal Traffic Safety Initiatives



TMCEC Traffic Safety Award Application Deadline: January 31, 2008 (postmarked)

Please print all information as you would like to appear on the award

Name of Person Submitting & Position: _____

Court Nominated: _____

Mailing Address: _____

City: _____ Zip Code: _____

Telephone number: (____) _____ - _____ Email address: _____

Category (please check one):

_____ *Large Volume Court: serving populations of 150,000 or more*

_____ *Medium Volume Court: serving populations between 30,000 and 149,999*

_____ *Low Volume Court: serving populations below 30,000*

Judge's Signature: _____

DO NOT WRITE IN THIS AREA:

Section I: Written Report: Maximum of 50 points: _____

Section II: Attachments/Samples: Maximum of 30 points: _____

Section III: Neatness, Organization of Materials,
& Following Submission Guidelines: Maximum of 20 points: _____

Total Points Awarded: _____

Notes: _____





TRAINING FOR YOUR COURT

15th Annual Municipal Prosecutors Conference

TMCEC is hosting two programs for prosecutors in FY2007-2008. The TMCEC Annual Municipal Prosecutors Conferences are 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 on procedural, substantive, and case law.

CLE Credit

These conferences will be submitted for CLE credit by the State Bar of Texas. We plan to provide for at least one hour of ethics at each school. The pre-conference offers an additional three hours of CLE. The TMCA Board adopted the \$100 fee that applies only to attorney judges and prosecutors who wish to receive CLE credit for their attendance at TMCEC programs. The fee is **voluntary** and is used for expenditures not allowed by the Texas Court of Criminal Appeals (membership services, salary, food, and refreshments). If you do not wish to seek CLE credit from TMCA, you can obtain it from another provider or claim judicial exemption.

Registration Fee

Municipal prosecutors may register for either of the prosecutors' conferences. Housing, two breakfasts and one lunch are included with the fee. Municipal prosecutors who do not need housing at the conference hotel may pay a \$100 registration fee (\$200 with CLE). **Prosecutors who must cancel for any reason 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 (\$400 with CLE) will be charged for non-municipal prosecutors or attorneys.

San Antonio

January 20-22, 2008 (S-M-T)
Crowne Plaza Riverwalk
111 E. Pecan St.
Zip Code: 78205
210.354.2800
Register by: 12/20/07

Houston

March 16-18, 2008 (S-M-T)
Omni Houston Hotel
4 Riverway
Zip Code: 77056
713.871.8181
Register by: 2/16/08

Municipal Bailiffs & Warrant Officers Conference

In FY 2007-2008, TMCEC is offering two 12-hour conferences for municipal bailiffs and warrant officers, accompanied by four-hour pre-conferences. The courses will include segments on court security. This may allow for participants' registration fees and travel to be paid for by local court security funds. Credit of 12 TCLEOSE hours will be awarded to participants who complete all 12 conference hours. Four hours of TCLEOSE credit is offered at the pre-conference. Partial credit is not given for the pre-conference or conference participation.

San Antonio

January 20-22, 2008 (S-M-T)
Crown Plaza Riverwalk
111 E. Pecan St.
Zip Code: 78205
210.354.2800
Register by: 12/20/07

Dallas

June 30-July 2, 2008
Omni Dallas Park West
1590 LBJ Freeway
Zip Code: 75234
972.869.4300
Register by: 5/30/08

Pre-Conference

Optional four-hour pre-conferences will be held prior to each of the 12-hour programs. Pre-conference topics will be announced at a later date via the conference confirmation letters. Registration forms will be enclosed with conference confirmation letters. An additional four TCLEOSE hours will be awarded to those who choose to attend the pre-conference.

Judge's Signature

TMCEC requires a signature authorizing attendance on the registration form from the municipal judge in whose courtroom the bailiff or warrant officer serves.

Registration fee: \$50.

Level III Assessment Clinic

To be certified at Level III, clerks and court administrators must attend a three-day Assessment Clinic sponsored by TMCEC. The Clinic is a workshop emphasizing the development and practice of court management and human resource skills. The purpose of the Clinic is to help clerks gain confidence in their management skills and to be better prepared to provide efficient and effective oversight of court operations. Each program will have 20 or fewer registered participants and interaction is emphasized. Participants are encouraged to make self-assessments of their own management and human resources skills - there is **NOT** an exam at the end of the program. This program is contingent upon at least 12 participants enrolling 30 days prior to the program.

Each of the programs will begin at 9:00 a.m. on Day 1 and conclude at 4:00 p.m. on Day 3. Night sessions are planned.

Participation in the Assessment Clinic is one of several activities required to complete Level III. Participants need not have completed the exam or observation process before attending the clinic; however, it is necessary to have completed the majority of recommended readings. The **\$100 program fee** is refundable if the Center is notified in writing of cancellation 10 working days prior to the clinic. Checks must be made payable to TMCEC and mailed with the registration form.

February 1-3, 2008 (F-Sa-S)


Austin

Austin Marriott Courtyard

300 East 4th St.

Zip Code: 78701

512.236.8008

Register by: 12/15/07 

2007-2008 TMCEC Academic Schedule At-A-Glance

Conference	Date(s)	City	Hotel Information
32-Hour New Judges and Clerks Conferences	December 3-7, 2007	Austin	Omni Hotel Southpark 4140 Governor's Row, Austin, TX
	WAIT LIST		WAIT LIST
19-Hour Court Administrator Special Topic: ICM: Managing Financial Resources	January 7-9, 2008*	Austin	Omni Hotel Southpark 4140 Governor's Row, Austin, TX
12-Hour Regional Judges and Clerks Conferences	January 14-16, 2008	San Antonio	Omni San Antonio Hotel 9821 Colonnade Blvd., San Antonio, TX
12-Hour Bailiffs/Warrant Officers and Prosecutors Conferences	January 20-22, 2008	San Antonio	Crowne Plaza Riverwalk 111 E. Pecan Street, San Antonio, TX
Texas Assoc. of Counties: Courts & Local Government Technology Conference	TBD	Austin	TBD
24-Hour Level III Assessment Clinic	February 1-3, 2008*	Austin	Marriott Courtyard Downtown 300 East 4 th Street, Austin, TX
12-Hour Regional Judges and Clerks Conferences	February 3-5, 2008	Fort Worth (Alliance)	Doral Tesoro Hotel and Golf Club 3300 Championship Pkwy, Ft. Worth, TX
12-Hour Regional Judges and Clerks Conferences	February 24-26, 2008	Galveston	San Luis Resort 5222 Seawall Blvd., Galveston, TX
12-Hour Regional Judges and Prosecutors Conferences	March 16-18, 2008	Houston	Omni Houston Hotel 4 Riverway, Houston, TX
12-Hour Judges and Clerks Low Volume Seminar	March 24-26, 2008*	Corpus Christi	Omni Corpus Christi Bayfront 900 N. Shoreline Blvd, Corpus Christi, TX
12-Hour Regional Judges and Clerks Conferences	April 8-10, 2008	Lubbock	Holiday Inn Park Plaza 3201 South Loop 289, Lubbock, TX
12-Hour Judges and Clerks Low Volume Seminar	April 13-15, 2008*	Horseshoe Bay	Horseshoe Bay Resort Marriott 200 Hi Circle North, Horseshoe Bay, TX
12-Hour Regional Clerks Conference	April-29- May 1, 2008	S. Padre Island	Radisson Resort South Padre Island 500 Padre Blvd., South Padre Island, TX
12-Hour Regional Judges Conference (Attorneys)	May 4-6, 2008	S. Padre Island	Radisson Resort South Padre Island 500 Padre Blvd., South Padre Island, TX
12-Hour Regional Judges Conference (Non-Attorneys)	May 6-8, 2008	S. Padre Island	Radisson Resort South Padre Island 500 Padre Blvd., South Padre Island, TX
14.5-Hour Judges, Clerks, and City Officials Traffic Safety Conference	May 21-23, 2008	Irving	Omni Mandalay Hotel at Las Colinas 221 East Las Colinas Blvd., Irving, TX
8-Hour Court Interpreters I Conference	June 2, 2008*	Irving	Omni Mandalay Hotel at Las Colinas 221 East Las Colinas Blvd., Irving, TX
8-Hour Court Interpreters II Conference	June 2, 2008*	Irving	Omni Mandalay Hotel at Las Colinas 221 East Las Colinas Blvd., Irving, TX
12-Hour Regional Judges and Clerks Conferences	June 18-20, 2008	El Paso	Camino Real Hotel 101 S El Paso Street, El Paso, TX
12-Hour Bailiff/WO and Court Administrator Conferences	June 30- July 2, 2008	Dallas	Omni Dallas Park West 1590 LBJ Freeway, Dallas, TX
32-Hour New Judges and Clerks Conferences	July 7-11, 2008	Austin	Doubletree Hotel 6505 IH 35 North, Austin, TX

*An asterisk indicates that there is no pre-conference, but housing is provided the night before the date shown. At all other conferences there is an optional pre-conference.

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
2008 REGISTRATION FORM**

Conference Date: _____
Conference Site: _____

Check one:

- | | | |
|---|---|---|
| <input type="checkbox"/> Non-Attorney Judge (\$50 fee) | <input type="checkbox"/> Clerk/Court Administrator (\$50 fee) | <input type="checkbox"/> Prosecutor not seeking CLE credit (\$250) |
| <input type="checkbox"/> Attorney Judge not seeking CLE credit (\$50) | <input type="checkbox"/> Bailiff/Warrant Officer* (\$50 fee) | <input type="checkbox"/> Prosecutor seeking CLE credit (\$350) |
| <input type="checkbox"/> Attorney Judge seeking CLE credit (\$150) | <input type="checkbox"/> Licensed Court Interpreter* (\$50 fee) | <input type="checkbox"/> Prosecutor not seeking CLE/no room (\$100 fee) |
| <input type="checkbox"/> Traffic Safety Conference-Judges & Clerks (\$50) | <input type="checkbox"/> Assessment Clinic (\$100 fee) | <input type="checkbox"/> Prosecutor seeking CLE credit/no room (\$200) |

By choosing TMCEC as your CLE provider, attorney-judges and prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. (For more information, see the TMCEC Academic Schedule).

Name (please print legibly): Last Name: _____ First Name: _____ MI: _____
Names you prefer to be called (if different): _____ 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, two nights at the 12-hour seminars, and one night at the 8-hour court interpreters seminar. 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.

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 (ex officio 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/Marshal* | <input type="checkbox"/> Prosecutor | <input type="checkbox"/> Licensed Court Interpreter* | |

***Bailiffs/Warrant Officers/Marshals/Court Interpreters:** Municipal judge's signature required to attend Bailiff/Warrant Officer/Marshal/Court Interpreter 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 working days prior to the conference. I will first try to cancel by calling the TMCEC office in Austin. If I must cancel on the day before or day of the seminar due to an emergency, I will call the TMCEC registration desk at the conference site IF I have been unable to reach a staff member at the TMCEC office in Austin. 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. Participants in the Assessment Clinics must cancel in writing two weeks prior to the seminar to receive a refund. **Payment is due with the registration form. Registration shall be confirmed only upon receipt of registration form and payment.**

Participant Signature (May only be signed by participant)

Date

PAYMENT INFORMATION:

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

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

Credit Card Number _____ Expiration Date _____

Credit card type: _____

MasterCard

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, or fax to 512/435-6118.

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**TEXAS MUNICIPAL COURTS
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1609 SHOAL CREEK BLVD., SUITE 302
AUSTIN, TX 78701
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**TMCEC MISSION
STATEMENT**

To provide high quality judicial education, technical assistance and the necessary resource material to assist municipal court judges, court support personnel and prosecutors in obtaining and maintaining professional competence.

Change Service Requested